

Planning Services

Plan Finalisation Report

Local Government Area: Willoughby

PP Number: PP_2014_WILLO_005_00

1. NAME OF DRAFT PLAN

Willoughby Local Environmental Plan 2012 - Amendment No.5 (draft LEP) (Tab LEP).

2. SITE DESCRIPTION

The planning proposal applies to the following specific land:

- 7, 9 and 13 Herbert Street, St Leonards, to reclassify the site from 'community' to 'operational';
- 28 Archer Street, Chatswood, to amend the maximum height of buildings and allow additional permitted uses;
- land affected by a range of errors that involve amendments to Schedule 1- Item 12, Schedule 1- Item 34, the Lot Size Map and the Special Provisions Area Map; and
- land identified by the Land Application Map relevant to clause 1.2, Clause 6.10, clause 4.1A, minimum subdivision lot sizes for dual occupancies, clause 4.1B Minimum subdivision lot sizes for shop top housing, clause 4.3A exceptions to height of buildings and clause 6.8 Affordable Housing.

3. PURPOSE OF PLAN

The draft LEP seeks to:

- reclassifying 10 strata titled affordable housing units from 'community' to 'operational' (no interests changed) at 7, 9 and 13 Herbert Street, St Leonards;
- introducing a new height limit and allowing additional permitted uses for land at 28 Archer Street, Chatswood;
- clarifying the intent of a number of clauses, which have been identified since the implementation of Willoughby LEP 2012, namely clause 4.1A, minimum subdivision lot sizes for dual occupancies, clause 4.1B Minimum subdivision lot sizes for shop top housing, clause 4.3A exceptions to height of buildings and clause 6.8 Affordable Housing; and
- correcting a range of errors created at the time of preparing Willoughby LEP 2012 which involves amendments to clause 1.2 aims of plan, clause 6.10 minimum lot sizes for attached dwellings, dual occupancies, multi dwelling housing, residential flat buildings and secondary dwellings, Schedule 1- Item 12 use of certain land at Albert Avenue, Chatswood, Schedule 1- Item 34 use of certain land at East Chatswood in Zone IN2, the Lot Size Map and the Special Provisions Area Map.

4. STATE ELECTORATE AND LOCAL MEMBER

The subject land applicable to the planning proposal falls within the Willoughby Electorate and Lane Cove Electorate. The Hon. Gladys Berejiklian MP is the State Member for Willoughby and the Hon. Anthony Roberts MP is the State Member for Lane Cove.

To the regional planning team's knowledge, neither MP has made any written representations regarding the proposal.

NSW Government Lobbyist Code of Conduct: There have been no meetings or communications with registered lobbyists with respect to this proposal.

5. STATE ENVIRONMENTAL PLANNING POLICIES AND S117 DIRECTIONS

The relevant Section 117 Directions and SEPPs were identified and addressed in Council's planning proposal ([Tab B](#)). The draft LEP is considered consistent with relevant SEPPs, deemed SEPPs and Section 117 Directions.

6. PUBLIC CONSULTATION

In accordance with the Gateway determination; public exhibition and consultation with Agencies was undertaken by Council from 13 May 2015 to 10 June 2015.

Eleven (11) submissions were received, of which all submissions were from or on behalf of community members. There were no Agency responses provided during public exhibition. The submissions report is provided at [Tab E](#).

	Support	Object
Total number of submissions	2	9
<i>Clause 4.3A Exceptions to height of buildings (Coolawin Rd / Minimbah Road, Northbridge)</i>	0	4
<i>Clause 4.1 Minimum subdivision lot size (Strata subdivision in Chatswood CBD)</i>	0	3
<i>28 Archer Street, Chatswood – Height of Building Map</i>	0	2
<i>Reclassification of land at 7-13 Herbert Street, St Leonards</i>	2	0

The public submissions objected to the proposal on the following grounds:

- The implications of rewording Clause 4.1 Minimum Subdivision Lot Size
 - Concern was raised that rewording of Clause 4.1 would be inconsistent with the standard instrument and may inhibit the viability of commercial holdings in Chatswood and stifle investment, restricting additional employment generation.
 - Council's report states that the proposed amendments provide clarity to the clause and do not change its intent.
- Amendments to Clause 4.3A exceptions to height of buildings
 - Concern was raised that the proposed amendments would restrict the height limit of residences on Coolawin Road and Minimbah Road, Northbridge.
 - Council's report notes that Amendments to clause 4.3A are necessary to protect views and limit impacts to the streetscape of Northbridge.
- 28 Archer Street, Chatswood
 - On 21 March 2016, the Department received Ministerial correspondence ([Tab K](#)) objecting to the 9 metre height limit at 28 Archer Street, Chatswood. On 26 April 2016, the Department responded advising it would consider the letter as part of its final assessment of the planning proposal ([Tab L](#)).

- Council's post-exhibition report identified that a 15 metre (5 storey) building height at 28 Archer Street, Chatswood is not supported as it does not comply with the intent of the R2 Low Density Residential zone.
- The Department's final assessment concluded a 15 metre height limit should be implemented as it is in keeping with the surrounding area and adjoining land zone. This is discussed in detail in Section 8 Post Exhibition Changes of this report.

Council has reviewed issues raised in submissions from the public (Tab E).

A public hearing was held on 17 June 2015 for reclassification of land at 7, 9 and 13 Herbert Street, St Leonards. Council engaged an independent assessor to conduct and report on the public hearing (Tab F).

The report recommended that Council should proceed to reclassify the land from 'community' to 'operational' in accordance with the planning proposal to include 7, 9 and 13 Herbert Street, St Leonards in Schedule 4, Part 2 Land classified, or reclassified, as operational land - no interests changed of Willoughby LEP 2012. Council has provided the title searches for all affected properties and note that leases on the title are to remain (Tab G).

7. ADVICE FROM PUBLIC AUTHORITIES

Council consulted the relevant authorities in accordance with the Gateway determination of 23 January 2015 (Tab D).

Office of Environment and Heritage

In line with the condition one of the Gateway determination, Council removed the proposed local heritage listing of Castle Cove Golf Course prior to public exhibition, as it does not meet the NSW Heritage Assessment Criteria. Council consulted with Office of Environment and Heritage – Heritage Division and raised no objection (Tab H).

Department of Education and Communities

In accordance with Condition 2 of the Gateway determination Council consulted with the Department of Education and Communities (DEC) in relation to the proposed rezoning of public school sites to SP2 Infrastructure. On 20 February 2015, the Department of Education and Communities wrote to Council (Tab I), requesting the proposed rezoning be removed from the proposal to be consistent with the Department of Planning and Environment's LEP Practice Note – 10-001 (Zoning for Infrastructure in LEPs). The Practice Note recommends rezoning of land to SP2 Infrastructure if there is no adjacent prescribed zone. As the land is already within a prescribed zone (residential) it does not require rezoning.

Council removed the rezoning of school sites from the planning proposal prior to public exhibition, in accordance with the Gateway Determination and consultation undertaken with the Department of Education and Communities.

There were no other objections raised by agencies.

8. POST EXHIBITION CHANGES

On 9 November 2015, Council considered a post exhibition report (Tab C), which recommended no changes to the planning proposal as exhibited. Council resolved to adopt

the Council officer's recommendation and forward the planning proposal to the Department to finalise the proposed amendments to WLEP 2012 ([Tab J](#)).

Reclassification

Council proposed and exhibited the reclassification of 7, 9 and 13 Herbert Street, St Leonards as 'operational' in Schedule 4 – Part 2 Land classified, or reclassified, as operational land—interests changed. However, following discussions between the Department and Council, it was determined that Council does not wish to extinguish any interests as part of the reclassification. This will ensure the interests recorded on titles in relation to leases for a community housing provider are retained ([Tab G](#)). As such, the proposal has been amended to reclassify the site as 'operational' under Schedule 4 – Part 1 Land classified, or reclassified, as operational land—no interests changed.

The proposal is not required to be re-exhibited, nor is an alteration to the Gateway determination required, for the post exhibition change to reclassify 7, 9 and 13 Herbert Street, St Leonards as 'operational'. The proposed amendments are consistent with the overall intent of the planning proposal as exhibited and will ensure leases and interests on the land are retained.

28 Archer Street, Chatswood

Council proposed and exhibited a 9 metre building height limit for the property at 28 Archer Street, Chatswood.

Two submissions were received during public exhibition objecting to the 9 metre height limit and recommended that a 15 metre height limit be implemented. On 21 March 2016, the Department also received Ministerial correspondence ([Tab K](#)) objecting to the proposed 9 metre height limit. The correspondence states that a 15 metre height limit provides a more cascading effect into the South Chatswood Heritage Conservation Area rather than the abrupt descent of the proposed 9 metres. On 26 April 2016 the Department responded to the correspondence and noted that it would consider the letter as part of the final assessment ([Tab L](#)).

A 15 metre height limit for the site is recommended as it is considered to be consistent with the surrounding area and adjoining land zoning. It is recommended that this amendment be endorsed under *Section 59(2)(a) of the Environmental Planning and Assessment Act 1979* without requiring further exhibition as it provides a building height which is more consistent with the streetscape and site context.

9. MAPPING

There are eighteen (18) maps and an accompanying map cover sheet ([Tab Maps](#)) associated with this amendment.

Council submitted the maps via the Department's e-Planning Portal and these have been checked by the ePlanning data and information team.

10. GATEWAY CONDITIONS, EXTENSIONS AND ALTERATIONS

There have been no Gateway extensions requested or issued for the draft Plan. The proposal was due for finalisation by 30 January 2016.

The finalisation of the proposal has been delayed due to ongoing negotiation with Parliamentary Counsel and Council regarding the drafting of clause 6.8 Affordable Housing.

11. ASSESSMENT

The Department has considered submissions received during public exhibition and amendments made post exhibition. It is recommended that the draft LEP be supported for the following reasons:

- the proposal provides corrections to anomalies which were created during the preparation of WLEP2012;
- amendments to anomalies provide clarification of the intent of clause 4.3A, clause 4.1 and clause 6.8 and Schedule 1;
- reclassification of land at 7-13 Herbert Street, St Leonards will support more affordable housing in Willoughby and afford greater flexibility in the provision of affordable housing in the LGA; and
- introduction of a 15 metre building height and additional permitted use at 28 Archer Street, Chatswood has site specific merit and is consistent with the streetscape and site context.

On 21 November 2016, the Greater Sydney Commission released the draft North District Plan. The proposal is located within the North District and is considered consistent with the priorities and actions of the draft North District Plan.

12. CONSULTATION WITH COUNCIL

Under section 59(1) of the *Environmental Planning and Assessment Act 1979*, Council was consulted on the terms of the draft instrument (Tab M). Council confirmed that the draft instrument is consistent with the intent of the planning proposal.

13. PARLIAMENTARY COUNSEL OPINION

On 3 May, 2017 Parliamentary Counsel provided the final Opinion that the draft Plan could be legally made. This Opinion is provided at Tab PC.

14. RECOMMENDATION

It is recommended that the Greater Sydney Commission's delegate determine to make the draft plan as it will amend a number of anomalies which were created during the preparation of the draft Willoughby LEP 2012 and will provide greater clarity for future development in the Willoughby Local Government Area.

 26.06.17

Sandy Chappel
Director, Sydney Region East

 28 June 2017
Stephen Murray
Executive Director, Regions
Planning Services

Contact Officer: Wayne Williamson (CT)
Team Leader, Sydney Region East
Phone: 9274 6438