

REPORT CM/7.6/22.03



Subject: Planning Proposal - Draft Waverley Local Environmental Plan 2022

TRIM No: A18/0594

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RECOMMENDATION:

That Council:

1. Supports the planning proposal attached to the report to repeal the *Waverley Local Environmental Plan 2012* and establish the *Waverley Local Environmental Plan 2022*.
2. Notes the matters raised in the submissions made on the public exhibition of the draft *Waverley Local Environmental Plan 2022* planning proposal.
3. Forwards the submissions, planning proposal and exhibition report to the Department of Planning and Environment, and requests that they take the post-exhibition changes into consideration in the post-Gateway assessment, as set out in Table 1 of the report.
4. Requests the Department of Planning and Environment to exercise the delegations issued by the Minister under section 59 of the *Environmental Planning and Assessment Act 1979* in relation to the making of the new Local Environmental Plan.
5. Notifies property owners of Council's decision.

1. Executive Summary

The *Local Strategic Planning Statement Implementation* planning proposal (the Proposal) seeks to establish the new Waverley Local Environmental Plan 2022. The Proposal culminates Phases 1 (Health Check), Phase 2 (Local Strategic Planning Statement) and Phase 3 (Supporting Environmental Strategies) of the Planning in Waverley project and begins the implementation into Phase 4 by establishing two new plans: the Waverley Local Environmental Plan 2021 (WLEP) (this Proposal) and a supporting Waverley Development Control Plan 2021 (WDCP) to be prepared in 2022.

The new WLEP is required under section 3.8(3) of the *Environmental Planning and Assessment Act* (EP&A Act) to give effect to the Eastern City District Plan (District Plan), by way of implementing the Planning Priorities and Actions of the *Waverley Local Strategic Planning Statement* (LSPS). The Proposal aims to implement the housing targets as identified in the LSPS and *Waverley Local Housing Strategy* (LHS), as well as key recommendations from the *Bondi Junction Urban Design Review Update 2020* (BJUDR Update) and the *Our Liveable Place Centres Strategy* (OLP).

In addition, other recently completed research and studies are implemented to improve environmental amenity and increase community resilience, such as the *Waverley LGA Flood Study 2020* and the *Future Proofing Residential Development to Climate Change* study.

The proposal also provides updated aims and zone objectives to ensure that development that occurs in the Waverley area is proposed and assessed in accordance with the strategic intent of the LSPS and provides greater certainty and clarity for the community.

The planning proposal has been placed on public exhibition as outlined in this report and is required to be forwarded to DPE for a post-Gateway determination. It is recommended that Council support the planning proposal subject to changes made in response to feedback received during the public exhibition period.

The time frame for the completion of the planning proposal is 10 months from the date of the Gateway determination, including a requirement to report the planning proposal to Council for a final recommendation no later than seven months from the date of the Gateway determination. As Gateway determination was granted on 19 August 2021, the planning proposal is expected to meet these deadlines.

Whilst Council requested the role of local plan-making authority from the DPE to exercise the delegations issued by the Minister under section 3.36 of the EP&A Act in relation to the making of the amendment, DPE did not grant this to Council.

2. Introduction/Background

The proposal seeks to repeal the *Waverley Local Environmental Plan (WLEP) 2012* and create the *Waverley Local Environmental Plan 2022*. It commences the implementation of the LSPS, meeting obligations under sections 3.8(3) and 3.33 of EP&A Act and giving effect to the District Plan. Council intends to implement the LSPS as a series of planning proposals, this being the first.

The proposed WLEP amendments relate to:

- Implementation of new aims to facilitate the planning priorities of the LSPS.
- Implementation of partial elements of the *Waverley Local Housing Strategy* (LHS).
- Implementation of recommendations of the *Our Liveable Places Centres Strategy* (OLP).
- Implementation of the *Bondi Junction Urban Design Review Update 2020* (BJUDR).
- Implementation of a recommendation of the *Future Proofing Residential Development to Climate Change* (Future Proof Study).

The planning proposal has been prepared in accordance with section 55 of the EP&A Act, and addresses the requirements of section 3.8(3) of the EP&A Act 'on the preparation of planning proposals under section 3.33 to give effect to the district strategic plan'. It is also in accordance with relevant Department of Planning and Environment Guidelines including *A Guide to Preparing Local Environmental Plans* and *A Guide to Preparing planning proposals*. Since the preparation of the planning proposal, the Department of Planning & Environment (DPE) has released the updated *LEP Making Guidelines*. The planning proposal is generally consistent with the new guidelines.

3. Relevant Council Resolutions

Meeting and date	Item No.	Resolution
Strategic Planning and Development Committee 13 April 2021	PD/5.1/21.04	That Council: 1. Supports the Local Strategic Statement Implementation planning proposal attached to the report to proceed to Gateway Determination. 2. Notes that the matters of 'double dipping' at the Boot Factory and implementing a minimum lot size for secondary dwellings in Queens Park have been considered and are not included in

		<p>this planning proposal.</p> <ol style="list-style-type: none"> Publicly exhibits the planning proposal for a minimum of 28 days in accordance with any conditions of the Gateway Determination that may be issued by the Department of Planning, Industry and Environment (DPIE). Requests the role of local plan-making authority from the DPIE to exercise the delegations issued by the Minister under section 3.36 of the <i>Environmental Planning and Assessment Act 1979</i> in relation to the making of the amendment.
Council 16 March 2021	CM/8.3/21.03	<p>That Council:</p> <ol style="list-style-type: none"> Notes the repeated problems of building collapses in the Waverley local government area following excavation on adjacent sites and includes enhanced provisions in the next Local Environmental Plan (LEP) that consider the structural integrity of adjoining buildings. Notes the inappropriate shoring practices that featured in the recent 21 Curlewis Street, Bondi, sand slide related to the building collapse at 19 Curlewis Street, Bondi. Reviews section 6.2(3) of the LEP to strengthen the development consent for earthworks relating to excavation that prohibit Bondi-Rose Bay sand body excavation deeper than the currently allowed state complying development certificate 3 m depth. Reviews the WLEP and DCP to produce standard conditions of consent that are consistent with the introduction of the Design and Building Practitioners Regulation from July 1, 2021.
Council 19 June 2018	CM/8.9/18.06	<p>That Council investigates rezoning the suburb of Diamond Bay (Diamond Bay Road, Craig Avenue and Isabel Avenue) from R3 Medium Density Residential to R2 Low Density Residential when amending the next Waverley Local Environmental Plan.</p>

4. Discussion

Housing targets

The objective of the planning proposal is to repeal the WLEP 2012 and create the WLEP 2022 to give effect to the District Plan; to commence the process of implementing Council's LSPS; and to make various housekeeping amendments.

This planning proposal responds to the requirement to implement housing and employment targets within the WLEP.

Housing and employment targets

Council undertook extensive community consultation to understand housing needs, as well as ABS Census data, Profile ID, DPE projections and housing supply data and supporting academic research to establish the evidence base for the LHS. The LHS was prepared in line with DPE Local Housing Strategy guidelines and was based on evidence. The LHS identifies a projected demand for 2500 dwellings to the year 2036, and that the latent capacity under the existing controls would provide for 3400 dwellings. Accordingly, no changes are proposed to facilitate additional capacity in the local government area (LGA), but rather an approach of incremental infill across the LGA.

It is also noted that increases in infrastructure capacity, such as public transport and schools, may be required to support additional growth. As part of the ongoing discussion with the DPE, Council is committed to working together with State Agencies to ensure the increased provision of these essential infrastructure services for the community.

This Proposal seeks to support the actions in the LHS that would require changes to the WLEP, including:

- Zone objectives in the LEP to encourage seniors housing and that it is consistent with desired future character.
- Updated zone objectives to encourage the provision of affordable housing.

Further changes to the LEP will be proposed in a subsequent planning proposal, taking into consideration feedback from DPE on the LHS.

There is a rising trend in the Waverley LGA whereby residential flat buildings and shop top housing in R3 Medium Density Residential zones are being demolished or heavily altered, and replaced with luxury dwelling houses, dual occupancies or residential flat buildings with significantly less units than the existing structure, resulting in a net loss of dwellings in generally well connected and serviced areas which can handle existing and future growth under the current development standards. An additional R3 zone objective to encourage new development in these areas to maintain or increase residential dwelling density is expected to assist to prevent this loss of dwellings.

Employment targets

To ensure that the WLEP is able to provide employment opportunities more broadly across the LGA, this Proposal seeks to implement changes that relate to employment targets to grow and protect Local and Neighbourhood centres across the LGA to provide local employment opportunities as well as local retail amenities and services.

Key proposed changes

Key proposed changes include:

- Include new aims, objectives and provisions within the WLEP that implement the planning priorities of the *Waverley Local Strategic Planning Statement* and facilitate the achievement of housing and employment targets.
- Maintain and protect local and neighbourhood centres to provide equitable access to essential goods and services by providing specialised zoning to support local businesses and character.
- Ensure boarding houses and seniors housing developments are consistent with local character and provide adequate amenity.
- Ensure operational Telstra sites are appropriately zoned to support key urban infrastructure.
- Ensure the ongoing role of Bondi Junction as a strategic centre and prioritise employment generating uses.

- Promote urban resilience through improved waste management, ensuring future ready development, and enabling urban agriculture.
- Implement the findings of the Waverley LGA Flood Study 2020 and improve the quality of stormwater.
- Implement the Council resolution to strengthen clause 6.2 Earthworks to prevent structural damage as a result of excavation.
- Identify sites for long-term acquisition to be able to deliver new bike paths parallel to Bondi Road.
- Enable uses in local and neighbourhood centres to better serve the local community and changing technologies.

Waverley LGA Flood Study 2020

The current WLEP Flood Planning Maps are proposed to be repealed under this planning proposal, as per the instruction of the NSW DPE. The Flood Planning Maps will be moved to the Waverley Development Control Plan 2012 instead, wherein any considerations from the Waverley LGA Flood Study which was adopted by Council in April 2021 will be implemented.

Post-exhibition changes

In light of feedback received during public exhibition from the community, agencies and internal departments, the following amendments to the planning proposal are suggested by Council officers:

Table 1. Post-exhibition changes.

Proposed amendment	Reason
Remove the proposed changes to the Land Reservation Acquisition Map.	Further investigation is required regarding changes to the Land Reservation Acquisition Map. Given the need for this, and the community feedback received during exhibition the changes to the Land Reservation Acquisition Map are to be withdrawn from the planning proposal.
Add the following additional land use zone objective to the R3 Medium Density Residential zone: To maintain or increase residential dwelling density.	There is a rising trend in the Waverley LGA whereby residential flat buildings and shop top housing in R3 Medium Density Residential zones are being demolished or heavily altered, and replaced with luxury dwelling houses, dual occupancies or residential flat buildings with significantly less units than the existing structure, resulting in a net loss of dwellings in generally well connected and serviced areas which can handle existing and future growing capacity under the current development standards. An additional R3 zone objective encouraging new development in these areas to maintain or increase residential dwelling density is expected to assist to prevent this loss of dwellings and degradation of the R3 Medium Density zone.
Add 'goods repair and reuse premises' as a permitted with consent to the B1, B2, B3 and B4 land use zones.	NSW Environment Protection Authority suggested that consideration be given to including a 'goods repair and reuse premises' in all business zones to facilitate circular

Proposed amendment	Reason
	<p>economy activities.</p> <p>All business zones are considered appropriate for this land use because the expected scale and nature of operation is minimal.</p>
<p>Add the following additional points under subclause (3) of the proposed Stormwater Management additional local provision:</p> <p><i>d) protects, maintains or restores waterway health, and</i> <i>e) includes an integrated approach to drinking water, wastewater and stormwater services, and</i> <i>f) fosters the relationship between water, landscapes and urban living, to enhance wellbeing and promote community co-design and governance in urban water strategies.</i></p>	<p>In line with advice from NSW Environment Protection Authority, the three principles are proposed for addition to strengthen the clause.</p>
<p>Retain the R3 Medium Density zone for properties bound by Beach Road, Simpson Street, Blair Street and Wellington Street, North Bondi.</p>	<p>These properties were proposed to be rezoned to B2 Local Centre, however, numerous landowners have raised questions regarding the applicable development standards for these sites. As such, further investigation is required as part of the Curlewis Street West urban design study.</p>
<p>Remove the addition of 'horticulture' as a land use permitted with consent in R2, R3 and R4 zones.</p>	<p>The inclusion of such a use is not considered to meet the existing R2, R3 and R4 WLEP zone objective 'To enable other land uses that provide facilities or services to meet the day to day needs of residents' and is therefore best suited as a new addition to the business zones only.</p>
<p>Add the following definition under the relevant Clause of the WLEP: 'In this clause "community resilience" refers to the capacity of the community to thrive in a changing environmental, social and economic climate'.</p>	<p>Additional clarity regarding the meaning of this term is required.</p>
<p>Add the following definition under the relevant Clause of the WLEP, or in the Dictionary: 'In this clause "public value" refers to benefit experienced by the broader community rather than individuals'.</p>	<p>Additional clarity regarding the meaning of this term is required.</p>
<p>The proposed new seniors housing objective should be simplified and replaced with the following:</p> <p>'To ensure the dwelling character, landscaped character, neighbourhood character and streetscapes of the zone are maintained over time.'</p>	<p>The original clause was considered ambiguous, and most appropriate in the R2 Low Density Residential zone alone, as some R3 and R4 areas are considered to be transitional which the word 'maintain' conflicts with.</p>

Proposed amendment	Reason
Furthermore, it is suggested that this objective only be applied to R2 Low Density Residential zone.	
Add 'attached dwellings' as permitted with consent in the R2 Low Density Zone.	To rationalise the existence of many existing attached dwellings which technically differ from 'dwelling houses' by definition but typically not by scale.
Remove previously proposed subclause (e) under Clause 4.3.	Current subclause (a) already achieves the underlying meaning of the newly proposed (e).
Remove the words 'limits on the overall' in existing subclause 1(a) of Clause 4.3 so that it reads: '(1)(a) to establish height of development that preserve the environmental amenity of neighbouring properties and public spaces and, if appropriate, the sharing of views'.	This revised objective is more robust to defend, and clarify the focus of the objective on preserving amenity rather than setting limits.
Should the new subclause (a) of 6.3 Urban Resilience be gazetted, then an extensive education and promotion program is proposed to be executed to inform the public and answer any questions. It is also requested that the Environmental Sustainability team receive additional resources to review each DA checked as a formal referral to ensure compliance with this statutory clause.	The introduction of this Clause would have impacts on Council's customers and will likely cause delays in DA assessment times if the public aren't informed of this requirement.

Waverley Local Planning Panel

The Waverley Local Planning Panel (the Panel) discussed the subject Proposal and provided advice on it on 24 March 2021 under schedule 2, part 5, item 26 of the *Environmental Planning and Assessment Act 1979*. The Panel advised Council that the planning proposal should proceed to a Gateway Determination.

Gateway determination changes

The Gateway determination was granted for this planning proposal on 19 August 2021. A condition was applied by DPE which required changes to the planning proposal as follows which were actioned prior to exhibition:

- i. include an advisory upfront in the 'Discussion of Proposed Changes' document that the draft clauses are indicative only and will be subject to drafting by Parliamentary Counsel should the planning proposal progress to finalisation;
- ii. include an advisory note referencing the Department's Employment Zones Reform work and note that based on the exhibition package, the B2 Local Centre zone would likely align with the exhibited 'E1 Local Centre' zone, and the B4 Mixed Use zone with the 'MU1 Mixed Use' zone;

- iii. *include an advisory note referencing the Department's draft State Environmental Planning Policy (Housing) 2021 and consider any changes to the proposed R2 Low Density Residential Zone objective regarding boarding houses;*
- iv. *revise the draft local character objective clauses for the R3 Medium Density Residential and R4 High Density Residential zones to delete the proposed changes to the mandated Standard Instrument LEP zone objectives. New objectives should be separate and underneath mandated objectives;*
- v. *include an advisory note referencing the Department's Explanation of Intended Effect (EIE), 'Varying Development Standards: A Case for Change', and acknowledge the proposal's inconsistency with part of the exhibited EIE that states councils will no longer be able to exclude provisions from the operation of clause 4.6;*
- vi. *provide further justification for the proposed amendment to extend Active Street Frontages to streets in B1 Neighbourhood Centre zoned land;*
- vii. *remove the proposed amendment to extend clause 6.12 Development on certain land in Bondi Junction to the B3 Commercial Core zone;*
- viii. *amend the proposed waste minimisation and recycling local provision to reframe it as an overarching clause setting out aims and objectives and remove the detailed design requirements;*
- ix. *provide additional information around the types of development the proposed future ready development clause is intended to apply to and amend to explain the relationship with the State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004;*
- x. *confirm whether clauses 5.1 and 5.1A of the LEP are proposed to be amended to reflect the updated Land Reservation Acquisition Map;*
- xi. *remove the proposed amendments to the Flood Planning Maps;*
- xii. *remove the proposed zone and development standards changes to the Diamond Bay, Vaucluse precinct;*
- xiii. *remove the incorrect reference to proposed changes to a Design Excellence Map; and*
- xiv. *update the project timeline to reflect the timeframe allowed to complete the LEP.*

Future planning proposals

Separate future planning proposals will follow as amendments to this Proposal and will assist to implement additional Planning Priorities of the District Plan.

Consultation

Public exhibition of the planning proposal took place over 10 weeks from 12 November 2021 to 23 January 2022.

Notification of the public exhibition occurred through the following means:

- Letter notification to every landowner of each property in the whole LGA.
- Notice in the Wentworth Courier
- Notice on Waverley's Have Your Say website
- Notice on the NSW Planning Portal website
- Notification in Council's 'Waverley Weekly' and 'Have Your Say' e-newsletters.
- Notification of Council's Precinct Committees.

Properties affected by proposed new Land Reservation Acquisition (LRA) Map markings were further consulted via the following means:

- Letter notification to every landowner of each property shown as a new marking on the LRA map
- Information session held on 13th December 2021 via video conference

As part of the Gateway Determination, notification of the following agencies also occurred:

- Department of Primary Industries (Agriculture).
- Environment, Energy and Science (EES) Group of the Department.
- Environment Protection Authority.
- Sydney Water Corporation.
- Transport for NSW.
- Randwick City Council.
- Woollahra Municipal Council.

Pursuant to division 3.4 of the Act and in accordance with the requirements of the Gateway determination, the planning proposal must be placed on public exhibition for a minimum of 28 days excluding the holiday new year 'shut down' period. The subject planning proposal complies with this requirement, as public notification ran between 12 November 2021 to 23 January 2022, a total of 50 days excluding the 'shut down' period.

A total of 71 submissions were received, and the Have Your Say page was viewed 1,900 times, with materials being downloaded 576 times.

Agency and internal submissions

Submissions were received by four out of the seven agencies notified. For the purposes of satisfying the Gateway condition, the DPE has advised that only notification of these agencies has to occur, and a response does not necessarily have to be received. Table 2 details the feedback from the agencies and the Council officer response. Attachment 1 outlines the agency submissions in full.

Table 3. Agency feedback

Key Agency Feedback	Officer Response
Provision to include horticulture as a permitted with consent use in certain zones	
Department of Primary Industries (Agriculture): <i>'DPI Agriculture supports the proposal to permit horticulture with consent in the R2 Low Density Residential, R3 Medium Density Residential, R4 High Density Residential, B1 Neighbourhood Centre, B2 Local Centre, B3 Commercial Centre, and B4 Mixed Use zones in order to facilitate urban agriculture.'</i>	Noted. The proposal to permit horticulture in business zones is recommended for retention by officers.
NSW Environment Protection Authority: While urban agriculture is a sustainable solution that provides local sourced food, <u>issues</u> with permitting horticulture on land in an urban setting include: <ul style="list-style-type: none"> • Food grown on land (such as vegetables) where there is contamination can take up legacy contaminants into food products leading potential public health issues. SEPP 55 should be considered in relation to this. Council may also wish to seek the services of an NSW Accredited Site Auditor to provide increased certainty on whether the nature and extent of contamination has been determined and whether a site is suitable for a specific use especially where food is being produced for local and commercial purposes. • Application of pesticides associated with horticulture can contaminate land. Planning Certificates should show 	The issues raised are noted. Land-use specific controls are proposed to be prepared to assist to mitigate the issues raised and will be considered within the upcoming draft Waverley Development Control Plan 2022, scheduled to go to Council and on public exhibition in 2022. Furthermore, removal of 'horticulture' as a permissible use in residential zones is expected to mitigate the risk of any incompatible operations. Further investigation may be conducted to

<p>whether a site has been subject to pesticide application.</p> <ul style="list-style-type: none"> • Odour and noise associated with horticulture may disturb neighbours. • Water pollution may occur. <p>Council may wish to consult with NSW Health and NSW Department of Primary Industries and seek advice in relation to placing agricultural activities in residential land use settings to help guide any control settings.</p>	<p>consider this use in the R2, R3 and R4.</p>
Key Agency Feedback	Officer Response
Provision to address fill quality under earthworks	
<p>NSW Environment Protection Authority: <i>'It is important that the quality of the fill is fit for its intended use and not contaminated with waste. To help clarify an expectation for the fill material and for Councils to be satisfied in relation to its quality, the following additional provision is recommended:</i></p> <p><i>Any fill that is imported to a site should only be Virgin Excavated Natural Materials (VENM) or Excavated Natural Material (ENM) or other soils permitted under a specific resource recovery order and exemption. Any fill received for this purpose must be validated by a suitably qualified independent person to demonstrate that it is VENM, ENM or meets the requirements of the relevant resource recovery order/exemption and is fit for its intended purpose.'</i></p>	<p>The requirement for fill to be VENM, ENM or other soils permitted under a specific resource recovery order and exemption is going to be considered within the upcoming draft Waverley Development Control Plan 2022, with an option to apply this as a condition of consent to development explored.</p> <p>The benefit in a requirement for a suitably qualified independent person to demonstrate that a Development Application satisfies this is acknowledged by officers, however, the financial and time burden for applicants is considered to outweigh the benefit.</p>
Key Agency Feedback	Officer Response
Provision to improve waste minimisation and recycling management	
<p>NSW Environment Protection Authority: <i>'The proposed new Waste Minimisation and Recycling Management provision in relation to new residential flat buildings, shop-top housing, and mixed-use developments is supported. To help support this new provision Council may also wish to update the supporting DCP with contemporary waste information to help guide key design elements for built form and public domain.'</i></p> <p>Council may also wish to consider:</p> <ul style="list-style-type: none"> • Aligning changes with the directions released under the NSW Waste and Sustainable Materials Strategy 2041 which provides the roadmap for NSW to help transition to a circular economy over the next 20 years. • Facilitating circular economy activities with the inclusion of Goods Repair and Reuse Premises to be made permissible in a range of land use settings. This inclusion will help enable circular economy 	<p>A comprehensive review of the Waverley Development Control Plan is underway and scheduled to be put to Council in 2022. Additional waste minimisation and recycling management provisions will be considered.</p> <p>The 'goods repair and reuse premises' is recommended to be added to all business land use zones under this planning proposal to facilitate circular economy activities.</p> <p><i>Note: 'goods repair and reuse premises means a building or place the principal purpose of which is to collect, repair or refurbish goods,</i></p>

approaches where people can reuse, share, repair and recycle their materials close to where they live and work.	<i>including furniture and appliances, for the purposes of sale, hire or swap, and includes premises known as op shops.'</i>
Key Agency Feedback	Officer Response
Provision to improve stormwater management	
NSW Environment Protection Authority: <i>'To help support the above directions [health of catchments and waterways in accordance with the Eastern City District Plan] Council may wish to consider strengthening the proposed Stormwater Management provision with the following guiding planning principles:</i> <ul style="list-style-type: none"> <i>incorporate development that protects, maintains or restores waterway health and the community's environmental values and uses of waterways through a risk-based approach to managing the cumulative impacts of development,</i> <i>ensures an integrated approach to drinking water, wastewater and stormwater services is considered to drive more sustainable water management outcomes,</i> <i>incorporate development that fosters the relationship between water, landscapes and urban living, to enhance human and social wellbeing and promote community co-design and governance in urban water strategies.'</i> 	A recommendation to add the following points under (3) of the new stormwater management clause under this planning proposal is made in response to this feedback: <ul style="list-style-type: none"> protects, maintains or restores waterway health, and includes an integrated approach to drinking water, wastewater and stormwater services, and fosters the relationship between water, landscapes and urban living, to enhance human and social wellbeing and promote community co-design and governance in urban water strategies.
Environment, Energy and Science Group (EES): EES supports the objectives regarding the consideration of stormwater on adjacent and downstream receivers, in particular native bushland, receiving waters and the downstream stormwater systems.	Noted.
Key Agency Feedback	Officer Response
Provision to provide tree canopy	
Environment, Energy and Science Group (EES): EES supports this intention, noting the role that creating and maintaining an urban canopy plays both in improving public amenity and urban biodiversity outcomes. EES considers that there would be additional benefit for this aim to include a preference for native, preferable local, canopy species, as appropriate and feasible, to be used.	This point will be considered within a future Sustainability planning proposal, and during the comprehensive Waverley DCP 2022, both scheduled for 2022.
Key Agency Feedback	Officer Response
Provision to future proofing development	
Environment, Energy and Science Group (EES): EES considers that the new addition for 'Future proofing Development' sub-clause in the LEP is a positive addition to allow energy and emissions performance. Paired with the design excellence clause this is likely to set a good base for net zero related criteria within the future development control plan (DCP).	This will be considered during the preparation of the comprehensive Waverley DCP 2022.

<p>EES suggests that provisions in the future DCP more clearly align with some of the regional district planning priorities such as:</p> <ul style="list-style-type: none"> o Eastern City District Plan: E19 - Reduce carbon emissions and managing energy, water and waste efficiently o Greater Sydney Regional Plan: Objective 33. A low-carbon city contributes to net-zero emissions by 2050 and mitigates climate change. 	
Key Agency Feedback	Officer Response
General	
<p>Transport for NSW:</p> <p>The potential changes to the LEP in the subject area, should take into account the rail tunnel and associated easement below ground. Any future development proposed on site/s near or above the rail tunnel must demonstrate that there will be no negative impact on rail infrastructure (including below ground tunnels) or rail operations. In this regard, loading impacts on below ground tunnels for works during and post construction must be adequately considered and addressed.</p>	<p>This feedback is noted. Transport for NSW will be consulted where practical on future Development Applications within the vicinity of the rail tunnel and associated infrastructure.</p>

Feedback was also received from Waverley's Development Assessment team. Table 4 details the feedback and Strategic Town Planning's response.

Table 4. Internal feedback from Development Assessment team.

Key Internal Feedback	Strategic Planning Officer Response
<p>New Aim - Resilience and Climate Change</p> <p>'To ensure public value for the community as provided by environmental, social and economic sustainability'.</p> <p>Comment: It is suggested that the term 'community resilience' be defined in the document to provide clarity as it is used frequently.</p> <p>It is unclear what 'public value' means in this aim and context and policies or development controls this relates to. This should be defined in the document.</p>	<p>Officers agree that adding a definition to clarify 'community resilience' and 'public value' is helpful.</p> <p>The suggested definitions are as follows:</p> <p>'In this clause 'community resilience' refers to the ability for the community to thrive in a changing environmental, social and economic climate'.</p> <p>'In this clause 'public value' refers to benefit experienced by the broader community rather than individuals.'</p>
<p>Part 2 – Land Use Table</p> <p>Horticulture is proposed to be introduced as a permitted use in the R2 Low Density Residential, R3 Medium Density Residential, R4 High Density Residential, B1 Neighbourhood</p>	<p>Officers agree that the inclusion of such a use may not necessarily be considered to meet the existing R2, R3 and R4 WLEP zone objective 'To enable other land uses that</p>

<p>Centre, B2 Local Centre, B3 Commercial Centre, and B4 Mixed Use zones to help to facilitate urban agriculture.</p> <p>According to the Dictionary in the LEP: Horticulture means the cultivation of fruits, vegetables, mushrooms, nuts, cut flowers and foliage and nursery products for commercial purposes, but does not include a plant nursery, turf farming or viticulture. Note—Horticulture is a type of intensive plant agriculture</p> <p>It is considered that introducing Horticulture as a permitted use to any of the Residential zones is inappropriate in the context of the Waverley LGA. One of the aims all 3 of the residential zones (R2, R3 and R4) is to;</p> <p>‘enable other land uses that provide facilities or services to meet the day to day needs of residents’.</p> <p>Horticulture fits within the definition of intensive plant agriculture and as an intensive commercial use (as described in the definition) is considered to contravene one of the key aims of each of the Waverley residential zones.</p> <p>The Waverley LGA is one of the most densely populated areas in the state, with a large housing stock of semi-detached dwellings and residential flat buildings where impacts of competing uses such as horticulture and residential living would be highly sensitive.</p> <p>Uses such as home business and home industries are permitted within the residential zones as they are clearly defined and controlled through statutory controls to have minimal impacts on the core residential intended use of the land.</p> <p>It is argued that an intensive use such as horticulture will be by its nature a wholesaling commercial operation which will not service the daily needs of residents in the immediate area and have adverse impacts on the character of the zone.</p> <p>Objection is raised to horticulture being a permitted use in <i>any</i> of the Waverley Residential zones.</p>	<p>provide facilities or services to meet the day to day needs of residents’ and is therefore best suited as a new addition to the business zones only.</p>
<p>Affordable Housing Clause</p> <p>Consideration should be given to introducing a clause which addresses the issue of a residential flat building being converted to a singular dwelling house, as this reduces the housing availability and affordability in the area. Under current controls, this is permissible, subject to environmental impacts being acceptable.</p>	<p>Officers agree. An additional R3 zone objective requiring new development in these areas to maintain or increase residential dwelling density is expected to assist to prevent this loss of dwellings.</p>
<p>Seniors Housing Objective</p>	<p>Officers agree and suggest that the new clause be simplified and</p>

<p>Proposed new clause: 'To ensure the dwelling character, landscaped character, neighbourhood character and streetscapes of the zone are maintained over time and not diminished by the cumulative impacts of co-housing or seniors living.'</p> <p>Comment: This intent of this new clause is ambiguous leading to various interpretations. The reference to 'dwelling' character is too specific when considering the different forms of residential accommodation which can be built in each of the zones.</p> <p>The use of the word 'maintained' may not be appropriate for areas which are transitioning to meet the future desired character of the area (ie. if a building is proposed which meets the development standards for the zone) and may discourage forms of new affordable housing. This would be contrary to the new aim which seeks to encourages the provision of affordable housing.</p> <p>It is unclear how cumulative impacts can be measured in this context of this clause. Is the intent that an applicant must assess the impacts (social, economic and environmental) of any existing boarding house or seniors housing within the vicinity with their application, as well as the impacts from the proposed development? What form would this come in, social or economic impact statements?</p> <p>Overall, it is recommended that the intent of this objective be clarified and if necessary, provide simple clear language to communicate how it supports the zone. Ultimately Clause 4.15 of the EPA Act 1979 requires assessment against the social, economic and environmental impacts of a development, therefore this new aim may be superfluous.</p>	<p>replaced with the following:</p> <p>'To ensure the dwelling character, landscaped character, neighbourhood character and streetscapes of the zone are maintained over time.'</p> <p>Furthermore, it is suggested that this objective only be applied to R2 Low Density Residential zones, as some R3 and R4 areas are considered to be transitional which the word 'maintain' conflicts with.</p>
<p>B2 Local Centre</p> <p>It is understood that the new B2 zones are replacing the existing B4 zones which were located out of the Bondi Junction Centre to create a hierarchy of centres. Provided that the permitted and prohibited uses remain the same between the two zones (accepting those uses which have been added as permissible), there are no issues raised.</p>	<p>Noted. The change in B4 zones (except for Bondi Junction) to B2 is recommended to progress.</p>
<p>Clause 4.3 Height of buildings</p> <p>The new objective (e) quoted below;</p> <p>(e) to protect the amenity of the public domain by providing public views of the city, harbour, ocean and surrounding areas.</p> <p>Comment: It is not clear what aspect of the public domain is trying to be protected in this clause. For example, a footpath</p>	<p>Officers agree and suggest removing the previously proposed subclause (e) under Clause 4.3.</p>

<p>in front of a dwelling house is the 'public domain', however a height compliant replacement building (ie. a single storey dwelling replaced by a 2 storey dwelling) could potentially affect a prominent view from a 'public place'. This type of development would be arguably appropriate if complying with all other statutory and non-statutory controls.</p> <p>If the intent is to protect the amenity of the area, including views, then objective (a) quoted below already achieves this by 'preserving' the amenity of public spaces and 'if appropriate' the sharing of views.</p> <p>(a) to establish limits on the overall height of development to preserve the environmental amenity of neighbouring properties and public spaces and, if appropriate, the sharing of views,</p> <p>It is recommended that the new proposed clause (e) be deleted, as it is sufficiently addressed in objective (a) and further supported by the DCP requirement to assess views using the planning principle of Tenacity Consulting Vs Warringah Council (2004) which is a substantiated assessment tool supported by the Land and Environment Court.</p>	
<p>6.3 New Clause - Urban Resilience</p> <p>It is understood that the new proposed Clause 6.3 (a) requires that any development that BASIX applies to but be designed to meet BASIX thermal targets higher than the current SEPP BASIX requires. New clause quoted below;</p> <p>Future Ready Development</p> <p>(a) The development is designed to meet the BASIX Thermal Comfort targets by using the CSIRO Climate File for 2050 for Climate Zone 56 in the NatHERS simulation method to respond to the unique climate of the Waverley area.</p> <p>It is noted that the Department of Planning and Environment have recently exhibited higher standards for BASIX requirements.</p> <p>Aside from that, from a practical perspective, should this amendment be gazetted, then Council's stakeholders should be contacted, and an extensive education and promotion program be executed to inform the public that the statutory BASIX requirements for the Waverley Local Government Area are based on a different data set than stipulated by the SEPP, BASIX. The introduction of this Clause would have impacts on Council's customers and will likely cause delays in DA assessment times if the public aren't informed of this requirement.</p>	<p>Should the clause be gazetted, an education campaign on the changes, and a savings provision is proposed.</p> <p>It is not anticipated that this will lead to a greater need for resources in the sustainability team if the education program is undertaken well.</p>

It is also requested that the Environmental Sustainability team have additional resources to have each DA checked as a formal referral to ensure compliance with this statutory clause	
<p>Gross Floor Area definition</p> <p>It is suggested that the gross floor area definition in the LEP be made clearer to define;</p> <ul style="list-style-type: none"> • what constitutes a habitable room • vertical circulation 	Officers will consider this first at the Development Control Plan level, as the definition is set out in the standard instrument.
<p>Land Use Table – Zone R2 – Low Density Residential</p> <p>In the R2 zone Land Use table, attached dwellings houses should be added to uses that are ‘permitted with consent. All other types of residential accommodation have been listed as a permitted uses, but attached dwelling houses is omitted, but are a type of residential accommodation which form the predominant character of R2 zones in the Waverley LGA.</p>	Officers agree. It is recommended that ‘attached dwellings’ be added as a permitted with consent use in R2.
<p>Part 4 – Height development standard</p> <p>It is recommended that a clause be added which addresses the height of dwellings houses (and other forms of low density residential accommodation) which are proposed in areas which have a height development standard of 9.5m or higher (ie. R3, R4 and B4 zones)</p> <p>For example, a dwelling house (attached house, dual occupancy et.al) which is proposed in the R3 zone which permits a height of 9.5m – 12.5m, should be restricted to a height of a dwelling house, akin with a R2 Low Density Zone (ie. 8.5m). With this scenario in the current development standards, as dwelling house can be built to the same height as a residential flat building.</p> <p>Introducing a clause similar to Clause 4.4A which has specific controls for low density residential housing is recommended.</p>	Officers will consider this as a future investigation, as more research into the impact and figures is required.

Community submissions

A total of 66 submissions were received from community members and organisations. Table 5 summarises at a high level the feedback, with Attachment 2 providing the submissions in the form of relevant verbatim extracts alongside a Council officer response.

Table 5. Summarised community feedback.

Proposed Item	Summarised community feedback
New aims in Part 1	No feedback.

Changes to Land Use Tables	Concern for horticulture in R2 zone.
New properties added to Active Street Frontages Map	1 submission opposed.
New properties added to Land Reservation Acquisition Map	12/14 submissions were opposed. 2/14 submissions in support.
Changes to Land Zoning Map	General support for B2 zone. Requests to downzone residential areas, and requests to upzone residential areas.
New aims in Clause 4.3 Height of Buildings	No feedback.
Changes to Clause 4.6 Exceptions to development standards	No feedback.
Changes to Clause 6.2 Earthworks	Support. Request to ban high impact construction and demolition techniques.
Changes to Clause 6.9 Design Excellence	Clause could be strengthened.
New Clause Future Proofing Development	Clause could be strengthened.
New Clause Waste Minimisation and Recycling	No feedback.
New Clause Stormwater Management	No feedback.

5. Financial Impact/Timeframe/Consultation

Financial impact

The Proposal seeks to better identify and protect the role of centres, while ensuring local amenity and character is preserved. The proposed changes are intended to support the community and are unlikely to result in any adverse social or economic effects.

Council has applied for funding under the Public Spaces Legacy Program for a total amount of \$4.75 million. The Program Agreement requires Council to meet the following four key requirements:

1. Substantially accelerate planning assessments between 1 September 2020 and 30 June 2021.
2. Commit to completing regionally significant development applications that have been under assessment for more than 180 days by 31 December 2020.
3. Further commit to delivering on housing and jobs growth, exhibiting updated local environmental plans to incorporate housing or employment supply for at least 6-10 years, by 30 June 2021.
4. Commit to delivering rezonings that have been under assessment for more than 4 years, by 30 June 2021.

It is noted that Council has received funding up to Milestone 3 and received an extension to the program for requirement (3) to 31 December 2022. The remaining funding for this agreement is dependent on the delivery of the subject Proposal to this report.

Time frame

The following indicative project timeline will assist with tracking the progress of the planning proposal through its various stages of consultation and approval. It is estimated that this amendment to WLEP will be completed by May 2022.

The detail around the project timeline is expected to be prepared following the referral to DPE for a Gateway Determination.

Table 2. Tasks and time frames.

Tasks	Timeframe
Submit planning proposal to Council for endorsement	April 2021

Gateway Determination	August 2021
Public Authority Consultation	November 2021 - January 2022
Community Consultation	November 2021 – January 2022
Post Exhibition Review	February 2022
Update planning proposal / Report to Council	March 2022
DPE review of final planning proposal	March 2022
Parliamentary Counsel drafting of LEP	April 2022
DPE to finalise LEP	May 2022

6. Conclusion

The *Local Strategic Planning Statement Implementation planning proposal* (the Proposal) is considered to successfully give effect to the District Plan, by way of implementing a number of the Planning Priorities and Actions of the *Waverley Local Strategic Planning Statement* (LSPS), and to meet Council's obligations under requirement (3) of the terms of the Public Spaces Legacy Program. The Proposal also provides updated aims and zone objectives to ensure that development that occurs in the Waverley area is proposed and assessed in accordance with the strategic intent of the LSPS and provides greater certainty and clarity for the community.

Council officers have considered the feedback received from the community, agencies and internal departments and recommend that Council supports the planning proposal to repeal the Waverley Local Environmental Plan 2012 and establish the Waverley Local Environmental Plan 2022, as set out in the attached planning proposal.

7. Attachments

1. Agency Responses (under separate cover)
2. Community Submissions (under separate cover)
3. Discussion of Proposed Changes (under separate cover)
4. Planning Proposal (under separate cover)
5. Proposed Mapping (under separate cover) .