

## Appendix 2: Detailed assessment of proposed provisions

This section assesses the justification and environmental impact of the proposed provisions. Where the proposed provisions align with the standard instrument or a model clause, a general assessment is provided in **Section 4** and **5** of the **Gateway Report**. A detailed assessment of the provisions which have been customised or result in specific environmental impacts follows in this appendix.

### A2.1 Aims of plan

The proposed aims are considered to be consistent with relevant district and local strategic planning priorities (See **Section 4** of the Gateway Report), and are prepared in accordance with the Department's Practice Note No. PN 11-001.

### A2.2 Site-specific rezonings

#### A2.2.1 Residential density hierarchy

Council's draft Local Housing Strategy (which is intended to accompany exhibition of the planning proposal) establishes a plan for housing in the LGA over the next 20 years. The Strategy involves establishing a hierarchy of residential zones that restricts low, medium and high density development to their respective zones. This hierarchy is intended to align development typologies with the proposed objectives of the residential zones in the new LEP (see **Appendix 3** for consideration of the proposed zone objectives). The proposed hierarchy is as follows:

- R2 Low Density Residential: Dwelling houses and dual occupancies;
- R3 Medium Density Residential: Attached dwellings and multi dwelling housing; and
- R4 High Density Residential: Residential flat buildings (RFBs).

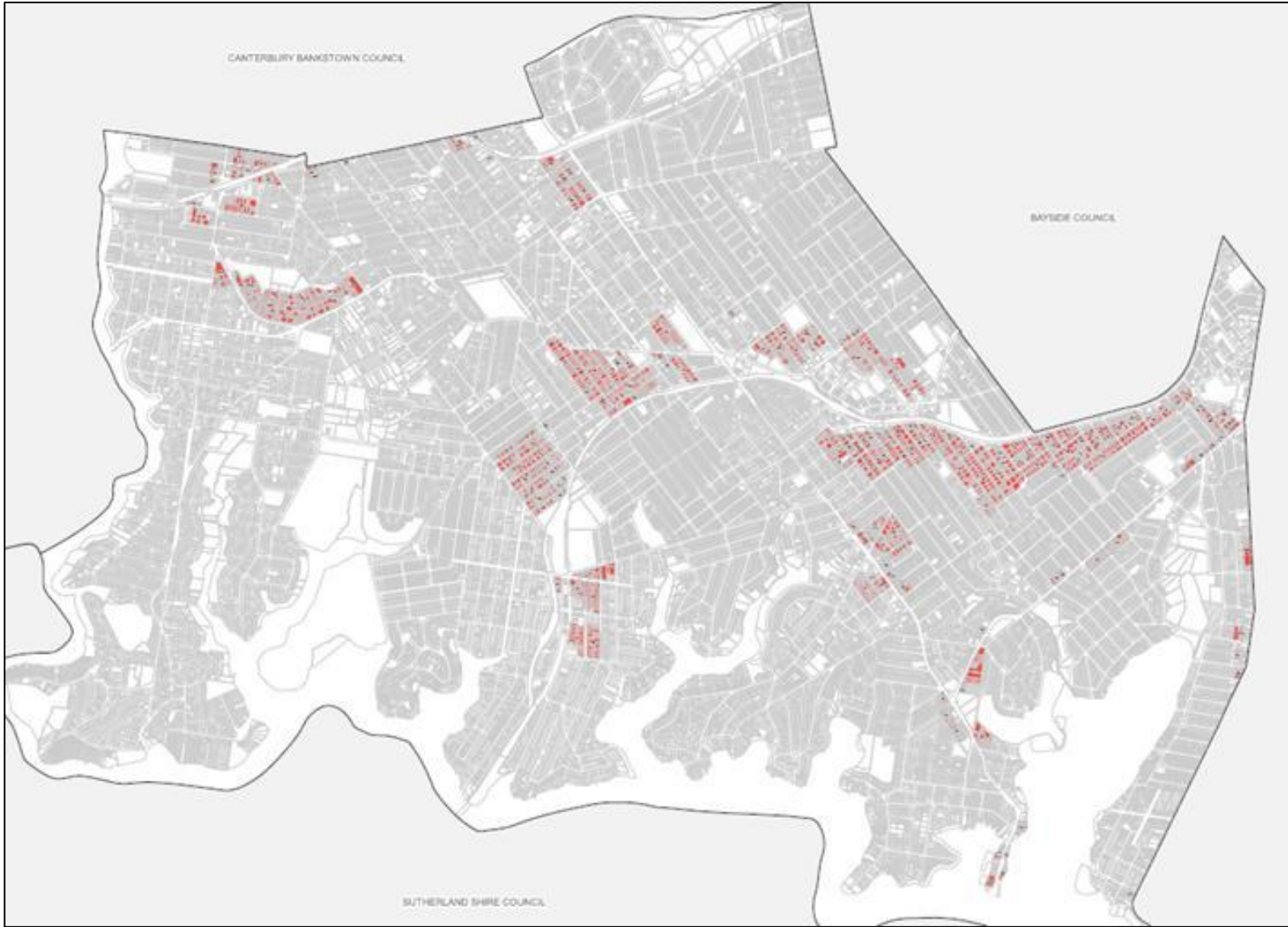
RFBs are permitted in the R3 zones of both HLEP and KLEP at present. In order to impose the new hierarchy, the planning proposal involves rezoning all land zoned R3 in HLEP and KLEP with a height of 12m or greater (**Figure 1**) to Zone R4 High Density Residential. The remaining land zoned R3 would remain within that zone (with new areas proposed for rezoning from R2 to R3 assessed in **A2.2.2** below).

The proposed hierarchy is supported because it simplifies the objectives and function of each residential zone for the community.

The proposed rezoning of land from R3 to R4 is considered acceptable because:

- The height of 12m facilitates a three or four storey residential flat building.
- The rezoning adheres to the proposed residential density hierarchy, which restricts attached dwellings and multi dwelling housing to the medium density residential zone, and residential flat buildings to the high density residential zone. At present, residential flat buildings are permitted in the R3 zones of both HLEP and KLEP (see **Appendix 3** for consideration of the new R3 and R4 zones).

- The rezoning will ensure that permitted residential typologies reflect the objectives of Zone R3, which emphasise landscaped settings, local character and residential amenity, and the objectives of Zone R4, which emphasise neighbourhood vibrancy, maximising public transport patronage and promoting active transport.
- The rezoning of the subject land within R3 zones under HLEP and KLEP to the proposed new R4 zone will not prohibit any significant residential, educational or commercial uses which are permissible in those LEPs, except for home-based child care in the HLEP area. The prohibition of this use is not considered in the planning proposal. A Gateway condition requires Council to provide justification for the prohibition, or to retain its permissibility.
- The prohibition of RFBs in the areas remaining in existing R3 zones presents an inconsistency with Section 9.1 Direction 3.1 Residential Zones since it reduces the permissible residential density of dwellings on this land. Although the draft LHS details how all of these areas are mapped with height limits below 12m, which is likely too low for a compliant RFB development, the draft LHS does not form a part of the planning proposal. To ensure that the planning proposal provides sufficient justification for this inconsistency, and thus to resolve the inconsistency, Gateway conditions require:
  - the planning proposal to be amended prior to community consultation to include the draft LHS; and
  - the planning proposal to be amended to reflect the final endorsed LHS prior to submission for finalisation, should the LHS be endorsed by the finalisation stage.
- It is acceptable with regard to all other Section 9.1 Directions and relevant SEPPs, subject to conditions (See **Section 4** of the **Gateway Report**).



**Figure 1:** Land proposed to be rezoned from R3 to R4 (Source: Planning Proposal)

### A2.2.2 Housing investigation areas

The planning proposal involves rezoning five precincts presently zoned R2 to R3 or R4, with corresponding development standards (see Page 12 of **Attachment A**). The precincts were identified in response to the completed *Local Housing Strategy Evidence Base*. The *Evidence Base* establishes a target of 14,000 new dwellings by 2036 (above the South District Plan's 13,400 target). The *Evidence Base* reviews current and future population and housing trends for the LGA and concludes that existing planning controls will result in a shortfall of 2,000 dwellings from the 14,000 target.

As a consequence, Council state that the draft *Local Housing Strategy* identified five Housing Investigation Areas for increased housing based on their access to existing infrastructure and social services, such as schools, community facilities, open space and public transport. Council state that a preliminary traffic study and urban design analysis supports this rezoning.

On 19 February 2020, Council provided a letter which states that a Housing Investigations Area Paper is being prepared and will be submitted to the Department shortly. This has not occurred.

As a result, the planning proposal provides insufficient justification for rezoning the proposed housing investigation areas. A Gateway condition requires the planning proposal to be amended prior to community exhibition to include justification for the proposed rezoning of the investigation areas, including:

- i. A detailed consistency assessment with all applicable SEPPs and Section 9.1 Ministerial Directions which explicitly addresses each investigation area;
- ii. An explicit consideration of the development standards recommended in the urban design analysis report;
- iii. The complete traffic study which supports the proposals; and
- iv. The detailed justification contained in the draft *Local Housing Strategy*.

The planning proposal's compliance with this condition will be endorsed at the finalisation stage.

In addition, the conditions described in **A2.2.1** above will require the exhibited planning proposal to:

- include the draft LHS; and
- for the planning proposal to be amended to reflect the endorsed LHS, should it be endorsed prior the finalisation of the planning proposal.

The LHS is subject to a separate endorsement process by the Department.

### A2.2.3 Zone SP2 Infrastructure land

Zoning amendments to land zoned SP2 Infrastructure are proposed as follows:

- Rezone land that is currently identified as SP2 “Church” under the HLEP 2012 to the adjoining zone to ensure a consistent approach across the LGA (as per the KLEP approach to SP2 zones). If the adjoining zone does not permit places of public worship as a land use then the property has been added to Schedule 1 of the LEP to enable place of public worship as an additional permitted use;
- Rezone land that is currently identified as SP2 “Aged Care” under the HLEP 2012 to the adjoining zone as seniors housing is permissible under the State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004; and
- Rezone land that is currently identified as SP2 “Community Purposes” and “Public Administration” under the HLEP 2012 to the adjoining zone to ensure a consistent approach across the LGA.

The proposed rezoning of church and aged care SP2 land is considered acceptable because:

- The rezoning of church land will permit a broader flexibility of use of these sites into the future.
- Adding the church properties to Schedule 1 of the new LEP in cases where the adjoining zone does not permit places of public worship (such as Zone R2) will ensure that the ongoing upkeep and development of churches is facilitated under the provisions of the LEP; and
- It is concurred that seniors housing is permitted under SEPP (Housing for Seniors or People with a Disability) 2004, and as such, the existing SP2 Infrastructure zones for the purpose of aged care are unnecessary.

The proposed rezoning of SP2 land identified for ‘Community Purposes’ is considered acceptable given the land is not owned by Council and is host to uses which are permissible and are carried out in other zones, with the exception of Riverwood Community Centre at 31 Thurlow Street. This land is owned by Council and is classified as operational land. A Gateway condition requires Council to amend the planning proposal prior to community consultation to explicitly state its intentions for the future of this land, given the likely public interest in the future of operational Council land which presently hosts a community facility.

The proposed rezoning of the SP2 land identified for ‘Public Administration’, which is limited to 141-143A Stoney Creek Road, Beverley Hills, lacks sufficient justification. Concern is raised about the potential for the land to be contaminated given the proposed rezoning to Zone R2 Low Density Residential. The land is a former motor registry with a large hard stand carpark, and its history or suitability for sensitive land uses, such as dwelling houses or childcare centres, is not known. See **Section 4.5.2** of the **Gateway Report** which considers SEPP 55 for more detail.

In addition, the planning proposal involves:

- Reviewing land currently identified as SP2 ‘Health Services Facilities’ under the KLEP and only retaining SP2 “Hospitals”, as per HLEP, in order to protect hospitals as significant infrastructure; and
- Identifying land across the LGA that is currently not zoned as SP2 but is owned by education providers and operating as a school and rezoning these properties to SP2 ‘Educational establishments’ to formalise the use of these lands as schools and retain their use.

Council provided further detail of the land subject to these two actions. Based on that additional information, the proposed rezonings are considered acceptable because:

- The land identified as 'Health Services Facilities' will only be rezoned to SP2 Hospitals, rather than to a zone permitting other sensitive land uses; and
- Rezoning all land presently used as an educational facility or identified as suitable land for future school expansion is considered to have strategic merit to provide space for these uses with the future growth of the LGA.

#### A2.2.4 Hurstville HLEP 1994 sites deferred from HLEP 2012

See **Appendix 4**.

#### A2.2.5 No 821 Forest Road, Peakhurst

See **Appendix 5**.

#### A2.2.6 Rezoning of KLEP Schedule 1 sites

See **Appendix 6**.

### **A2.3 Principal development standards**

#### A2.3.1 Minimum Subdivision Lot Size

This provision seeks to control the minimum subdivision lot size across the LGA, as per an accompanying map, and includes new objectives and a subclause which excludes the area of access handles and right-of-carriageways to battle-axe lots in calculating the lot size.

The proposed development standard is considered acceptable because:

- Both HLEP and KLEP already contain this clause.
- The proposed local objectives are appropriate, subject to future legal drafting refinement.
- The proposed minimum subdivision lot size in the R2 zone of 450sqm is the lesser of the two existing LEPs, and thus less restrictive.
- The proposed minimum subdivision lot size in the Foreshore Scenic Protection Area (FSPA) of 700sqm (above the existing 550sqm in the HLEP area, and equalling the 700sqm in the Kogarah DCP), is considered appropriate for community consultation because:
  - Orderly and economic development of foreshore land will be incentivised for the purpose of dual occupancies rather than dwelling houses due to their 1000sqm minimum lot size (See **Appendix 2.3.3** below) and 450sqm minimum subdivision lot size (see **Appendix 2.3.2** below);

- The control will ensure that subdivision for the purpose of dwelling houses occurs on large lots of land which may facilitate large areas of landscaping and fulfil the environmental considerations of the proposed FSPA local provision (See **Appendix 2.5.4**).

Council may consider submissions received about this proposed control and re-evaluate following consultation whether it is appropriate.

- The proposed 1000sqm minimum subdivision lot size for land zoned R4 High Density Residential to prevent lot fragmentation is considered acceptable for the purposes of community consultation. Council must consider submissions received about the issue following consultation and may then re-evaluate whether the control is appropriate.
- Likewise, the proposed 1000sqm minimum subdivision lot size for IN2 land, and 2500sqm in the Kingsgrove Industrial Precinct and part of the Peakhurst Industrial Precinct, is acceptable for consultation purposes (the planning proposal states this is KLEP land in error). Should submissions raise issue with the proposed controls, Council may re-evaluate their appropriateness prior to finalisation.
- The elimination of lot size controls for business zoned land is considered appropriate to provide flexibility for these open zones.

#### A2.3.2 Minimum subdivision lot size for dual occupancies

The provision seeks to apply a minimum subdivision lot size control of 300sqm across the LGA, except for 430sqm in the Foreshore Scenic Protection Area (FSPA).

The proposed minimum subdivision lot size for dual occupancies is considered acceptable because:

- The 300sqm control in all areas except for the FSPA provides enough land for adequate amenity, and aligns with the minimum lot size of 650sqm for dual occupancies (see **A2.3.3** below), when allowing for the provision of a driveway or differing lot sizes due to site context; and
- Likewise, the 450sqm control in the FSPA provides land for sufficient landscaping to maintain the character of foreshore areas, and a long battleaxe driveway arrangement within the confines of the 1000sqm minimum lot size (see **A2.3.3** below).

#### A2.3.3 Minimum lot sizes and special provisions for certain dwellings

The provision applies minimum lot size and lot width controls for attached dwellings, dual occupancies, manor houses, multi dwelling housing and terraces.

The following issues have been identified with the proposed clause:

- The clause refers to land use terms from the Low Rise Medium Density Housing Code: manor houses and multi dwelling housing (terraces). A Gateway condition deletes these land use terms from the planning proposal given they are governed by the Code.

However, the Department considers it acceptable to apply the control for the following reasons:

- Applying minimum lot size controls for medium density land uses across the LGA will assist in providing certainty about which lots are suitable for these developments.
- The controls will assist in achieving the future desired character of the proposed low density residential and medium density residential zones by requiring development to be sited commensurate to its scale.
- Council has provided detailed evidence to support the proposed lot width control for dual occupancies, multi dwelling housing and attached dwellings, including an analysis of existing lots in the LGA to demonstrate that the controls are compatible with the vast majority of relevantly zoned land.

The proposed controls will provide the existing provisions of the Interim DCP with greater legal weight and discourage variation by introducing a tougher test under Clause 4.6.

Council has provided evidence to indicate that the DCP controls have rarely been varied. Similar lot width controls are in place in the Bankstown and Ryde LGAs.

- The proposed minimum lot size controls are considered reasonable, whilst providing sufficient land for occupant amenity.
- The proposed 1000sqm minimum lot size for dual occupancies in the FSPA aligns with the existing control of HLEP and KDCP, and its inclusion in the LEP is considered appropriate.

#### A2.3.4 Height of buildings

The proposed clause includes four local objectives which are considered reasonable. The objective which seeks to ensure an appropriate transition between medium and low density residential zones relates to the proposed multi dwelling housing height control (see **A2.3.5**), which is acceptable. No mandated objectives are provided in the Standard Instrument for this clause.

The proposed changes to the building height shown for land are largely considered in **A2.2** where they relate to site-specific rezonings.

In addition to the rezonings, the planning proposal involves changes to height shown for the following land:

- An increase from 10m to 16m for the Kingsgrove industrial precinct (**Figure 2**) and a part of the Peakhurst industrial precinct (**Figure 3**); and
- All other land zoned IN2 Light Industrial in the former HLEP and KLEP area to increase from 10m to 12m.





**Figure 2:** Proposed area of height increase from 10m to 16m in Peakhurst Industrial Precinct





**Figure 3:** Proposed area of height increase from 10m to 16m in Kingsgrove

The proposed increase in height of IN2 land to 12m will not result in unreasonable amenity impacts upon surrounding land because development up to 9m is permitted in most of the adjoining land to the industrial areas. As such, the potential visual impact or view impact will likely be negligible or minor, and subject to detailed assessment at the DA stage.

In addition, the proposed increase in height of certain land to 16m is considered acceptable because:

- Council has demonstrated that the height increase will permit development in these areas to reach the already permitted FSR of 1:1;
- The height increase will allow greater flexibility in built form and intensification of employment generating industrial uses; and
- The proposed areas of the height increase are all buffered from surrounding residential zoned land by either main roads or industrial land under the 12m control, which will ensure that the amenity impact of the height increase is not unreasonable, subject to detailed assessment at the DA stage.

#### A2.3.5 Exceptions to height of buildings

The provision stipulates that the maximum height of dual occupancies is 9m in R3 and R4 zones, and that the maximum height of multi dwelling housing is 5m for any dwelling adjacent to a rear boundary.

The proposed clause is considered acceptable because:

- Limiting the maximum height of dual occupancies to 9m in R3 and R4 zones will ensure that this development maintains a low-rise form in line with the height limit of the R2 zone, despite the higher building heights shown for the land in zones R3 and R4.
- Limiting the height of multi dwelling housing adjacent to a rear boundary to 5m is considered to mitigate the potential amenity impacts of this type of medium density development upon surrounding dwellings, such as overshadowing, view loss and visual impact. It is likely that the proposed wording of the clause will require amendment at finalisation stage, but it is considered acceptable for the purpose of community consultation.

#### A2.3.6 Floor space ratio

The proposed objectives are considered reasonable for the purpose of community consultation.

The proposed site-specific changes to the FSR map are considered in **A2.2**.

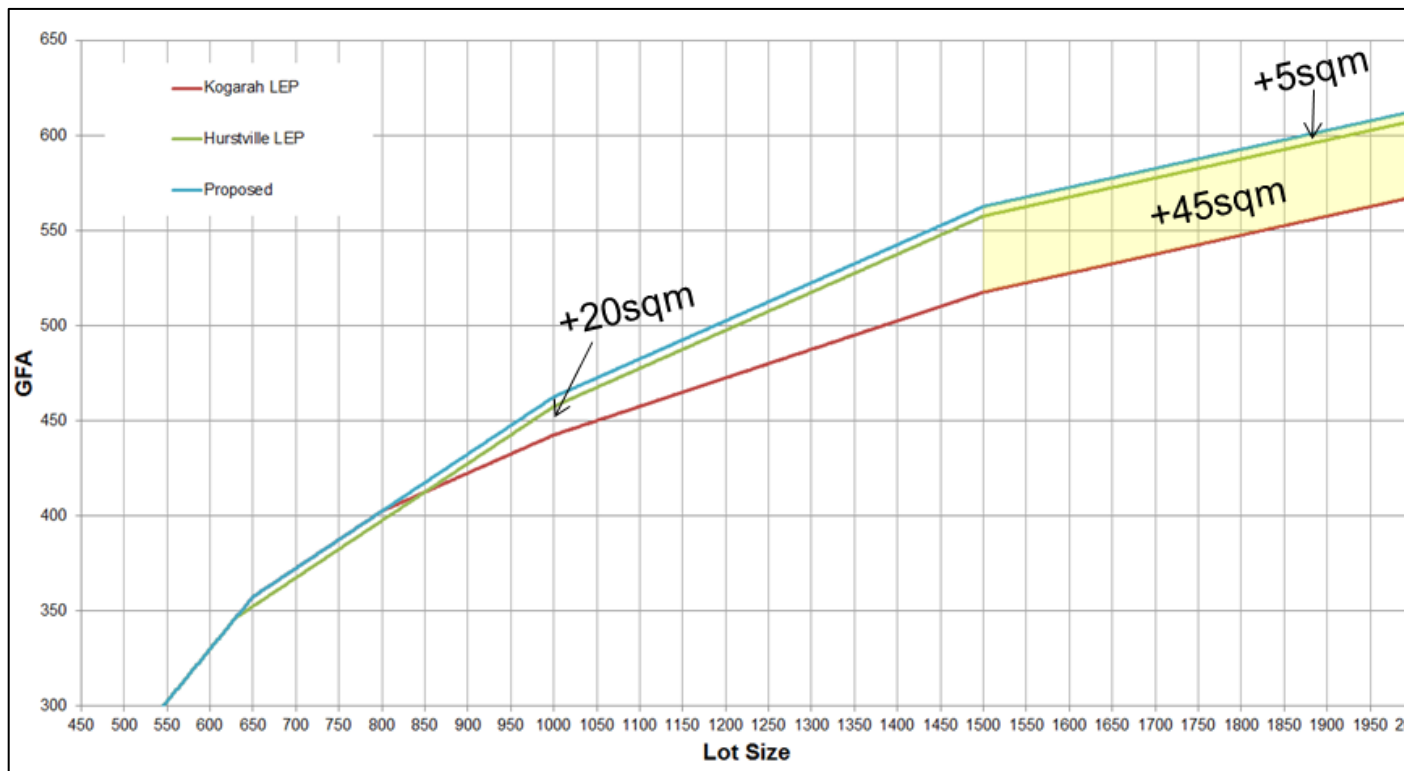
The proposed FSR bonus clause for the purpose of hotel or motel accommodation on land at the corner of Forest Road and Durham Street, Hurstville, lacks any justification in the planning proposal. It is understood that this clause and the accompanying mapping of the block at the corner of Durham Street and Forest Road is intended to align with the planning proposal *PP\_2017\_GRIVE\_005\_01*, which is presently undergoing finalisation. The planning proposal is to be amended prior to community consultation to explain that it will implement the final plan once it is finalised.

### A2.3.7 Exceptions for floor space ratio for certain dwellings

The proposed provision overrides the FSR shown on the map to prescribe FSR for different types of residential development. The clause utilises a sliding scale formula for certain lot sizes.

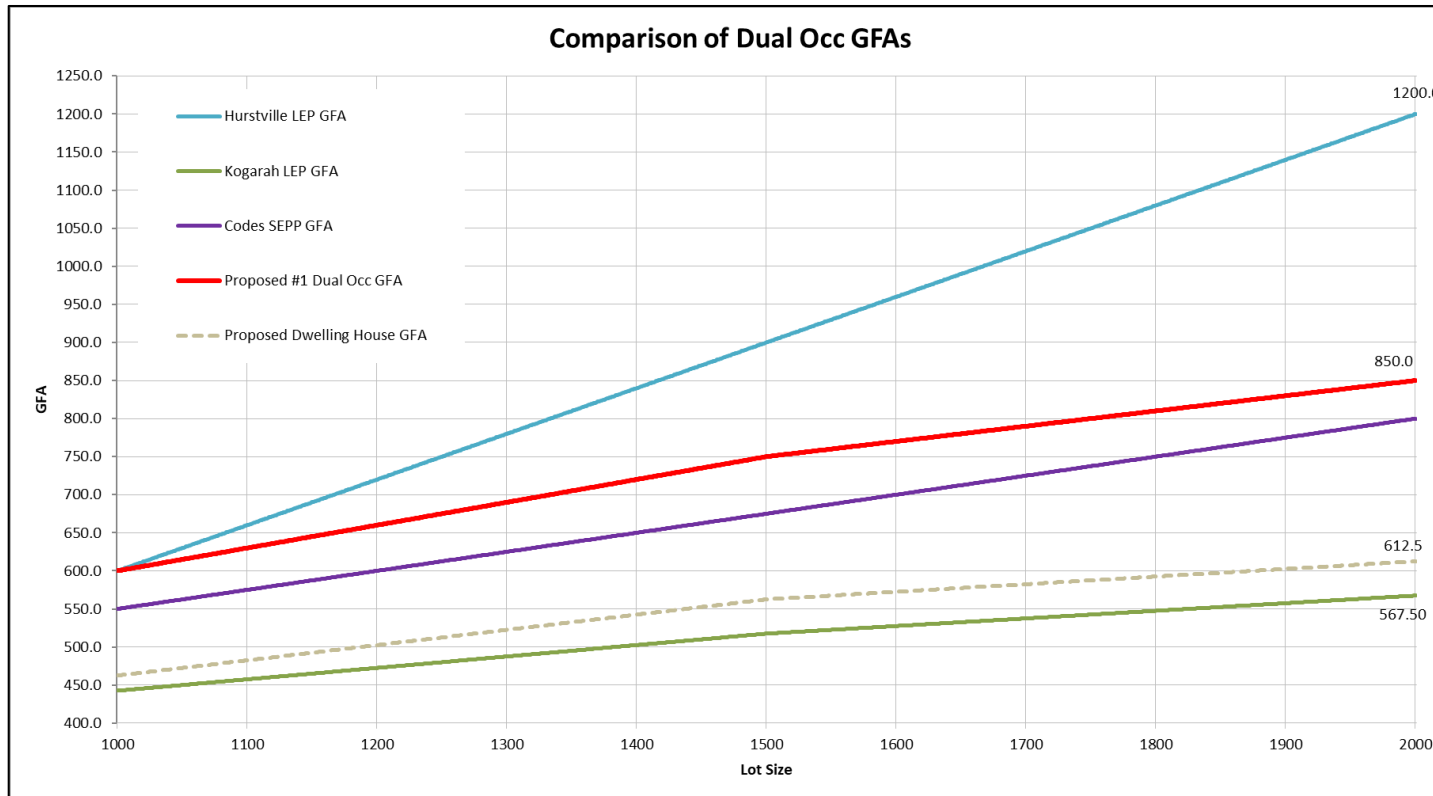
The proposed clause is considered acceptable because:

- The proposed sliding scale gross floor area (GFA) table for dwelling houses in Area 1, which comprises most of the R2 zone, will result in a minor increase in development yield when compared with the similar clauses in both HLEP and KLEP (**Figure 4** below), and thus has a negligible impact;



**Figure 4:** Comparison of permitted GFA for dwelling houses under the sliding scale tables of KLEP, HLEP and the proposed consolidated clause

- The retention of a 0.6:1 FSR control from KLEP for narrow-lots in Hurstville and Allawah is considered appropriate; and
- The proposed sliding scale GFA table for dual occupancy development strikes a balance between the GFA permitted under the KLEP sliding scale and HLEP's blanket 0.6:1 control across zones where dual occupancies are permitted (see **Figure 5** below), which is considered appropriate since it limits the size of buildings upon larger lots.



**Figure 5:** Comparison of permitted GFA for dual occupancies under the sliding scale tables of KLEP, HLEP and the proposed consolidated clause

#### A2.3.8 Non-residential floor space ratios

The provision applies a minimum non-residential FSR to mixed use developments in accordance with the hierarchy developed in Council's Commercial Centres Strategy (Part 1, by HillPDA and endorsed by Council in June 2019). The Strategy projects demand for employment floor

space to 2036 throughout the LGA and identifies a net loss of non-residential floor space over time with the ongoing mixed use redevelopment of business zoned land. The hierarchy of centres is based on their existing provision of retail floor space.

The proposed clause is considered acceptable because:

- The non-residential FSR controls for the business zoned land of each centre is justified by the *Georges River Centres Strategy*. It is considered appropriate that the minimum non-residential FSR controls be imposed based on a hierarchy of existing employment floor space per centre as this reflects the degree by which this floor space should be protected.

#### A2.3.9 Exceptions to development standards

The following provisions are proposed to be excluded from operation of the clause:

- Clause 5.4 Controls relating to miscellaneous permissible uses;
- Clause 6.13 Development for the purposes of dual key dwellings in Zones R2 and R3;
- Clause 6.15 Office premises in Zone IN2; and
- Clause 6.16 Take away food and drink premises and restaurants in Zone IN2.

The proposed additions to the list of development standards excluded from the operation of Clause 4.6 are considered acceptable because they would likely be undermined with the potential for further variation.

## **A2.4 Miscellaneous provisions**

### A2.4.1 Relevant acquisition authority

The proposed clause aligns with the standard instrument, although a number of changes to the mapping from HLEP and KLEP are proposed to reflect sites already acquired and new sites identified by Council for acquisition.

The proposed mapping changes are considered acceptable because:

- Sites already acquired have been removed; and
- Identifying the additional sites will facilitate the delivery of future road widening and open space.

However, it is noted that the planning proposal does not list the agencies which have acquired the land to be deleted from the map. A Gateway condition requires this information to be provided (see **Section 4.4** of the **Gateway Report** for more detail).

#### A2.4.2 Controls relating to miscellaneous permissible uses

The proposed numerical controls regulating industrial retail outlets, neighbourhood shops, roadside stalls, secondary dwellings and artisan food and drink industry are considered appropriate and acceptable.

### **A2.5 Additional local provisions**

#### A2.5.1 Flood planning

At present, HLEP does not contain a flood planning provision. KLEP contains the model provision and maps the flood planning area.

Council proposes a modification to the model provision which involves:

- Applying the clause to the flood planning area on the flood planning map, which is identical to the flood planning area of KLEP;
- Applying the clause to a new 'flood planning zone' on the flood planning map, which consists of 1:100 event affected land identified in the:
  - *Overland Flow Flood Study for Hurstville, Mortdale and Peakhurst Wards* (the entire former Hurstville LGA); and
  - *Moore Reserve Catchment Overland Flow Study* (in the former Kogarah LGA).
- Applying the clause to 'sensitive land uses' in 'flood prone land', which consists of Probable Maximum Flood (PMF) affected land identified in an existing flood risk assessment on a new 'Probable Maximum Flood Map';
- Applying the clause to 'sensitive land uses' in the 'flood prone zone', which consists of PMF affected land identified in flood studies, but not a flood risk assessment. Council has not identified these flood studies in the planning proposal.

Council defines 'sensitive land uses' as early education and care facilities, educational establishments, health services facilities, group homes, seniors housing and respite day care centres.

The application of this clause appears to contradict the *Floodplain Development Manual* (the Manual) because:

- The manual outlines the Floodplain Risk Management Process, which involves:
  - First completing a flood study (such as the overland studies which form the basis of the 'flood planning zone'), then
  - Completing a Floodplain Risk Management Study, to determine options in consideration of social, ecological and economic factors relating to flood risk; then
  - Completing and endorsing a Floodplain Risk Management Plan, including a public exhibition of preferred options and revisions in response to submissions, in order to inform future planning controls and other flood risk mitigation measures; and then

- Implementing the plan by making planning control changes.
- The planning proposal does not indicate which flooding report forms the basis for the proposed 'flood prone land' and 'flood prone zone' layers.
- Should the proposed flood mapping not be based on a Council exhibited and endorsed floodplain risk management plan, the community will not have had a chance to comment on the potential impacts of identifying certain land as flood affected.
- Indeed, Council concedes in the planning proposal that mapping properties which have not been subjected to an endorsed risk management plan may require them to be removed in the future should the future plan deem them to be unaffected.

As a result, it is considered that the planning proposal is inconsistent with Section 9.1 Direction 4.3 Flood Prone Land since the proposed provisions are inconsistent with the principles of the Manual.

The Department also considers that mapping such a large area of potentially flood affected land may require frequent planning proposals to amend the two flooding maps when approved developments alter flood behaviour. Maintaining outdated flood maps in the LEP may unnecessarily burden property owners with the need to prepare flood studies to demonstrate that their properties are no longer affected.

The model provision clearly provides a mechanism to allow Council to apply the clause to 'other land at or below the flood planning level' without mapping in the LEP in cases where accurate mapping is not possible. Given the large amount of private properties with existing buildings in the proposed areas of flood mapping, it is considered appropriate that Council use alternative mapping, which can be dynamically updated when redevelopment occurs, rather than LEP mapping.

In addition, the proposed criteria for assessment of land to which the clause applies differs from the model provision, including two new subclauses:

*(d) minimises the impact of the loss of flood storage capacity,*

and

*(f) allows for any discharge from the site of the development to be accommodated within the existing stormwater infrastructure.*

Both subclauses are encompassed by the model provision subclause (b):

*(b) will not significantly adversely affect flood behaviour resulting in detrimental increases in the potential flood affectation of other development or properties*

As such, a Gateway condition requires Council to adopt the model flood planning provision and only retain the flood planning area identified in KLEP in the flood planning map. Council may proceed with a planning proposal for additional areas once it prepares and endorses the relevant floodplain risk management plans.



### A2.5.2 Stormwater management

The proposed clause is considered acceptable because it will effectively reduce the impact of urban stormwater upon adjoining properties and ecosystems in substantial developments.

### A2.5.3 Foreshore area and coastal hazards and risks

The proposed clause expands upon the model 'Limited development on foreshore area' clause which is based on the foreshore building line, to encompass tidal inundation mapping up to the year 2100 and also riparian lands and watercourses. The following issues are identified with the proposed clause:

- A Gateway condition will separate the Riparian Lands and Watercourses Map from applicability under the clause since the proposed strict restrictions upon new development are best suited to the foreshore area, both present and mapped into the future as per the Coastal Hazard Map.

The Riparian map affects significantly more land for which the proposed strict restrictions upon new development are not justified. Council is encouraged to incorporate the Riparian Lands and Watercourses Map with a specific Riparian Lands local provision.

- It is understood that the proposed clause is justified by Council's *Foreshore Strategic Directions Paper*. That paper considers the key recommendations of the *Georges River Estuary Coastal Zone Management Plan (CZMP)*. The CZMP is a statutory planning document which must be considered in the assessment of relevant development applications under the Coastal Management SEPP and the Greater Metropolitan Regional Environmental Plan No 2-Georges River Catchment, and is also intended to guide the development of LEPs and DCPs.

The planning proposal must be consistent with the CZMP under clause 4(d) of s9.1 Ministerial Direction 2.2 Coastal Management and Clause 8 of the Georges River GMREP. The planning proposal does not explain how it implements the recommendations of the CZMP, nor does it explain how the proposed LEP will be consistent with the CZMP in the future assessment of DAs. As such, a Gateway condition requires Council to update the planning proposal to address explicitly its consistency with the Direction, including addressing the recommendations of the CZMP, prior to the exhibition of the planning proposal.

It is expected that, subject to these conditions and future drafting refinements, the proposed clause will be acceptable.

### A2.5.4 Foreshore scenic protection area

The provision modifies the clause of HLEP 2012 and extends its application across to areas within KLEP 2012. This clause requires that development must respond to the existing environmental, social and character values of the foreshore by ensuring development is compatible with the desired future neighbourhood character and minimise potential impacts on views to and from the Georges River, foreshore reserves, residential areas and public places.

The proposed clause is considered acceptable because:

- It is justified by Council's *Foreshore Strategic Directions Paper*;
- It will apply mostly to land in close vicinity to the foreshore;
- It will facilitate consideration of the impact of development upon the protection of the natural environment, including the sloping topography and vegetation;
- It will require that native vegetation and habitat is maintained in the vicinity of the foreshore;
- It will assist in maintaining view sharing to and from the Georges River, residences and public places;
- It is considered appropriate that the clause be extended into the former KLEP area to provide a consistent development regime along the Georges River foreshore;
- The development standards associated with the FSPA, including minimum lot and subdivision sizes, are considered appropriate- see **A2.3.1, A2.3.2 & A2.3.3**; and
- The clause appears to be consistent with s9.1 Ministerial Direction 2.2 Coastal Management because it does not permit increased development in the coastal zone.

However, despite being justified by Council's *Foreshore Strategic Directions Paper*, the planning proposal's consistency with this direction is unresolved because it does not explicitly address consistency with the Georges River Estuary Coastal Zone Management Plan (CZMP).

As such, a Gateway condition requires the planning proposal to be amended to demonstrate consistency with Direction 2.2.

#### A2.5.5 Essential services

The proposed clause is considered acceptable because it will ensure development will be adequately serviced when required.

#### A2.5.6 Design excellence

The proposed provision is not in HLEP or KLEP, and intends to give effect to the LSPS vision for well designed development. The clause seeks to apply to new development or substantial redevelopment of 12m or above in business, industrial and R4 zones, as well as certain development in the FSPA.

The proposed clause is considered acceptable because:

- The Department supports the introduction of a clause to deliver the highest standard of design; and

- A Gateway condition requires the planning proposal to only include a plain English explanation of the clause since the exact wording and operation of the clause is best confirmed following community consultation at the drafting stage.

#### A2.5.7 Environmental sustainability in certain business, industrial and residential zones

The proposed new clause applies to new development or substantial redevelopment of buildings 1,500sqm or greater in GFA on business, industrial or R4 zoned land. The clause requires development to exhibit the best practice principles of environmentally sustainable development.

The proposed clause is considered acceptable because:

- The Department supports a clause to achieve environmentally sensitive design in substantial development; and
- A Gateway condition requires the planning proposal to only include a plain English explanation of the clause because, like the design excellence clause above, the exact wording of the clause will be subject to the detailed drafting process after community consultation.

#### A2.5.8 Landscaped areas in certain residential and environmental protection zones

A new clause specifying minimum landscaped area requirements for development in R2, R3, R4 and E2 zones. The area requirements differ based on the type of development, its location and the zone.

The following controls are proposed to provide a minimum landscaped area, as defined by the SI:

Development	Proposed requirement	Example
Dwelling house (non-FSPA)	20%	90sqm is required on a 450sqm site
Dwelling house (FSPA)	25%	175sqm is required on a 700sqm site
Dual occupancy (non-FSPA)	20%	65sqm per lot is required on a 650sqm site
Dual occupancy (FSPA)	25%	125sqm per lot is required on a 1,000sqm site
Medium density development (e.g. multi dwelling housing)	20%	160sqm is required on a 800sqm site
R4 zones (excludes SEPP 65 development)	10%	100sqm is required on a 1,000sqm site
E2 zone (only one site in the LGA)	70%	16,520sqm is required on the 23,600sqm site

**Table 1: Minimum landscaped area controls (Source: Planning Proposal)**

The proposed clause is considered acceptable because:

- The Department supports the broad objectives of the clause to retain and provide vegetation since it will assist in minimising urban stormwater run-off, minimise the visual impact of development and reduce the urban heat island effect.
- A Gateway condition will require the exhibited planning proposal to explain the intent to apply minimum landscaped area controls in plain English, with the exact numbers and phrasing of this subclause to be determined following public exhibition. It is considered that changes will be necessary post-exhibition because the LPP altered the definition of 'Landscaped Area' for the purpose of the clause at its meeting of 6 February 2020. The numerical controls had been prepared on the basis of a different definition. The additional information provided by Council on 19 February provides modelling of the controls to demonstrate that they are achievable with regard to the DCP setback controls and LEP FSR and building height controls. This is acceptable for the purpose of consultation.

#### A2.5.9 Development for the purposes of dual key dwellings in Zones R2 and R3

The proposed clause is not in HLEP or KLEP, and enables development of an internal secondary dwelling, defined as a dual key dwelling, up to a maximum of 75sqm when wholly contained within the building of an existing principal dwelling.

The intent of the proposed clause is supported as it provides additional GFA for secondary dwellings located within existing buildings. It is considered that the draft clause is suitable for public consultation, with detailed drafting to achieve its intent to occur at finalisation stage.

#### A2.5.10 Development in certain business zones

The proposed provision achieves a similar objective to the existing Active Street Frontage local provision of HLEP 2012 and applies to all business zones in the LGA where shop top housing is permitted. The clause requires development to not include residential or tourist and visitor accommodation land uses on the ground floor of a building facing the street. The clause also requires a minimum of 500sqm of non-residential floor space at the ground floor of development in the B6 zone.

The provision is acceptable because:

- It will ensure that street frontages of mixed use buildings in Zone B1, B2, B4 and B6 contain active uses which attract pedestrians; and
- By requiring 500sqm of non-residential floor space at the ground floor of developments in Zone B6 Enterprise Corridor, large floor plates which are capable of a variety of employment uses will be encouraged.

#### A2.5.11 Office premises in Zone IN2

The proposed provision is not in HLEP or KLEP, and is proposed to apply to the IN2 zone. The clause would to permit an additional office premises on the same land as an industrial use, equating to a maximum of 10% of the GFA of the industrial activity and its existing associated office.

The proposed clause is not supported because:

- The planning proposal does not make clear whether the clause restricts all development for the purpose of office premises in Zone IN2. If so, the clause is considered unreasonably restrictive and complex;
- Council have not demonstrated the need in the LGA for a local provision which differentiates between primary and secondary office uses as ancillary to an existing industrial use;
- It is considered preferable that such development be considered office development ancillary to an industrial use;
- The Department is not aware of a precedent for such a clause, (with the planning proposal in apparent error when citing Clause 7.22 of *Liverpool LEP 2008*), nor is it convinced of the need for one; and
- Should Council wish to prohibit office premises in Zone IN2 as a result of the deletion of this local provision, this amendment should occur prior to the commencement of community consultation.

A Gateway condition is imposed to this effect.

#### A2.5.12 Take away food and drink premises and restaurants or cafes in Zone IN2

The proposed provision is not in HLEP or KLEP, and applies to the IN2 zone by restricting take away food and drink premises and restaurants or cafes to a maximum of 20% of the GFA of the industrial activity located on the same land, or 200sqm, whichever is lesser.

The proposed clause is considered acceptable because it will facilitate food retailing in industrial areas whilst ensuring that most IN2 land is used for higher order employment activities.

#### A2.5.13 Creative industries in Zone IN2

The proposed new provision applies to the Peshurst Lane and Halstead Street IN2 zones and permits certain types of office development for creative purposes.

The intent of the proposed clause to permit a broader range of creative industrial developments in Zone IN2 is considered acceptable. However, the draft instrument provided raises inconsistency issues with the standard instrument. This is because new land use terms are introduced to define 'creative industries'.

In addition, Council will need to amend the clause since this Gateway determination includes a condition which deletes the *Office Premises in the Zone IN2* clause (see **A2.5.11** above). This is because the Creative Industries clause provides an exemption to the floorspace controls which would be stipulated under the Office Premises clause.

As such, a Gateway condition requires the planning proposal to be amended for community consultation to include a plain English explanation of the proposed clause only. Detailed drafting is to occur at the finalisation stage.

#### A2.5.14 Location of sex services premises

The proposed provision harmonises the existing clauses in HLEP 2012 and KLEP 2012 to minimise land use conflict and adverse amenity impacts associated with sex services premises.

The proposed clause is considered reasonable and will protect the amenity of surrounding land in the assessment of sex services premises.

### **A2.6 Schedule 1 Additional permitted uses**

The proposal involves a schedule which:

- Consolidates the schedules of HLEP 2012 and KLEP 2012;
- In accordance with the Commercial Centres Strategy, incorporates two sites into the adjacent business zone (See **Appendix 6** for more detail);

- Inserts all sites with existing places of public worship within the R2 zone to ensure permissibility following the prohibition of places of public worship in the R2 zone; and
- Inserts 'entertainment facility' as an additional permitted use at Jubilee Stadium to reflect the LSPS vision for the facility as a regionally significant sporting and entertainment hub.

The proposed schedule is considered acceptable because:

- It consolidates the schedules of HLEP and KLEP;
- A Gateway condition also deletes the proposed removal of items 16(ja) and 16(la) from KLEP due to insufficient justification, which is considered in **Appendix 6**;
- The proposed insertion of a number of places of public worship is assessed and considered appropriate subject to a Gateway condition (See **A2.2.3**); and
- The insertion of entertainment facility as an additional permitted use at Jubilee Stadium, Carlton reflects its regional significance as a sporting and entertainment venue, and is justified by Council's LSPS Action A26.

### **A2.7 Schedule 5 Heritage**

The proposed schedule involves consolidating the heritage schedules of HLEP and KLEP and making a number of amendments based on the Hurstville Heritage Review. These amendments include the modification of the description of heritage items in the HLEP area and the removal of four items.

No issue is raised with the proposed consolidation and amendments, however a Gateway condition requires that prior to the commencement of community consultation, the Review Recommendations document is to be signed by its author, with their heritage qualifications also clearly stated.

### **A2.8 All other provisions**

All other proposed provisions adhere to the form of the standard instrument or model provisions, or are considered acceptable and justified.