

9.2 AMENDMENTS TO WILLOUGHBY LOCAL ENVIRONMENTAL PLAN 2012 AND WILLOUGHBY DEVELOPMENT CONTROL PLAN

ATTACHMENTS:

- 1. PLANNING PROPOSAL**
- 2. WDCP AMENDMENTS TO PART B.4 CATEGORY C NOTIFICATION PERIOD**
- 3. WDCP AMENDMENTS TO PART D.1 PRIVATE RECREATION FACILITIES FOR DWELLING HOUSES, DUAL OCCUPANCIES AND SECONDARY DWELLINGS**
- 4. WDCP AMENDMENTS TO PART E1.7 OPEN SPACE REQUIREMENTS FOR SHOP TOP HOUSING DEVELOPMENTS**
- 5. WDCP AMENDMENTS TO PART G.2 BOARDING HOUSES**
- 6. WDCP AMENDMENTS TO PART G.4 AFFORDABLE HOUSING**
- 7. WDCP AMENDMENTS TO PART G.8 CHILD CARE SERVICES**
- 8. PLANNING ADVICE NOTE ON CLASSIFICATION AND RECLASSIFICATION OF PUBLIC LAND**

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CITY STRATEGY LINK: 3.1.1 PLAN FOR HOUSING CHOICE
3.1.3 LOCAL CHARACTER
5.1.1 LOCAL BUSINESS

MEETING DATE: 7 OCTOBER 2014

Purpose of Report

This report includes details of:

- (i) a planning proposal prepared by Council officers which seeks to amend Willoughby Local Environmental Plan 2012 (WLEP 2012) by:
 - the correction of anomalies and discrepancies
 - the inclusion of a proposed heritage item of local significance at Castlecove Golf Course
 - reclassification of land at 7-13 Herbert Street, St Leonards from community to operational.
 - Rezoning of public schools to SP2 Educational Establishment.
- (ii) Proposed amendments to the Willoughby Development Control Plan (WDCP). The proposed changes comprise of corrections and firming of controls where there have been issues regarding clarification and implementation.

The report recommends that Council support the planning proposal amendments to Willoughby Local Environmental Plan and the planning proposal be forwarded to the NSW Department of Planning and Environment for a Gateway Determination. The report also recommends the exhibition of the proposed WDCP amendments together with the planning proposal.

Background

Willoughby Local Environmental Plan 2012 (WLEP 2012) was adopted by Council on 23 July 2012 and was made on 31 January 2013. Since its implementation, a number of anomalies have been highlighted by Council officers and the planning proposal intends to correct these.

The corrections to the written instrument are intended to provide clarification of the intent of certain clauses in instances where uncertainty has arisen ie in the Height (Clause 4.3A), subdivision (Clause 4.1) and Affordable Housing (Clause 6.8). An update of property descriptions in Schedule 1 (Additional Permitted Uses) is also included.

With regard to mapping corrections, the planning proposal removes properties which were incorrectly included in the Special Provisions Area Map and provides error corrections for the Lot Size and Height of Buildings Map.

In addition to the corrections, the planning proposal also includes:

- a proposed heritage item of local significance at Castle Cove Golf Course. Council considered a report on 11 November 2013 and resolved that:
"...Willoughby Council take the appropriate steps to list Castle Cove Golf Course as a Local Heritage Item based on historical associations and social significance."
- The reclassification to operational of the Council owned 10 affordable housing units at 7-13 Herbert Street, St Leonards which Council has previously considered during Artarmon property workshops held in 2014.
- The rezoning of public schools to SP2 Educational Establishment in accordance with a Council resolution made during the time of the making of WLEP 2012.
- Provision of a height limit and proposed additional permitted uses for the property at 28 Archer Street, Chatswood.

Proposed WLEP 2012 Changes

A summary list of all the written and mapping amendments is provided in the following table. The planning proposal includes the addressing of applicable State Environmental Planning Policies and Section 117 Directions as can be viewed at Attachment 1

Description and Item No.	Proposed Change
1. Clause 4.3A Exceptions to height of buildings	Wording amendment to subclause (1): The intention of this clause as originally written, is to provide a height restriction which protects views and limits the impact on streetscape on certain foreshore land at Northbridge. The intent of this clause is also to provide a dwelling height across the site which is no higher than the height of a single storey at the street frontage, but allows within that height limit, up to 10 metres height at the rear of sites which drop away from the street frontage. This reflects the character of dwellings on the Northbridge foreshore. In the final preparation of WLEP 2012, Parliamentary Counsel (PC) changed the wording of this clause. However the wording changes the intent and needs to

be corrected. PC added the words "...where the building adjoins the street boundary...."

The dwellings in the street to which this clause applies are set back from the street and there are no instances "...where the building adjoins the street boundary...."

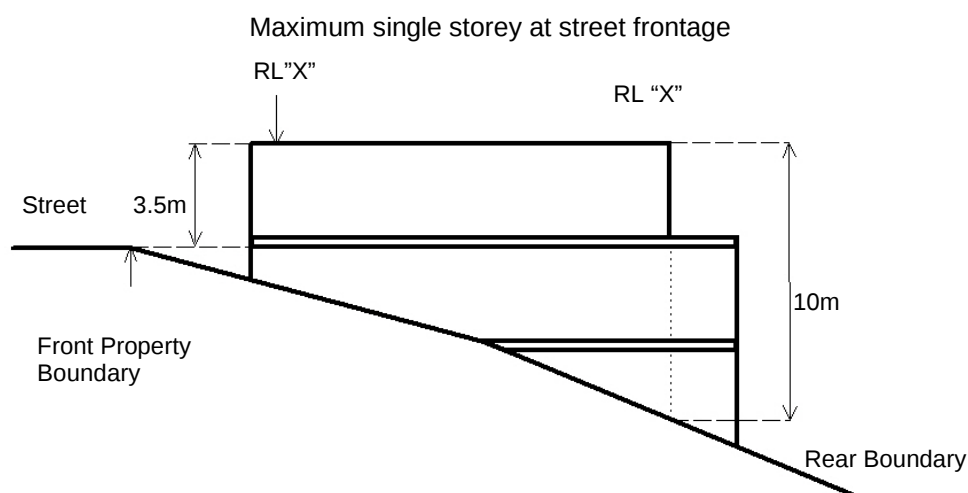
This should be amended to refer to where the land adjoins the street boundary

The inclusion of the words by PC changed the intent of the exhibited clause and subclause (a) should be reworded as follows:

4.3A Exceptions to height of buildings

- (1) The height of a building on land in Zone E4 Environmental Living in Northbridge that is identified as "Area 1" on the Height of Buildings Map must not exceed:
 - (a) a height that is equal to 3.5 metres above ground level (existing) at the highest point of the land where the building land adjoins the street frontage boundary of the land, and
 - (b) 10 metres above ground level (existing) at any other point of the land.

This reflects the clause as was publicly exhibited. The diagram below is currently in WDCP and clarifies the intent of this clause:



The extent of Area 1 of the Height of Building Maps is as follows:



Extract from Height of Building Map 7.

2. Schedule 1 - Item 34

Item 34 is headed, "Use of certain land in East Chatswood in Zone IN2." This item allows bulky goods retailing in the IN2 zone.

PC mistakenly removed the words "...and Roseville.." from the exhibited draft WLEP 2012 and that which was adopted by Council, in the final stages of the making of WLEP 2012. For clarification purposes, the reference to Roseville should be reinstated in the heading and in subclause (1) as the IN2 zone applies to land in both East Chatswood and Roseville and in keeping with Council's intentions. The clause should read:

34 Use of certain land at East Chatswood and Roseville in Zone IN2

- (1) This clause applies to land in East Chatswood and Roseville that is in Zone IN2 Light Industrial, unless the land has direct frontage to or adjoins any residential area (other than land along Eastern Valley Way).
- (2) Development for the purposes of bulky

	goods premises, garden centres, hardware and building supplies, and landscaping material supplies is permitted with development consent. (3) Development consent under subclause (2) must not be granted unless the consent authority is satisfied that: (a) suitable land is not available for the development in any nearby business centre, and (b) the development will not detrimentally affect the range of services offered by existing shops located in any nearby business centre, and (c) giving consent would not, because of the number of retail outlets that exist or are proposed in Zone IN1 General Industrial or Zone IN2 Light Industrial, change the predominantly industrial nature of the area or detrimentally affect existing or future industrial development in the zone.
3. Schedule 1 – Item 12	The lots and DPs of this item needs to be updated to reflect the correct property information for the site. The land to which the Schedule applies remains unchanged. The items should be reworded as follows: 12 Use of certain land at Albert Avenue, Chatswood (1) This clause applies to land at Albert Avenue, Chatswood, being Lot 1, DP 741948, Lot 24, DP 618973, Lot 1, DP 69505, Lot 8, DP 620843, <u>Lot 11 DP 1171717</u>, Lot 6, DP 69530 and Lot 5, DP 69530. (2) Development for the purpose of a car park is permitted with development consent. Item 12 previously referred to Lot 8 DP 620843 which was subject to a boundary adjustment between the Council car park and Lot 11 DP 1119753 (38 Albert Avenue) which is to be developed
4. Clause 6.10 Minimum lot sizes for attached dwellings, dual occupancies, multi dwelling housing, residential flat buildings and secondary dwellings	Subclause (4) (e) heading states the minimum lot size for land bounded by Julian, Street, Edward Street and Borlaise Street, Willoughby. This heading should also have included “Penkivil Street.” The lots and DPs for Penkivil Street are included in the subclause (e) but not in the title. This error should be corrected as follows: 1.10 Minimum lot sizes for attached dwellings, dual occupancies, multi-dwelling housing, residential flat buildings and secondary dwellings (4) (e)

	(e) 2,500 square metres for land bounded by Julian Street, Edward Street, <u>Penkivil Street</u> and Borlaise Street, Willoughby, being Lots 2–4, DP 170500, Lot 1, DP 170956, Lots 1 and 2, DP 215758, Lots A and B, DP 443111, Lot 1, DP 195017, Lots A and B, DP 337800, Lots 3–5, Section 1, DP 975943, Lot 678, DP 815928, Lots 10 and 11, DP 1005258, Lot 20, DP 1105368, Lot C, DP 337800, Lot 1, DP 782473, Lots A and B, DP 443285, Lot F, DP 382354, Lots 1 and 2, DP 511145, Lots 1 and 2, DP 204240, Lots 1 and 2, DP 1052333, Lot 2, DP 597098, Lot A, DP 410182, Lot 22, DP 85344, Lots 241 and 242, DP 603255, Lot 25, Section 2, DP 975943, Lots A and B, DP 401143, Lots 211 and 212, DP 879375, Lot D, DP 374740, Lot C, DP 401143, Lot 1, DP 597098 and Lot B, DP 410182,
5A Clause 4.1A Minimum subdivision lot sizes for dual occupancies	The wording of this clause has resulted in confusion as to what the FSR of the 2 resulting dwellings will be after subdivision takes place. The subclause currently states that the floor space of each dwelling should not exceed either 0.4:1 or whatever is stated in Floor Space Area Map – whichever is the lesser. The intention of the clause is that for dual occupancy development, the maximum floor space ratio permitted equals the floor space ratio of dwelling 1 and the floor space ratio of dwelling 2. In the case of subsequent Torrens subdivision, the FSR of each dwelling relative to its proposed lot must not be greater than the FSR permitted for the dual occupancy development on the original lot prior to the subdivision. A wording change is recommended to clarify this as indicated in 5B below.
5B 5 Year period for subdivision of dual occupancies	In addition, the requirement for subdivision after 5 years also requires clarification that this can only take place after a “final” occupation certificate has been granted (rather than an interim construction certificate). Residents can occupy a dwelling with an interim occupation certificate and never apply for a final certificate. This means the entitlement to subdivision would be with an interim certificate but still have outstanding matters required by the consent (landscaping, privacy treatments etc). It is recommended that Clause 4.1A be amended to clarify points 5A and 5B as follows: 4.1A Minimum subdivision lot sizes for dual occupancies (1) Development consent may be granted to the subdivision of a lot on which there is a dual occupancy if: (a) the lot is not a lot in the area identified as “Area 1” on the Dual Occupancy Restriction Map, and (b) the area of each lot resulting from the subdivision is at least 350 square metres, and (c) each of the resulting lots will have one of the

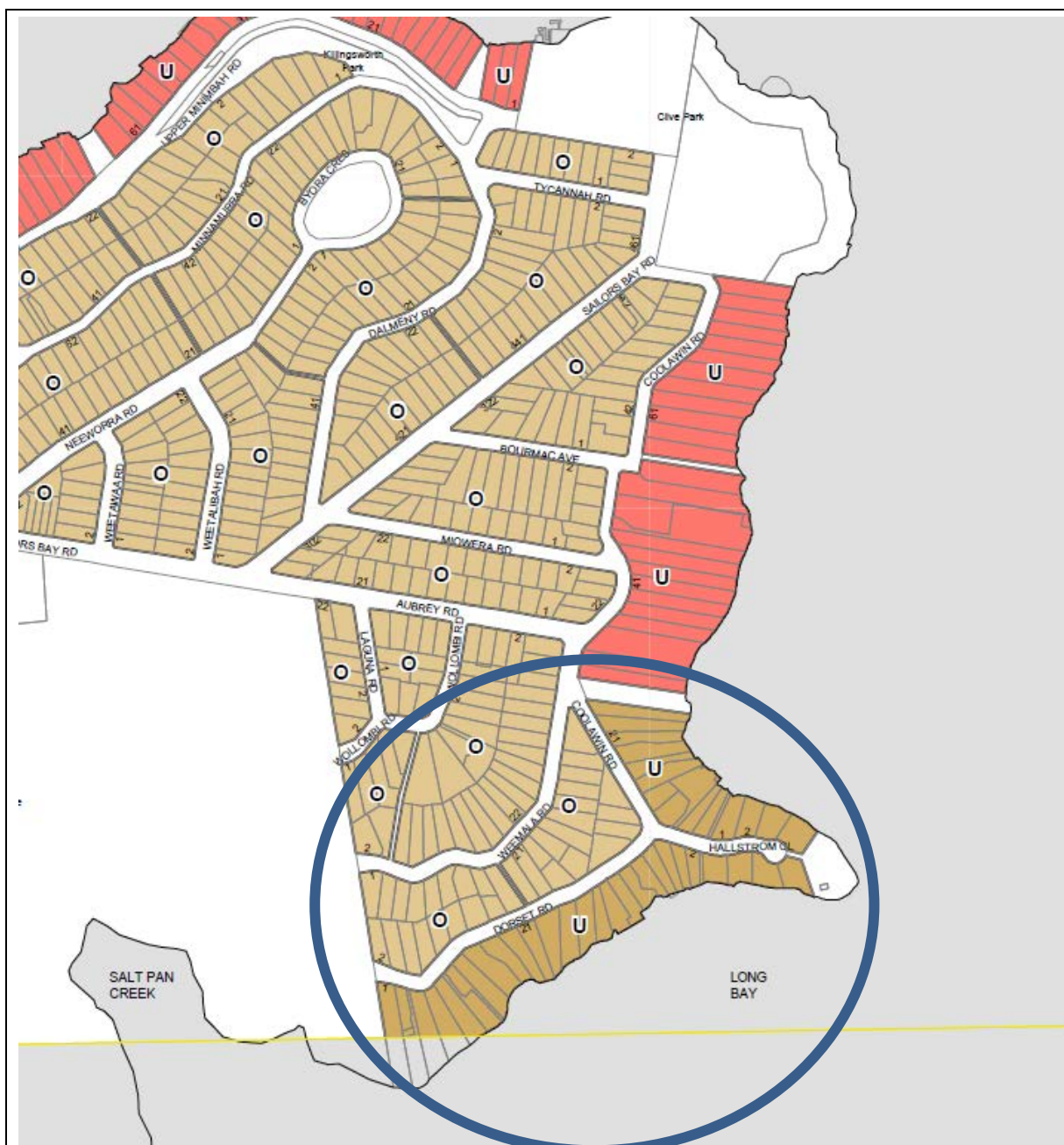
	dwelling on it, and (d) the floor space ratio of each dwelling <u>relative to its newly created lot</u> does not exceed: (i) 0.4:1, or (ii) any floor space ratio specified under clause 4.4A for a buildings on the <u>existing</u> lot <u>prior to subdivision</u>, whichever is the lesser, and (e) an <u>final</u> occupation certificate was issued for the dual occupancy at least 5 years before the development consent is granted. (2) To avoid doubt, this clause does not affect the right to subdivide a dual occupancy under clause 4.1.
Clause 6.8 Affordable Housing 6A Dwelling consistency	There are 5 parts to the amendment to Clause 6.8 Affordable Housing, as outlined in 6A to 6E below. 6.8 (1) (d) relates to the building standard of an affordable housing dwelling which is being dedicated to Council and uses the words, ".... is consistent with other dwellings in Willoughby.." The building standard of the dedicated dwelling should be consistent with the other dwellings in the development proposal. The wording should be amended to reflect this (see below at the end of 6D).
6B ABS Terminology	Replacement of reference in Clause 6.8 (1) (b) from the "Sydney Statistical Division" to the "Greater Sydney Greater Capital City Statistical Area" in accordance with recent Australian Bureau of Statistics terminology.
6C Use of Funds	Word changes to allow for and clarify that any funds received from the disposal of Council owned affordable housing dwellings will be used for the purpose of improving or replacing affordable housing dwellings in Willoughby.
6D Dedication of Land and clause order	Clarification of the intent of the clause which has arisen through development application queries with appropriate rewording, eg removal of words "of the applicant" when referring to the dedication of land as the applicant may not be the owner. Change of words "not more than" when referring to the gross floor area of a complete dwelling for dedication – words should read "not less than". The current wording could mean an applicant dedicated only a fraction of what they are required to dedicate. Rearrangement of order of clause in (3)(a) and (b) in order to improve the sense of the clause and highlight that the dedication of units is Council's preferred choice.
6E Monetary Contributions	It is also intended to clarify that it is Council's preference to

	provide the affordable units on site. In certain circumstances, a monetary contribution may be an alternative and this option is required to be agreed by Council. Further, regarding the monetary contribution, the clause refers to market value with a reference to the Rent and Sales Report NSW published by the Department of Family and Community Services. In certain development applications it may be difficult to compare with a category in the Rent and Sales Report and therefore, it may be appropriate to utilise another method of valuation. In these circumstances, an alternative method needs to be agreed by Council.						
	With regard to points 6A to 6E above, Clause 6.8 is proposed to be amended as follows: Clause 6.8 Affordable housing (1) For the purposes of this clause, the <i>Willoughby Affordable Housing Principles</i> are as follows: (a) affordable housing must be provided and managed in Willoughby so that accommodation for a diverse residential population representative of all income groups is available in Willoughby, and (b) affordable housing must be rented to tenants whose gross household incomes fall within the following ranges of percentages of the median household income for the time being for the Sydney Statistical Division Greater Sydney <u>Sydney Greater Capital City Statistical Area</u> according to the Australian Bureau of Statistics: <table> <tr> <td>Very low income household</td><td>less than 50%</td></tr> <tr> <td>Low income household</td><td>50% or more, but less than 80%</td></tr> <tr> <td>Moderate income household</td><td>80–120%</td></tr> </table> and at rents that do not exceed a benchmark of 30% of their actual household income, and (c) dwellings provided for affordable housing must be managed so as to maintain their continued use for affordable housing, and (d) rental from affordable housing received by or on behalf of the Council, after deduction of normal landlord's expenses (including management and maintenance costs and all rates and taxes payable in connection with the dwellings), <u>and money received from the disposal of affordable housing</u>, must be used for the purpose of improving or replacing affordable housing or for providing additional affordable housing in Willoughby, and (e) affordable housing must consist of dwellings constructed to a standard that, in the opinion of the consent authority, is consistent with other <u>equivalent dwellings in Willoughby within the development</u>, especially in terms of internal fittings and finishes, solar access and privacy. (2) Development consent must not be granted to the erection of residential accommodation on land identified as "Area 3" on the Special Provisions Area Map unless the consent authority has	Very low income household	less than 50%	Low income household	50% or more, but less than 80%	Moderate income household	80–120%
Very low income household	less than 50%						
Low income household	50% or more, but less than 80%						
Moderate income household	80–120%						

	taken the following into consideration: (a) the Willoughby Affordable Housing Principles, (b) the impact the development would have on the existing mix and likely future mix of residential housing stock in Willoughby, (c) whether an affordable housing condition should be imposed on the consent. Note. The affordable housing principles set out in Schedule 2 to <i>State Environmental Planning Policy No 70—Affordable Housing (Revised Schemes)</i> may also apply to the development. (3) The following are affordable housing conditions: (a) if 4% of that accountable total floor space provides a sufficient amount of gross floor area, a condition requiring: (i) the dedication in favour of the Council consent authority, free of cost, of land of the applicant comprised of one or more complete dwellings with a gross floor area of not more-less than the amount equivalent to that percentage, each dwelling having a gross floor area of not less than 50 square metres, and (ii) if the total amount of gross floor area of the complete dwelling or dwellings is less than the amount equivalent to that percentage, the payment of a monetary contribution to the consent authority by the applicant that is the value, calculated in accordance with subclause (4), of the gross floor area equivalent to the difference between those amounts, to be used for the purpose of providing affordable housing in accordance with the Willoughby Affordable Housing Principles. (b) where, at the agreement of the Council, a condition requiring the payment of a monetary contribution to the consent authority by the applicant to be used for the purpose of providing affordable housing in accordance with the Willoughby Affordable Housing Principles that is the value, calculated in accordance with subclause (4), of 4% of the accountable total floor space to which the development application relates, or (4) The amount of the contribution to be paid under a condition imposed under subclause (2) (c) is the value of the gross floor area concerned calculated by reference to the market value of dwellings of a similar size to those proposed by the development application or by other means determined by Council. Note. Section 94F of the Act permits the imposition of such a condition and specifies the circumstances under which such a condition may be imposed. Any condition imposed is subject to section 94G of the Act. (5) This clause does not apply to development for the purpose of any of the following: (a) boarding houses, (b) community housing (as defined in section 3 of the <i>Housing Act 2001</i>), (c) group homes,
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	(d) hostels, (e) public housing (as defined in section 3 of the <i>Housing Act 2001</i>). (6) An affordable housing condition must not be imposed in relation to an amount of accountable total floor space if the consent authority is satisfied that such a condition has previously been imposed under this clause in relation to the same or an equivalent amount of accountable total floor space on the site. (7) In this clause: accountable total floor space means the gross floor area of the residential component of the development to which the development application relates. market value means the most current median sales price of such dwellings for Willoughby as documented in the Rent and Sales Report NSW published by the Department of Family and Community Services or, if another document has been approved for that purpose by the Director-General, that document.
6F Clause 1.2 Aims of Plan	Currently, the aims of the plan do not include any reference to affordable or adaptable housing. It is intended to correct this omission: Replace 2(f) with the following clause: (f) for housing- (i) to provide opportunities for a range of housing choice in Willoughby to cater for changing population needs in accessible locations, and (ii) <u>to facilitate the provision of adaptable and affordable housing.</u>
7. Schedule 4 : Reclassification of 7-13 Herbert Street, St Leonards from community to operational land.	It was assumed that the correct classification of the 10 affordable units at 7-13 Herbert Street, St Leonards as operational land under the Local Government Act 1993, took place at the time that the units were dedicated to Council, in order to enable the long term lease of the units to tenants. Council resolved on 10 June 2003 that the units be classified as operational land. However, a recent search of Council property records provided no confirmation that the correct public advertisements for the classification were made. This means that the units' classification as operational land is uncertain and that they may be community land. Classification as operational would also enable the option of the future sale of any of these units in order to fund alternative affordable housing in Willoughby City. This would be a long term process undertaken in conjunction with the community housing provider and the potential sale of any of the units would be gradual as leases expired or tenants vacated and alternative accommodation would be offered to tenants. This

	possibility has been discussed with Council in Artarmon property workshops held in 2014. Further information on the proposed reclassification of the units at 7-13 Herbert Street can be viewed at Attachment 8 under the heading “LEP Practice Note PN 09-003 –Written Statement.” Reclassification of lots at 7-13 Herbert Street St Leonards from community to operational. WLEP 2012 Schedule 4 amended as follows: Insert the following into Part 2 Land classified, or reclassified, as operational land – interests changed. <table><tr><th>Column 1</th><th>Column 2</th><th>Column 3</th></tr><tr><th>Locality</th><th>Description</th><th>Any trusts etc not discharged</th></tr><tr><td><u>St Leonards, 7-13 Herbert Street</u></td><td><u>Lot 98, 99, 174, 178, 179 and 184, DP69609</u> <u>Lot 25, 30, 32 and 33, DP67931</u></td><td><u>Nil</u></td></tr></table>	Column 1	Column 2	Column 3	Locality	Description	Any trusts etc not discharged	<u>St Leonards, 7-13 Herbert Street</u>	<u>Lot 98, 99, 174, 178, 179 and 184, DP69609</u> <u>Lot 25, 30, 32 and 33, DP67931</u>	<u>Nil</u>
Column 1	Column 2	Column 3								
Locality	Description	Any trusts etc not discharged								
<u>St Leonards, 7-13 Herbert Street</u>	<u>Lot 98, 99, 174, 178, 179 and 184, DP69609</u> <u>Lot 25, 30, 32 and 33, DP67931</u>	<u>Nil</u>								
8. Lot Size Map	There is a drafting error in the Lot Size Map with a label and colour not matching. Map 7 of the Lot Size Map shows a section of Coolawin Road, Hallstrom Close and Dorset Road, Northbridge with a Label of “U” but are coloured as per “Q”. This is an error with the “U” Label minimum lot size of 1500m² being correct. The colour needs to be amended to reflect this. (This correction also relates to a small section of Map 8 where the properties overlap). The original exhibition of the draft WLEP 2012 was correct. The area to be corrected is highlighted as follows:									

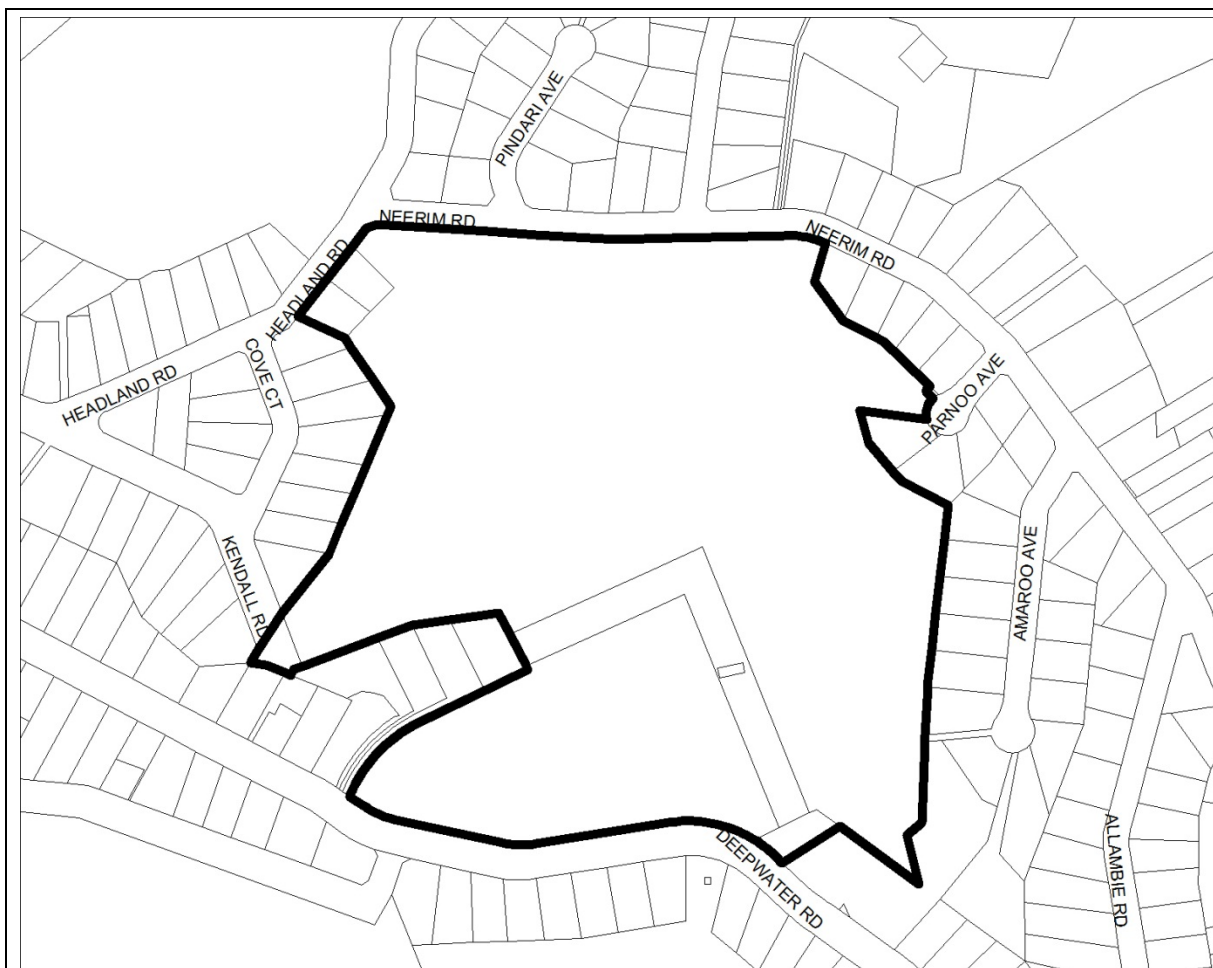


9. Special Provisions Area Map

Map 7 of the Special Provisions Area Map incorrectly includes properties at 54 and 56 Mowbray Place within Areas 1 and 3.

Areas 1 and 3 relate to the Willoughby Market Garden development. The boundary for Areas 1 and 3 including 54 and 56 Mowbray Place is now incorrect and should be amended to exclude them.

	AREA 3 AREA 1 and AREA 3
10. Heritage Map and Schedule 5	Council resolved on 11 November 2013 to include Castle Cove Golf Course as a heritage item of local significance. The reasons why the golf course is to be considered as a heritage item is based on the previous Council report and resolution on this matter in 2013, which will be included as part of the planning proposal to be submitted to the Gateway and public exhibition. It is proposed that the inclusion of Castle Cove Golf Course be inserted into Schedule 5 and added to Map 6 of the Heritage Map. A location plan of the site is as follows:



11A. New local provision added to Clause 4.1 Minimum Subdivision Lot Size

Clarification of the minimum lot size for strata subdivision.

The intent of this clause as it applies to the B3 Commercial Core land in Chatswood CBD is to avoid the circumstance where a building is strata subdivided and then is unable to be redeveloped because of the commercial inability to gain agreement of the strata owners.

Clause 4.1 (4) states:

".....This clause does not apply in relation to the subdivision of individual lots in a strata plan or community title scheme..."

This has resulted in a number of enquiries to clarify the meaning of the clause.

The confusion relates to whether the subdivision relates to lots that already exist in a strata plan or the subdivision of lots by a strata plan.

Advice given to Council by officers of the Department of Planning at the time of the draft WLEP 2012 was being prepared is that the sub clause (4) is intended to refer to lots currently within a strata plan and does not permit subdivision by strata plan that is not in accordance with the Minimum Lot Size Map.

11B Amendment to Clause 4.1B(i)
Minimum Subdivision lot sizes for
shop top housing

For clarification, it is proposed to add a new subclause (4A) as follows:

4.1(4A) This clause does apply in relation to the subdivision of individual lots by a strata plan or community title scheme.

Council included B3 land within the Chatswood CBD on the minimum lot size map (minimum 2,500m²) in order to address the economic issues of strata subdivision of office and retail buildings that compromises the ability to manage the tenancy mix and long term flexibility of the building for redevelopment. Initially, a specific clause was included in the draft WLEP 2012, however this was subject to a number of changes during the process of creating the Standard Instrument provisions and the compromise acceptable to Parliamentary Counsel was the inclusion of the land in the Minimum Lot Size Map. The minimum lot size to be created for subdivision of the Chatswood B3 land is 2,500m².

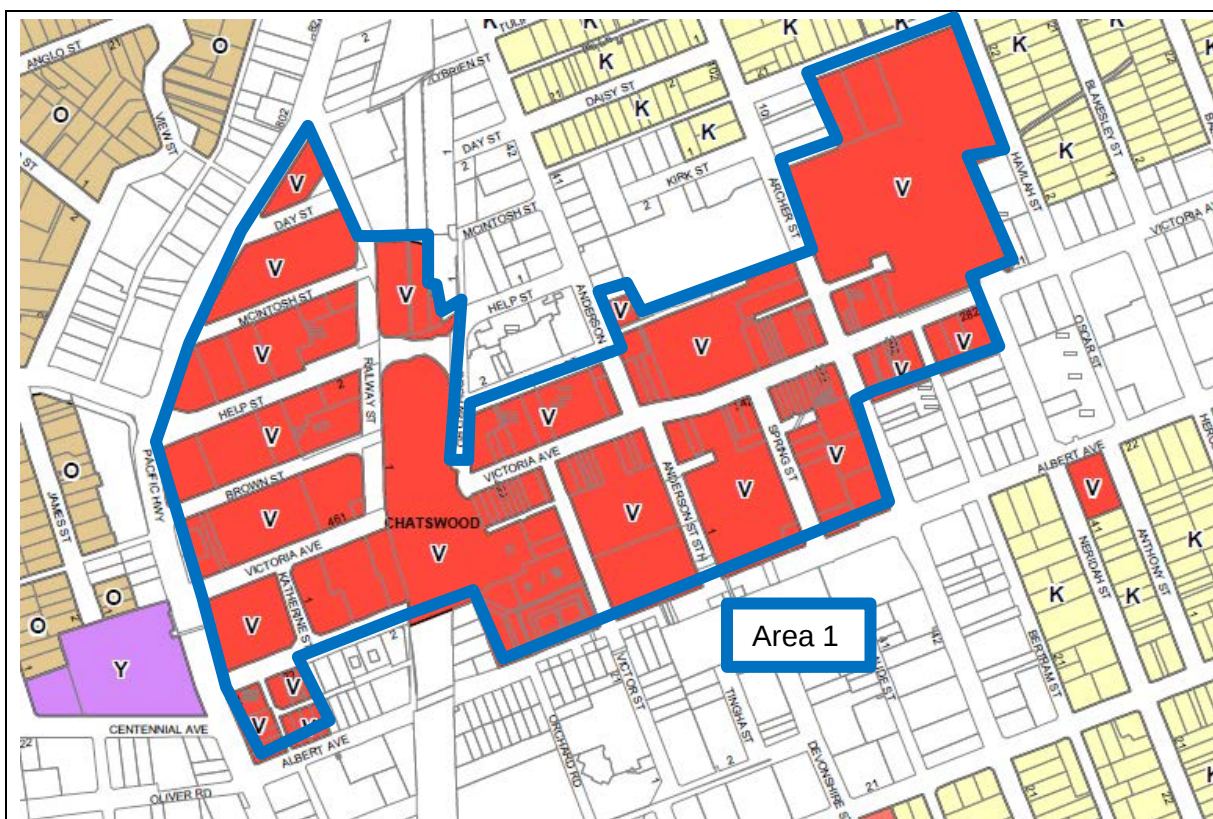
Clause 4.1B(i) itemises an exception to this minimum lot size for the subdivision of shop top housing in land along Victoria Avenue Chatswood (identified as Area 5 on the Special Provisions Area Map as indicated on the map extract below). Shop top housing is a newly permissible use under WLEP 2012 in this locality. (Shop top housing is a prohibited use in the B3 zone land use table).

There are however, additional sites in the Chatswood CBD B3 land which also permits shop top housing in Schedule 1 of WLEP 2012 and it should be clear that the minimum lot size restriction on subdivision does not apply to the residential component of a development in the Schedule. Clause 4.1B(1) should be amended as follows:

4.1B (1) Development consent may be granted to the subdivision of shop top housing on a lot where it is an additional permitted use on land identified in Schedule 1 in the area identified as ~~"Area 5" on the Special Provisions Area Map even if the size of any or all lots resulting from the subdivision is less than the minimum lot size shown "Area 1"~~ on the Lot Size Map in relation to that land.

Proposed amendment to Lot Size Map 4

The land zoned B3 Commercial Core highlighted below with a minimum lot size of "V" ie 2500m² should be included as Area 1 on the Minimum Lot Size Map as part of the amendment 11B discussed above.



Extract from Special Provisions Area Map – Area 5

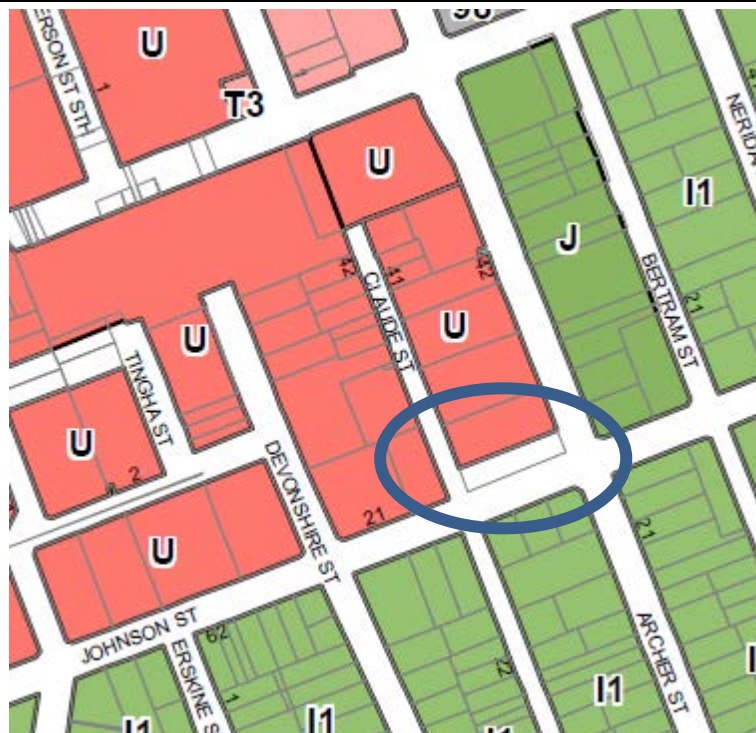


12. 28 Archer Street Height of Buildings Map and Schedule 1	Add 28 Archer Street to the Height of Buildings Map with a height of 12 metres. (The parcel currently has no height control). Under WLEP 1995, the site was previously zoned Special Uses "A" Legacy and was rezoned to R2 as part of WLEP 2012. The land immediately to the north is zoned R4 High Density Residential and developed to 6 storeys. Under WLEP 2012, the site was given a FSR of 1.7:1 to match the remainder of the block but (in error) was not given a height limit. The extract below from Height of Building Map 4 shows that the adjoining sites within the block have a height limit "U" which is 34 metres. The height limit of the adjacent R2 zone is 8 metres. The site in question is the equivalent of a single home lot of 913m² and should the site be redeveloped to 1.7:1, it is limited in terms of width and available setbacks. A height of 34 metres would not be achievable or desirable. In addition, the site is opposite South Chatswood Conservation Area. It is recommended that a height of 9 metres should apply to the site which would enable a lower scale redevelopment and provide a transitional height to the conservation area. Council recently refused a Development Application for this site. The DA proposed a boarding housing with a height of 28.5m using SEPP (Affordable Rental Housing) 2009. Council engaged an independent urban design review of the site which concluded that, "....a high rise residential tower is not an appropriate building typology for the site as it will not achieve adequate amenity for future or adjoining residents. A more appropriate built form is a set of town house style developments or individual smaller apartments located within a landscape setting....." (Summary of Issues and Urban Design Review – Proposed Boarding House Development 28 Archer Street, Chatswood prepared by GM Urban Design & Architecture Pty Ltd, May 2014). It is not considered appropriate to rezone this site to a higher density residential zone, when the consequent additional uses, due to its lot size. As recommended in the independent urban design review, a form of town house style development would be an appropriate option for the site. However, the R2 zoning does not permit this use. It is recommended to permit attached dwellings and multi dwelling housing on the site by Schedule 1 Additional permitted uses. The standard instrument defines attached dwellings as: "....a building containing 3 or more dwellings, where (a) each dwelling is attached to another dwelling by a common wall, and (b) each of the dwellings is on its own lot of land, and
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(c) none of the dwellings is located above any part of another dwelling.

Multi dwelling housing is defined as:

"...3 or more dwellings (whether attached or detached) on one lot of land, each with access at ground level, but does not included a residential flat building".



13. Height of Building and Floor Space Ratio Maps at 1-5 Railway Street Chatswood

At the time of making of WLEP 2012 there was no property description that separately defined the site at 1-5 Railway Street as a discreet lot. It was part of the larger land holding at Chatswood Station owned by Railways. Identification as a separate lot occurred with registration of DP 1094273 for the Chatswood Transport Interchange site and the lot is known as Lot 101 in DP 1094273.

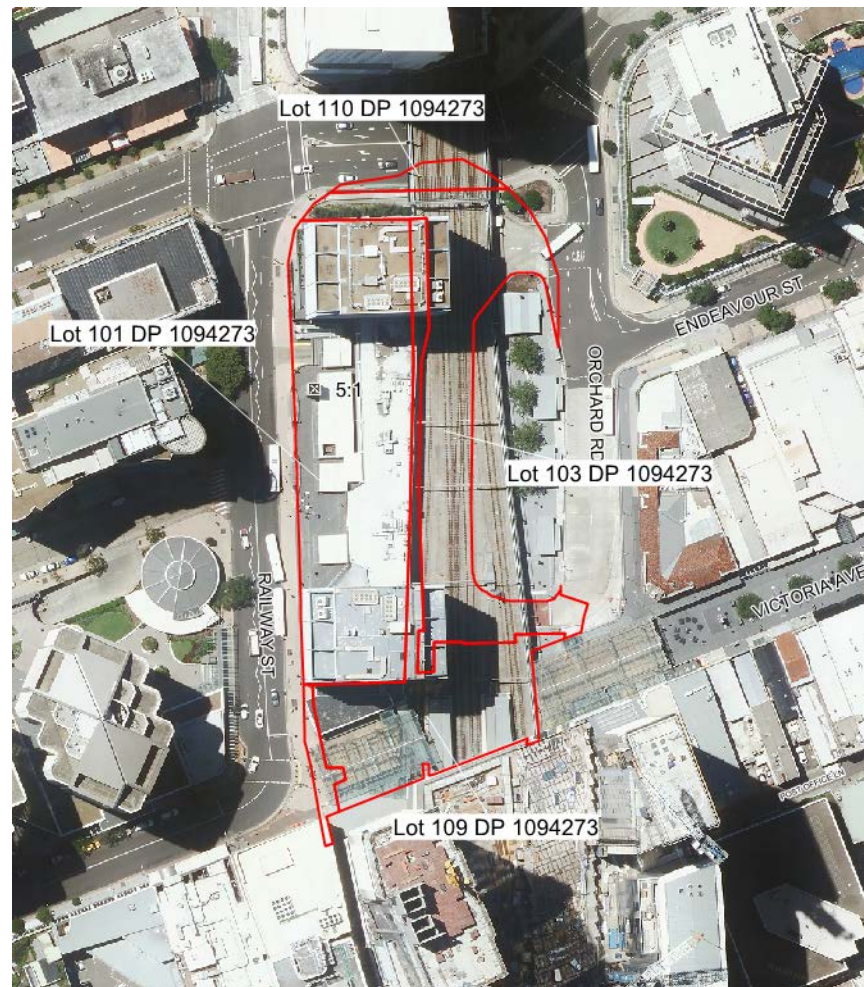
A slither of land to the north of 1-5 Railway Street was given its own title – Lot 110 DP 1094273. That lot is physically part of Help Street but the WLEP 2012 Maps show the slither of land has having the same height and FSR as the adjoining site at 1-5 Railway Street. Similarly, the embankment to the railway line adjoining 1-5 Railway Street and the bus interchange was given a separate title – Lot 3 DP 1094273 and the embankment area of Lot 103 was given a height and FSR to match the Interchange.

The section of road should be removed from the Height and FSR Maps and the embankment should be restricted to the same height as the bus interchange (allowing a height of 6 metres).

Lot 109 DP 1094273 is a long lot that extends across Victoria Avenue and the railway pedestrian underpass. The section of the lot which extends across Victoria Avenue should be

removed from the Height of Building Map, consistent with the remainder of the Height of Building Map which does not place height limits across road.

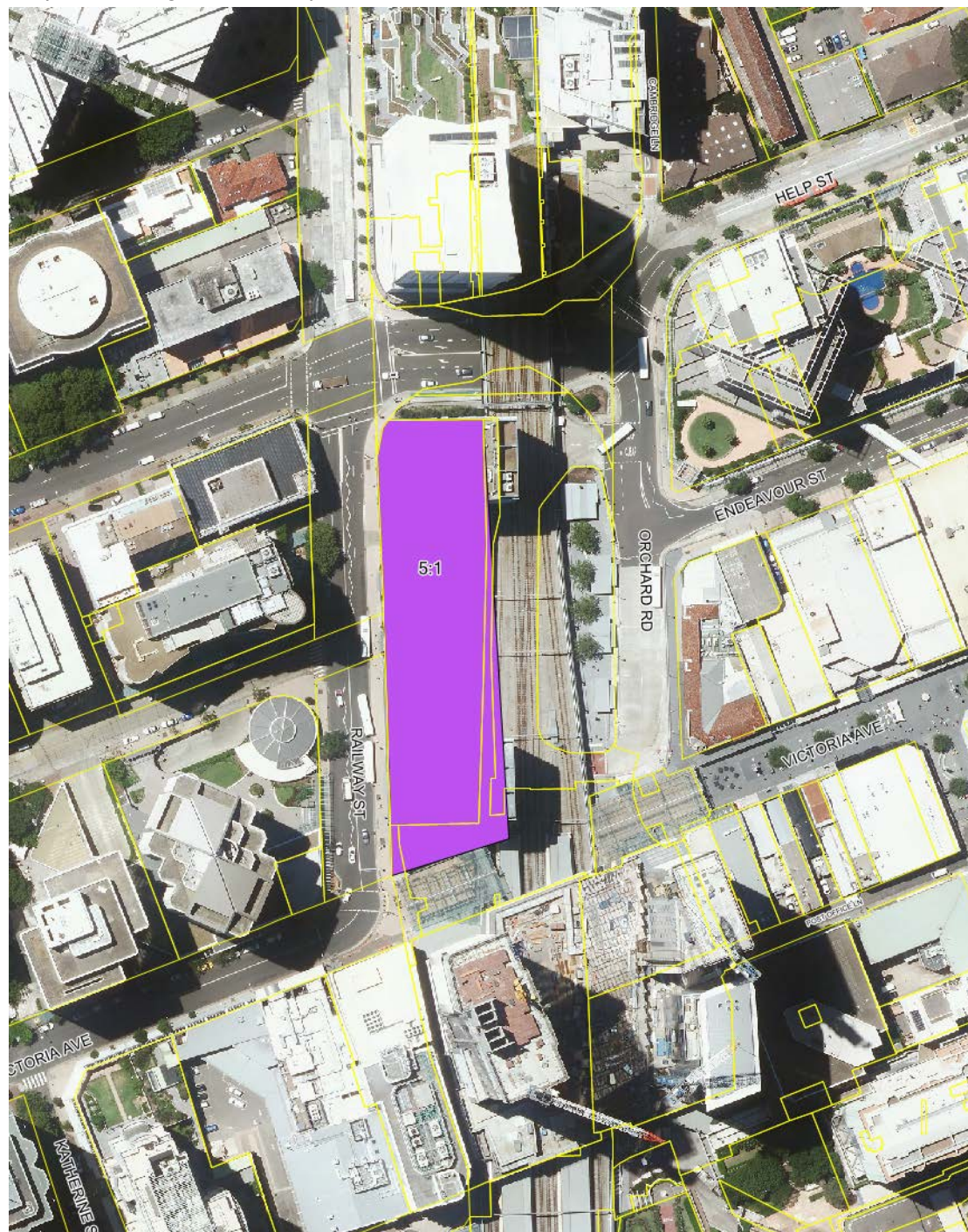
Titles map



Current FSR Map



Proposed change to FSR Map for lots 110 and 103.



Current Height Map



Proposed change to Height of Building Map for lots 103, 109 and 110.



14. Zoning Map – Public Schools

In the previous WLEP 1995, schools had a Special Uses zoning. A condition of the Section 65 Certificate issued by the Department of Planning prior to the exhibition of WLEP 2012 was that specific land zoned special uses be rezoned to the adjoining zone. When Council adopted the then draft WLEP 2012 on 23 July 2012, the resolution stated that:

“...following the making of Draft WLEP 2012...That Council prepare a Planning Proposal to amend the Willoughby LEP 2012 to zone all public school sites in Willoughby that were previously zoned Special Uses (School) to SP2- Educational Establishment...”

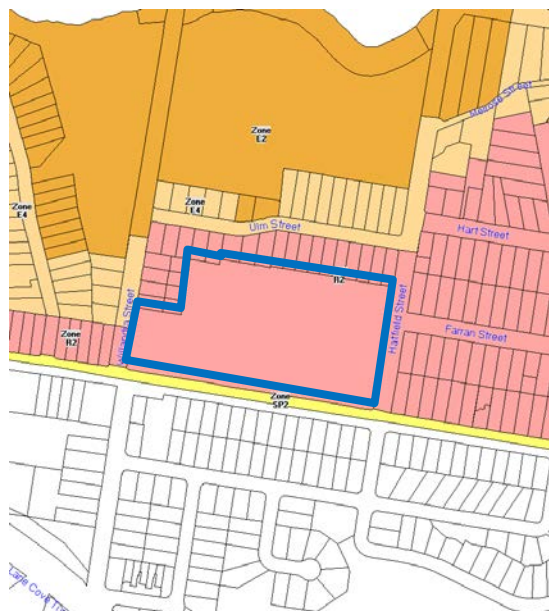
Since the making of WLEP 2012, subsequent Standard Instrument LEPs have been allowed by the Department of Planning to include the new equivalent to Special Uses zones - SP2 Infrastructure for some public schools (eg North Sydney Council).

In accordance with the previous Council resolution, the following public schools are proposed to be rezoned back to SP2:

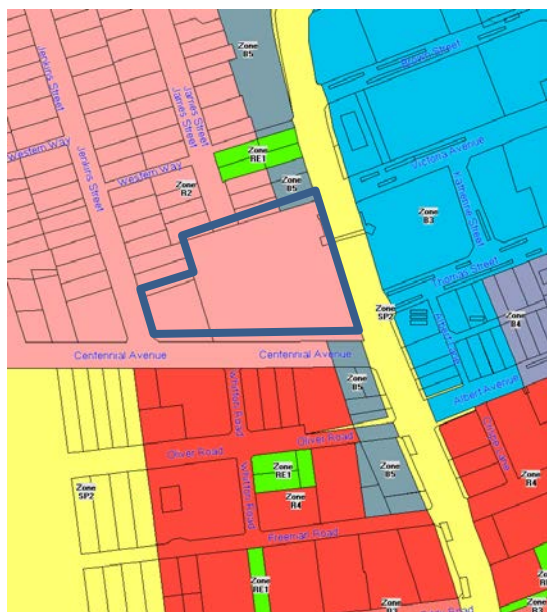
- Mowbray Public School
- Chatswood Public School
- Artarmon Public School
- Willoughby Girls High School
- Willoughby Public School
- Castle Cove Public School
- Northbridge Public School

(NB Chatswood High School is already zoned SP2 Infrastructure).

Mowbray Public School



Chatswood Public School



Artarmon Public School



Willoughby Girls High School and Willoughby Public School



Castle Cove Public School



Northbridge Public School



Amendments to Willoughby Development Control Plan

In addition to the above proposed amendments to WLEP 2012, there are proposed amendments to the Willoughby Development Control Plan (WDCP). The changes proposed comprise of corrections and firming of controls where there have been issues regarding clarification and implementation.

Part B.4 Category C Notification Period

Part B.4 of the WDCP sets out the process for notification of development applications. Categories A, B and C sets out specific types of development along with the notification period. It has been noted recently that “boarding houses” are not currently included in any of the categories. This omission from any list makes it a Category A Notification by default (being a Notification Period of 14 days to and notified only to the 3 nearest properties to the front and at the rear). Given the interest of recent proposed boarding houses to the wider community, it is considered that a larger notification area and longer Notification Period should be provided for this type of use.

It is considered that boarding houses should be added to Category C, ie a Notification Period of 21 days and notified to all properties within a 100 metre radius of the application site. The proposed amendment to Part B.4 to incorporate this change can be viewed at Attachment 2. (There are further amendments proposed for Part G.2 Boarding Houses which are discussed below).

Part D.1.10.3 Private Recreation Facilities for Dwelling Houses, Dual Occupancies and Secondary Dwellings

With regards to controls for swimming pools, it is intended to add a note for information which references the Australian Standard regarding the use of non-climbable planting within 1 metre of a swimming pool structure. The proposed amendments to Part D.1.10.3 can be viewed at Attachment 3.

Part E Specific Controls for Commercial and Shop Top Housing Development – E1.7 Open Space Requirements for Shop Top Housing Developments

Part E1.7 currently specifies a minimum requirement of 30m² for an internal communal area to be provided for mixed developments which propose less than 15 residential units. Council staff have received anecdotal evidence that internal communal open space for relatively small developments often lapse into unused space or used for unauthorised purposes. It is generally considered that developments with less than 15 units may not warrant the provision of any communal areas, particularly if they have their own balconies and are situated in locations that are readily accessible to recreational and/or cultural and social facilities.

It is proposed to delete the requirement for internal communal areas in mixed developments where the number of dwelling proposed is less than 15 and a larger balcony is provided for each unit.

The proposed changes to E1.7 can be viewed at Attachment 4.

Part G Controls for Specific Development Types G.2 Boarding Houses

In light of recent development applications for Boarding Houses, it is proposed to clarify specific considerations which need to be addressed. This will comprise of the inclusion of references to State Environmental Planning Policy (Affordable Rental Housing) 2009, State Environmental Planning Policy 65 – Design Quality of Residential Flat Building and Part C.11 Safer by Design of the WDCP.

It is also proposed to include the Council requirements for the submission of an operational management plan.

It is proposed to remove sections 1-5 of Part G.2 provisions for which are contained in the State Environmental Planning Policy (Affordable Rental Housing). As mentioned earlier (in Part B4), it is also proposed to extend the notification period and notification area for boarding house applications.

The proposed changes to G.2 can be viewed at Attachment 5.

Part G Controls for Specific Development Types - G.4 Affordable Housing

In addition to the proposed amendments relating to WLEP 2012, Clause 6.8 Affordable Housing detailed above as part of the planning proposal, the following amendments to the Affordable Housing section of the WDCP are proposed:

- the options for providing Affordable Housing (on site or monetary contribution)
- clarification on what comprises floorspace
- what information should be included in Development Applications
- a new attachment to the WDCP which provides a Housing Transfer Deed template.
- Wording amendments to clarify how to provide a monetary contribution.
- Deletion of bank guarantee option. The intention of this is for the contribution to be paid prior to construction certificate stage. This is a procedural measure consistent with other contribution payments to Council (such as Section 94A contributions).

Details of the amendments to Part G of WDCP and the new Attachment 30 of the WDCP can be viewed at Attachment 6. These changes also involve the deletion in Schedule 3 of the "Willoughby Local Housing" a term which no longer exists in WLEP 2012 and has been replaced by the "Willoughby Affordable Housing Principles".

Part G.8 Child Care Centres

Council has received a number of proposals for child care centres which are located in culs-de-sac. Part G.8 of the WDCP specifies that child care centres should not be located in a cul-de-sac. It is considered that objectives of this WDCP requirement could be further reinforced by including extra objective regarding safety issues associated with the prohibition of child care centres being located in culs-de-sac.

The proposed changes to G.8 (at Attachment 7) and includes an additional requirement: *"to ensure access for emergency vehicles and evacuation options / routes"*.

Public Consultation

Community consultation will be undertaken in accordance with the requirement of section 57 of the Environmental Planning and Assessment Act 1979, section 29 of the Local Government Act 1993 and the Department's LEP guideline "A guide to preparing local environmental plans" (April 2013).

The planning proposal is proposed to be exhibited for 28 days in accordance with section 5.5.2 of the Department's LEP guideline. The draft WDCP amendments exhibition will be carried out in conjunction with the planning proposal. The exhibition will be advertised in the North Shore Times and on Council's website. Where appropriate, affected landowners and, surrounding owners will be notified. Changes to correct mapping errors, property

descriptions or wording changes made by the Department of Planning after the original exhibition will not be notified.

In accordance with section 29 of the Local Government Act 1993, a public hearing in relation to the Council land reclassification will be held after the exhibition period has concluded. The public hearing will be undertaken in accordance with section 5.5.3 of the Department's LEP guideline. Public notice of the public hearing will be sent and published at least 21 days before the start of the public hearing.

Conclusion

The majority of the proposed amendments both to WLEP 2012 and WDCP are generally of an administrative nature and need to be amended in order to prevent Council's planning controls potentially being misinterpreted in the future.

As the planning proposal includes Council owned land, Council will not be seeking delegation to process and finalise the planning proposal.

It is recommended that Council support the planning proposal and draft WDCP amendments. It is recommended that Council forward the planning proposal to the Department of Planning & Environment, seeking a Gateway Determination under Section 56 of the Environmental Planning and Assessment Act 1979 and that the planning proposal and draft WDCP amendments be exhibited concurrently.

In summary, the proposed WLEP 2012 changes are as follows:

- a) Amend Clause 4.3A Exceptions to height of buildings in order to clarify the intent of the height restriction within Area 1 of the Height of Buildings Map
- b) Amend items 12 and 34 of Schedule 1 Additional Permitted in order to clarify the property descriptions.
- c) Amend Clause 6.10 (4) (e) in order to clarify the property description.
- d) Amend Clause 4.1A Minimum subdivision lot size for dual occupancies in order to clarify what the permissible Floor space ratio is after subdivision of a of dual occupancy and that subdivision can only be applied for 5 years after a final occupation certificate has been issued.
- e) Amend Clause 4.1(4) Minimum subdivision lot size in order to clarify the minimum lot size for strata subdivision for commercial land in Chatswood CBD and clarify that the clause does not apply to any residential component of shop top housing permitted by Schedule 1.
- f) Amend the Lot Size Map by including an Area 1 to clarify the minimum lot size for subdivision in Chatswood CBD
- g) Amend Clause 6.8 Affordable Housing in order to:
 - i. clarify the building standard of a dwelling is to be dedicated to Council,
 - ii. update by including the use of recent Australian Bureau of Statistics terminology
 - iii. clarify that funds received will be used for the purpose of replacing or improving affordable housing
 - iv. clarify the who dedicates the land and how to calculate the gross floor area

- v. clarify the means of monetary contribution and determination of market value.
- vi. rearrange the word order of the clause to improve the sense of the Clause.
- h) Amend Clause 1.2 Aims of the Plan by including and aim to facilitate the provision of adaptable and affordable housing.
- i) Amend Schedule 4 and Reclassify certain land at 7-13 Herbert Street St Leonards from community to operational land.
- j) Amend the Lot Size Map by correcting the colour for 1500m² at Coolawin Road, Hallstrom Close and Dorset Road. Northbridge.
- k) Amend the Special Provisions Area Map by excluding numbers 54 and 56 Mowbray Place from Areas 1 and 3.
- l) Include Castle Cove Golf Course as an heritage item of local significance in Schedule 5 and on the Heritage Map.
- m) Amend the Height of Buildings Map by including 28 Archer Street, Chatswood with a height of 9 metres and include an additional permissible use of attached dwellings and multi dwelling housing for the site in Schedule 1.
- n) Adjust the Height of Building and Floors Space Ratio Maps for 1-5 Railway Street, Chatswood.
- o) Rezone Mowbray Public School from R2 Low Density Residential to SP2 (Educational Establishment)
- p) Rezone Chatswood Public School from R2 Low Density Residential to SP2 (Educational Establishment)
- q) Rezone Artarmon Public School from R3 Medium Density Residential to SP2 (Educational Establishment)
- r) Rezone Willoughby Girls High School from R2 Low Density Residential to SP2 (Educational Establishment)
- s) Rezone Willoughby Public School from R2 Low Density Residential to SP2 (Educational Establishment)
- t) Rezone Castle Cove Public School from R2 Low Density Residential to SP2 (Educational Establishment)
- u) Rezone Northbridge Public School from R2 Low Density Residential to SP2 (Educational Establishment)

The proposed WDCP amendments are as follows:

- a) Amend Part B.4 Category C Notification Period as detailed in Attachment 2.
- b) Amend Part D.1.10.3 Private Recreation Facilities for Dwelling Houses, Dual Occupancies and Secondary Dwellings as detailed in Attachment 3.
- c) Amend Part E1.7 Open Space Requirements for Shop Top Housing Developments as detailed in Attachment 4.

- d) Amend Part G.2 Boarding Houses as detailed in Attachment 5.
- e) Amend Part G.4 Affordable Housing, add the new Attachment 30 and amend Schedule 3 as detailed in Attachment 6.
- f) Amend Part G.8 Child Care Centres as detailed in Attachment 7.

OFFICER'S RECOMMENDATION

- 1. Council support the planning proposal and forward it to the Department of Planning & Environment seeking a Gateway Determination under Section 56 of the Environmental Planning and Assessment Act 1979.**
- 2. Council supports the draft WDCP amendments and that the amendments be exhibited in accordance with the Environmental Planning and Assessment Regulation 2000 concurrently with the planning proposal exhibition.**
- 3. Council proceed with the reclassification of certain land at 7-13 Herbert Street from community to operational.**

PLANNING PROPOSAL

Amendment to Willoughby Local Environmental Plan 2012

Part no

- 1. Objectives and Intended Outcomes**
- 2. Explanation of Provisions**
- 3. Justification**
- 4. Mapping**
- 5. Community Consultation**
- 6. Project Timeline**

Annexure 1

Report to Council of 11 November 2013 – inclusion of Castle Cove Golf Course as an heritage item of local significance.

Annexure 2

Planning Advice Note PN 09-003

PART 1. objectives or intended outcomes

This planning proposal seeks to amend Willoughby Local Environmental Plan 2012, to:

Correct anomalies, discrepancies and provide clarity

The majority of the planning proposal comprises corrections and addresses anomalies which were created in error during the preparation of Willoughby Local Environmental Plan 2012 (WLEP 2012).

The corrections to the written instrument are intended to provide clarification of the intent of certain clauses in instances where uncertainty has arisen ie in the Height (Clause 4.3A), subdivision (Clause 4.1) and Affordable Housing (Clause 6.8). An update of property descriptions in Schedule 1 is also included.

The corrections to the Maps include:

- the removal of properties which were incorrectly included in the Special Provisions Area Map,
- provision of error corrections for the Lot Size, Height of Buildings and Floor Space Ratio Maps.
- An additional area to the Lot Size Map to provide clarity regarding subdivision in B3 Commercial Core land in Chatswood CBD

Proposed heritage item

The planning proposal also includes a proposed heritage item of local significance.

Reclassification of land at 7-13 Herbert Street, St Leonards.

The planning proposal also seeks to reclassify to operational the Council owned 10 affordable housing units at 7-13 Herbert Street, St Leonards.

28 Archer Street

Provide a height limit and proposed additional permitted uses for the property at 28 Archer Street, Chatswood

Rezoning of public schools to SP2 (Educational Establishment)

The planning proposal seeks to rezone public schools from the adjoining residential zone back to SP2 Educational Establishment (as per what the zoning was under Willoughby Local Environmental Plan 1995).

PART 2. explanation of provisions

The table below provides an explanation of the changes proposed to WLEP 2012.

DETAILS TO BE INSERTED FROM COUNCIL REPORT HEADING TITLED "Proposed WLEP 2012 Changes."

PART3. Justification

SECTION A – NEED FOR THE PLANNING PROPOSAL

1. Is the planning proposal a result of any strategic study or report?

There are no specific strategic studies or reports relating to the preparation of this planning proposal. The planning proposal does not generate any significant implications in terms of findings and recommendations of major strategic planning studies. The undertaking of the amendments to Willoughby Local Environmental Plan 2012 (WLEP 2012) is primarily an administrative and mapping exercise.

The planning proposal is a result of :

a review that was undertaken by Council staff to identify anomalies requiring correction of the recently made WLEP 2012.

a report to Council to consider the inclusion of Castle Cove Golf Course as a Heritage Item of local interest within Schedule 5 of WLEP 2012.

Discussions during Council Artarmon property workshops held in 2014.

2. Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

Yes. The planning proposal is the best means of achieving the intended outcome.

With regards to the proposed reclassification, the planning proposal is required by the Local Government Act 1993 to change the land classification.

All the matters covered by the planning proposal relate to statutory issues under Part 3 of the Environmental Planning and Assessment Act 1979. In this regard, the planning proposal is the only mechanism for achieving the objectives or intended outcomes relating to the properties and provisions covered by the planning proposal.

SECTION B – RELATIONSHIP TO STRATEGIC PLANNING FRAMEWORK

3. Is the planning proposal consistent with the objectives and actions of the applicable regional or sub-regional strategy (including the Sydney Metropolitan Strategy and exhibited draft strategies)?

The planning proposal is consistent with the Metropolitan Plan for Sydney 2036 and the Draft Inner North Subregion Strategy. The amendments proposed are mostly administrative and will have a no impact on these objectives and actions.

4. Is the planning proposal consistent with a council's local strategy or other local strategic plan?

The planning proposal is consistent with the Willoughby City Strategy 2013-2029. The Willoughby City Strategy sets out a 16 year vision for the future of Willoughby City. Set out within the Strategy's six themes are goals and outcomes to be achieved over the 16 years and strategies to achieve these outcomes. The changes sought in this planning proposal are consistent with the strategies and outcomes contained in the Willoughby City Strategy.

5. Is the planning proposal consistent with applicable State Environmental Planning Policies?

The table below details how the planning proposal is consistent with the relevant State Environmental Planning Policies and does not contain provisions that would affect the application of these policies.

SEPP title	Consistency	Explanation
State Environmental Planning Policy No. 19 – Bushland in Urban Areas	YES	The planning proposal does not contain provisions that would affect the application of this SEPP.
State Environmental Planning Policy No. 21 – Caravan Parks	N/A	
State Environmental Planning Policy No. 30 – Intensive Agriculture	N/A	
State Environmental Planning Policy No. 32 – Urban Consolidation (Redevelopment of Urban Land)	YES	The planning proposal does not contain provisions that would affect the application of this SEPP.
State Environmental Planning Policy No. 33 – Hazardous and Offensive Development	N/A	
State Environmental Planning Policy No. 50 – Canal Estate Development	N/A	
State Environmental Planning Policy No. 55 – Remediation of Land	YES	The planning proposal does not contain provisions that would affect the application of this SEPP.
State Environmental Planning Policy No. 62 – Sustainable Aquaculture	N/A	
State Environmental Planning Policy No. 64 – Advertising and Signage	N/A	
State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development	YES	The planning proposal does not contain provisions that would affect the application of this SEPP.
State Environmental Planning Policy No. 70 – Affordable Housing (Revised Schemes)	N/A	
State Environmental Planning Policy (Major	N/A	

Development) 2005		
State Environmental Planning Policy (Infrastructure) 2007	YES	The planning proposal does not contain provisions that would affect the application of this SEPP.
State Environmental Planning Policy (Miscellaneous Consent Provisions) 2007	YES	The planning proposal does not contain provisions that would affect the application of this SEPP.
State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007	N/A	
State Environmental Planning Policy (Exempt and Complying Development Codes) 2008	YES	The planning proposal does not contain provisions that would affect the application of this SEPP.
State Environmental Planning Policy (Affordable Rental Housing) 2009	YES	The planning proposal does not contain provisions that would affect the application of this SEPP. The amendments to Clause 6.8 and reclassification of land relate only to the affordable housing clauses within WLEP 2012.
State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004	YES	The planning proposal does not contain provisions that would affect the application of this SEPP.
State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004	YES	The planning proposal does not contain provisions that would affect the application of this SEPP.
Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005	YES	The planning proposal does not contain provisions that would affect the application of this SEPP.

6. Is the planning proposal consistent with the applicable Ministerial Directions (s117 directions)?

The table below details how the planning proposal is consistent with the applicable Section 117 Ministerial Directions.

No	Title of Direction and objectives	Comment	Compliance
1. Employment and Resources			

1.1	Business and Industrial Zones: (a) encourage employment growth in suitable locations, (b) protect employment land in business and industrial zones, and (c) support the viability of identified strategic centres.	Applicable to this direction are the following items: - Item 2 – Schedule 1 heading clarification in IN2 Light Industrial land - Item 3 - Schedule 1 lot and DP clarification within B4 Mixed Use land - Item 11 relating to strata subdivision within B3 Commercial Core land at Chatswood CBD. - Item 13 relating to FSR and Height controls within B3 Commercial Core land at Chatswood CBD The proposed changes are of minor significance, seek to protect employment lands, encourage employment growth and reflect existing uses thereby supporting the viability of the City of Willoughby	YES
2. Environment and Heritage			
2.1	Environment Protection Zones: The objective of this direction is to protect and conserve environmentally sensitive areas.	Applicable to this direction are the following items: - Item 1 relating to dwelling heights in land within the E4 Environmental Living zone. - Item 8 relating to minimum lot size within certain land in the E4 Environmental Living zone. The proposed changes are of minor significance and relate to the clarification of existing clauses that have been in place since WLEP 1995 with an aim to protect views of Middle Harbour as well as (for Item 1), taking account of the sloping topography of the land at that location.	YES
2.3	Heritage Conservation: The objective of this direction is to conserve items, areas, objects and places of environmental heritage significance and indigenous heritage significance.	Applicable to this direction are the following items: Item 10 relating to including Castle Cove Golf Course as a heritage item of local interest.	YES
3. Housing, Infrastructure and Urban Development			
3.1	Residential Zones: (a) to encourage a variety and choice of housing types to provide for existing and future housing needs,	Applicable to this direction are the following items: Item 4 relating to minimum lot size in R3 Medium Density Residential land.	YES

	(b) to make efficient use of existing infrastructure and services and ensure that new housing has appropriate access to infrastructure and services, and (c) to minimise the impact of residential development on the environment and resource lands.	• Items 5A and 5B relating to subdivision of dual occupancy land in the R2 Low Density and E4 Environmental Living zones. • Items 6A -6F relating to affordable housing within the City. • Item 7 relating to reclassification of certain R3 Medium Density Residential units in St Leonards in relation to affordable housing. • Item 9 relating to an error of inclusion within Areas 1 and 3 of the Special Provisions Area Map. • Item 12 relating to height of building and additional permitted residential uses. • Item 14 relating to rezoning existing public schools from a residential zoning to SP2 educational establishment. The land at the schools are not currently used for residential purposes. The proposed changes are of a minor significance and are consistent with this direction.	
6. Local Plan Making			
6.3	Site Specific Provision: The objective of this direction is to discourage unnecessarily restrictive site specific planning controls.	The planning proposal clarifies existing site specific clauses. The proposed changes are consistent with this direction.	YES
7. Metropolitan Planning			
7.1	Implementation of the Metropolitan Plan for Sydney 2036: The objective of this direction is to give legal effect to the vision, transport and land use strategy, policies, outcomes and actions contained in the Metropolitan Plan for Sydney 2036.	The planning proposal is consistent with the objectives and strategies of the Metropolitan Plan The proposed changes are generally of a minor significance, reflect existing uses and support the viability of the City.	YES

SECTION C – ENVIRONMENTAL, SOCIAL AND ECONOMIC IMPACT

7. Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the proposal?

The amendments proposed in the planning proposal are mostly administrative and will generally have no significant impacts on critical habitats, threatened species, populations or ecological communities or their habitats

8. Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?

The planning proposal will not result in any other environmental effects.

9. Has the planning proposal adequately addressed any social and economic effects?

The planning proposal seeks to ensure, through its contents and implementation that the future development and growth of the Willoughby LGA will be done in a manner that considers and provides for the overall social and economic wellbeing of its residents and stakeholders.

The proposed amendments generally seek to reflect the current land uses and to update provisions, correct anomalies and discrepancies for greater certainty in relation to the current and future use of the sites affected by this planning proposal.

SECTION D – STATE AND COMMONWEALTH INTERESTS

10. Is there adequate public infrastructure for the planning proposal?

The planning proposal will not place additional demands on public infrastructure. The properties affected by the planning proposal are located in close proximity to public infrastructure including sewerage, water supply, power and telecommunication services.

11. What are the views of State and Commonwealth public authorities consulted in accordance with the Gateway determination?

Appropriate consultation will be conducted when the Gateway determination is issued. Formal consultation has not yet been undertaken.

PART 4 - MAPPING

The table at Attachment 1 includes maps of the properties relating to this planning proposal.

PART 5 – community consultation

Community consultation will be undertaken in accordance with the requirement of section 57 of the Environmental Planning and Assessment Act 1979, section 29 of the Local Government Act 1993 and the Department's LEP guideline "A guide to preparing local environmental plans" (April 2013).

The planning proposal is proposed to be exhibited for 28 days in accordance with section 5.5.2 of the Department's LEP guideline. The exhibition will be advertised in the North Shore Times and on Council's website. Where appropriate, affected landowners and, surrounding owners will be notified. Changes to correct mapping errors, property descriptions or wording changes made by the Department of Planning after the original exhibition will not be notified.

In accordance with section 29 of the Local Government Act 1993, a public hearing in relation to the Council land reclassification will be held after the exhibition period has concluded. The

public hearing will be undertaken in accordance with section 5.5.3 of the Department's LEP guideline. Public notice of the public hearing will be sent and published at least 21 days before the start of the public hearing.

PART 6 – PROJECT TIMELINE

The following table provides an indicative timeline for the planning proposal:

Planning Proposal Presented to Council	October 2014
Planning Proposal submitted to Gateway	November 2014
Gateway Determination received by Council	January 2015
Community Consultation (28 days) May need to be extended as per Council Christmas / new year community consultation policy	February 2015
Public hearing	March 2015
Report to Council on public exhibition and public hearing	April 2015
Planning Proposal submitted to DoPI requesting notification on Government website	June 2015

ANNEXURE 1 – REPORT TO COUNCIL ON CASTLE COVE GOLF COURSE

INSERT COUNCIL REPORT AND RESOLUTION 11 NOVEMBER 2013

ANNEXURE 2

LEP Practice Note PN 09-003 –Written Statement

As part of the planning proposal, Council must provide a statement which address specific requirements for the reclassification of public land. These requirements are contained within the NSW Government Department of Planning's LEP Practice Note PN09-003 "Classification and reclassification of public land through a local environmental plan".

Council intends to reclassify Lots 98, 99, 174, 178, 179 and 184 DP 69609 and Lots 25, 30, 32 and 33 DP 67931 at 7-13 Herbert Street St Leonards from community land to operational land via the planning proposal process. The planning proposal does not propose any changes to the zoning of the subject site. The zoning of the building is R4 High Density Residential. The 10 lots are located within a building(s) which total 218 units.

The changes resulting from the reclassification are addressed in the table below.

LEP Practice Note: PN 09-003	
Classification and reclassification of public land through a local environmental plan	
Requirement	Response
Reason why the planning proposal is being prepared	The planning proposal is being prepared so that the land can be reclassified to operational to enable the long term leasing and /or allow Council the option of selling the subject sites.
Current and proposed classification	The land is currently classified as community land and it is proposed that the land be reclassified to operational land.
Reason for the classification	The land is currently classified as community. When the land was dedicated to Council, it went through the process of being classified as operational. However, it is uncertain that this process was concluded satisfactorily. The land is required to be operational in order to be used for their purpose to be leased to members of the public for affordable housing. It is also beneficial to have the option to sell the units sometime in the future if this is the best option for utilising the funds for affordable housing.
Council's ownership of the land	The subject sites are owned by Council
Nature of Council's interest in the land	The subject sites are owned by Council
How and when the interest was first acquired	Units 7, 12, 14 and 15/ 13 Herbert Street were transferred to Council on 15/2/2003. Units 1, 5, 6 and 11/ 7 Herbert Street and 5 and 6/9 Herbert Street were transferred to Council on 12/6/2003. Willoughby Local

	Environmental Plan 1995 (WLEP 1995) identified the site at 7-13 Herbert Street as an Affordable Housing Precinct. WLEP 1995 required that 4% of the total floor space of new dwellings within identified Willoughby Local Housing Precincts be provided as affordable housing. (Precincts were identified under WLEP 1995 when rezoning for residential or higher density residential occurred). The development of the site at 7-13 Herbert Street by Meriton Apartments Pty Ltd resulted in 10 affordable housing units being dedicated to Council. These units are managed by community housing provider Link Housing and leased to eligible tenants. Council owns the units in perpetuity.
The reasons Council acquired an interest in the land	Same as above
Any agreements over the land	Development consent 1999/1138 required the provision of affordable housing dwellings to Council. There are no covenants on the title relating to the affordable housing.
An indication of any financial loss or gain from the reclassification	The units comprise 8 x one bedroom units and 2 x two bedroom units. The market value of these units are approximately \$450,000 for the one bedroom units and \$600,000 for the 2 bedroom units. The units are subject to high strata management costs as the unit complex has several lifts as well as a swimming pool and gymnasium. Reclassification, would allow the flexibility of selling the units. The sale of the units could yield up to \$4.8 million to be spent on the construction or purchase of alternative affordable housing units in the City potentially with less facilities and lower strata fees. The current tenants of the units would need to be suitably rehoused prior to the sale of the units which would be done in conjunction with the community housing provider. The sale of the units would be gradual as leases expired or tenants vacated and alternative accommodation would be offered to tenants.
The asset management objectives being pursued.	Council would like to have a greater number of options available for the management of the units, including having the option to sell them which would provide flexibility for the purchase of alternative affordable housing units within the City. Whether they are sold or not, the units should also be classified as operational to enable long term lease

	agreements.
Whether there has been an agreement for the sale or lease of the land.	There has been no legal agreement entered into for the sale or lease of the land.
Relevant matters required in plan making under the Environmental Planning & Assessment Act 1979.	The reclassification is proposed to be carried out in accordance with: Section 55 relevant authority to prepare a planning proposal. Section 56 Gateway Determination Section 57 Community Consultation
A copy of the practice note	The NSW Government Department of Planning LEP practice note PN09-003 – Classification and reclassification of public land through a local environmental plan is at Attachment 8 of the Council report. Council is seeking to reclassify land via the process in Column 2 of Attachment 1 of PN09-003, entitled “Requirements after commencement to the 2008 EP&A Act when it applies to a proposal”

Category C: Notification Period 21 Days

(unless other period prescribed by Legislation)
Notification Area C

- New or major alterations and additions to Seniors Housing (including SEPP- (Seniors Living) 2004);
- New or major alterations and additions to a Child Care Centre (other than Category B);
- New or major alterations and additions to an educational establishment in or *adjoining land* in a residential zone or E4 Environmental Living zone;
- Sex Services Premises;
- New recreation facility (major) and recreation facility (outdoor) in or *adjoining land* zoned residential or E4 Environmental Living zone;
- New Place of Public Worship in or *adjoining land* zoned residential or E4 Environmental Living zone;
- New buildings and major alterations and additions in a Special Purpose zone (other than category B);
- Designated development*;
- State significant development*;
- Integrated development*;
- New residential flat building, attached dwellings, multi-dwelling housing or shop-top housing comprising more than 10 residential units;
- New or major alterations and additions to a Pub;
- New or major alterations and additions to a community facility in or *adjoining land* zoned residential or E4 Environmental Living zone;
- New or major alterations and additions to a health services facility in or *adjoining land* zoned residential or E4 Environmental Living zone;
- New or major alterations and additions to tourist and visitor accommodation buildings (other than a bed and breakfast accommodation);
- New or alterations and additions to telecommunications facilities and/or network communications facilities
- **Boarding houses**

***(NOTE: Notification requirements for Designated Development, State Significant Development and Integrated Development are separately prescribed by the EP&A Act, 1979 and EP&A Regulation, 2000 and in this respect the 21 day notification period above may not be applicable)**

Notification Areas For Category C

- All properties within a 100 metre radius of the application site.

D.1.10 Private Recreation Facilities

D.1.10.1 Objectives

1. To ensure those private recreation facilities such as tennis courts and swimming pools are properly integrated with the natural environment, topography of the land, landscaping and dwelling design.
2. To ensure that the location and structure of private recreation facilities does not adversely affect the amenity of neighbouring properties.

D.1.10.2 Performance Criteria

1. Siting and design of private recreation facilities shall:
 - i) maintain the amenity of neighbouring properties in terms of privacy, undue glare or light spill from external lighting, noise and visual impact;
 - ii) ensure that adjoining properties including public reserves are not affected in terms of drainage or overflow; and
 - iii) take account of the natural topography with minimal cut and fill or raised elements above ground level.
2. The location of private recreation facilities will have regard to protecting any significant areas of vegetation or other natural landscape features on site. In areas adjoining bushland or foreshore, particular regard should be given to achieving a high standard of visual quality if a pool is to be visible from those areas.

D.1.10.3 Controls

1. Swimming pools and tennis courts (excluding fencing) are not to extend more than 1.5m above existing ground level. Surrounding areas must be terraced and landscaped for all court and pool levels more than 1m above existing ground level. Steeply sloping sites are generally not suitable for tennis court or swimming pool because of the need for extensive excavation or fill.
2. Swimming pool structures are to be set a minimum distance of 1m from a boundary measured from the outer edge of the pool surrounds or paving, to allow for planting.
Note: No planting which at maturity is capable of extending into the non climbable zone is permissible. The non climbable zone is defined in Australian Standard 1926.1 – Swimming Pool Safety – Part 1 Safety Barriers for Swimming Pools.
3. The fence enclosing a tennis court should be set a minimum distance of 2m from any boundary.
4. Setback areas from the ~~pool or~~ court fencing to boundaries of adjacent residential properties are to be intensively landscaped other than a path for servicing of the area.
5. Any part of the supporting undercroft structure of a pool or tennis court visible due to the topography of the site is required to be suitably screened from view with dense planting or with screening material of natural, dark non-reflective colours and texture.
6. Where a pool or tennis court is visible from the foreshore, bushland or the public domain the following requirements will apply:
 - i) retaining walls are to be in harmony with the natural vegetation, with use of sandstone blocks, masonry units incorporating planting, or timber;

- ii) fencing is to be in dark, non-reflective colours, such as black, dark green etc. in order to minimise its visual impact from the water or bushland.
- 7. Swimming pools adjoining bushland are to incorporate a suitable pump and hose system to use the pool water in the event of bushfire. The pump must be regularly maintained in accordance with manufacturer's instructions and used in co-operation with the NSW Fire Brigade.
- 8. All swimming pools are to be fenced in accordance with the BCA / Pool Fencing Act.
- 9. Tennis court fencing is not to exceed 3.6m in height above finished court level and should be constructed of black or dark green plastic coated wire netting.
- 10. Floodlighting of tennis courts will not be permitted unless Council is satisfied that there will be no unreasonable impact on adjoining properties or the locality by the lighting.
- 11. Where the lighting of a tennis court is proposed, the application is to include details of the proposed lighting, placement, height, location and extent of potential spill. Assessment of the lighting application will take into consideration any adverse effects on the amenity of adjoining properties as a result of lighting and noise created by extended hours of play.
- 12. In the event that flood lighting of tennis courts is permitted, lighting is restricted to 9.30 pm.
- 13. Private skateboard ramps will not be permitted in a Residential or Environmental Living E4 zone.

E1.7 Open Space Requirements for Shop Top Housing Developments

Intent

- To provide a range of usable, attractive and accessible ~~landscaped outdoor~~ **open** spaces ~~and recreation areas~~ for the use of the occupants of Shop-top housing.
- For sites providing open space at the ground level, to assist with stormwater management and on-site drainage control.

Performance Criteria

~~Recreational Areas~~ **Open Space**

1. Recreational areas should:
 - contribute positively to the amenity of the development;
 - be clearly defined to distinguish between communal and private open space;
 - be of dimensions to suit the proposed use and requirements of the occupants;
 - provide for a range of recreational uses and activities;
 - be cost effective to maintain; and
 - contribute to stormwater management and be integrated with the on-site drainage detention system.

Private open space

2. Private open spaces should address the private recreational requirements of the dwelling units. Each dwelling unit is to have an area of private open space for the exclusive use of the occupants of the unit.
3. Private open spaces should be:
 - located adjacent to and accessible from main living areas of the dwelling;
 - located so as to maximise solar access, i.e. preferably orientated from north-east to north-west;
 - located to ensure privacy and away from noisy locations, where possible; and
 - screened by vegetation or a wall to ensure privacy.

~~Communal Areas~~ **Open Space**

4. Communal area should take account of:
 - the natural features of the site (~~where provided outdoors~~);
 - its relationship to adjoining open spaces;
 - the type of recreational activities desired;
 - orientation and solar access;
 - its location to ensure the privacy of adjacent dwellings; and
 - future maintenance requirements.
5. The open space should be supplemented with seating, recreational facilities (e.g. a barbecue area) and landscaping.

Controls

Recreational Area

1. Recreational area includes private open spaces and communal areas.
2. Recreational area must have the following minimum areas:

No. of Residential Storeys	Minimum % of Site Area as Recreational Open Space
1	40 %
2	50 %
3	52 %
4	54 %
5	56 %
6	58 %
7	60 %
8	62 %
9	64 %
10	66 %
11	68 %
12	70 %

3. ~~Where a development has a mixed number of storeys, the minimum recreational area is to be calculated on a pro rata basis.~~
4. ~~A minimum of 80% of the required recreational area is to be provided in the form of outdoor open space (open space areas at ground level, 1st level or rooftops and uncovered balconies).~~

Private Open Space

1. Private open space for Shop top housing must ~~have the following minimum areas~~ **be provided as follows:**

<i>Form of open space</i>	<i>Balconies or terraces (may be provided as one or more balconies)</i>
Studio and 1 Bedroom dwelling	10m ²
2 bedroom dwelling	10m ²
3+ bedroom dwelling	15m ²
For developments up to and including 15 dwellings where no communal open space is provided	An additional 5m ² per dwelling is required
Minimum dimensions for areas to be counted as recreational area private open space:	• a minimum single area of 10m²; • a minimum dimension of 2m; • not to be enclosed; and • be accessible from the main living areas of the dwelling.

Communal ~~areas~~ Open Space

1. ~~In developments where the only form of private open space provided to any residential unit is balconies, communal open space must be provided for use by occupants of the development~~

For shop top housing development, communal areas may take the form of ground or first level landscaped areas, landscaped rooftop areas, and/or an internal community room or facility. Any internal community room or facility should have regard to its relationship to communal open space, and maximise solar access. Internal community rooms should be designed to provide for a range of uses such as meetings, leisure, recreational and sporting activities. It may therefore be appropriate to incorporate kitchenette and toilet facilities.

2. Communal open space for shop top housing must be provided as follows:

Rate per dwelling for dwellings having balconies as the only form of private open space	10m ²
Minimum area	30m ²
Minimum dimension	5m
Minimum requirement where communal area is to be provided in the form of an internal room	Minimum of 30m ² for up to 15 units; and
Further requirements	Developments in excess of 15 units should also provide external open space in accordance with previous requirements for each dwelling in excess of 15 dwellings.

2.1 Communal open space for shop top housing for development in excess of 15 dwellings must be provided as follows:

16 dwellings +	30m ² for the first 15 dwellings plus 10m ² per additional dwelling
Minimum area	30m ²
Minimum dimension	5m
Maximum proportion of the communal open space that can be used as an adjoining internal room.	20%

2 Where it can be demonstrated that it contributes to the usability of the communal outdoor area, Council will consider a maximum of 20% of the required communal open space being provided as an adjoining internal communal room for uses such as leisure, sporting activities, kitchenette and toilet.

G.2 Boarding Houses

Intent

To ensure that boarding houses are established and operate to properly meet the housing needs of ~~boarders and~~ lodgers without adversely affecting the amenity of surrounding residents.

Controls

Permissible areas for boarding houses

State Environmental Planning Policy (Affordable Rental Housing) permits boarding houses in the following zones:

- R1 General Residential
- R2 Low Density Residential (if within an “accessible area” as defined by the SEPP)
- R3 Medium Density
- R4 High Density Residential
- B1 Neighbourhood Centre
- B2 Local Centre
- B4 Mixed Use
- B6 Enterprise Corridor

~~Boarding houses are permitted,~~ Willoughby Local Environmental Plan 2012 permits boarding houses with the consent of Council in Low Density R2, Medium Density R3, High Density R4, Neighbourhood Business B1, Local Centre B2 and Mixed Use B4 zones.

Minimum requirements

1. Applications for boarding houses must comply with the provisions of the Boarding Houses Act 2012 and Regulation 2013.
2. Boarding houses considered under State Environmental Planning Policy (Affordable Rental Housing) must comply with the provisions of that Policy.
3. Boarding houses are required to be registered with NSW Fair Trading within 28 days of commencing operations as prescribed by the Boarding Houses Act 2012.
4. Boarding houses cannot be strata subdivided.
5. Where applicable, the provisions of State Environmental Planning Policy 65- Design quality of residential flat buildings and the Residential Flat Design Code will be considered in the assessment of a boarding house application.
6. Where applicable, the provisions of Part C.11 Safety by Design of this DCP will apply, and the application will be referred to NSW Police for comment.

~~1. A boarding house has the following characteristics:~~

~~— The building, which operates as a boarding house, must be compatible with the character of the area.~~

- ~~2. The boarding house should contain:
 - ~~i) bedrooms;~~
 - ~~ii) one kitchen;~~
 - ~~iii) bathroom(s) and laundry;~~
 - ~~iv) living room(s);~~
 - ~~v) any other rooms ordinarily associated with a dwelling house including some shared or common rooms or facilities available to the boarders including living room, dining room, kitchen, bathrooms and open space.~~~~
- ~~3. Accommodation is provided to boarders and lodgers for a term of letting which should be three months or more.~~
- ~~4. The owner or manager maintains the property and usually provides cleaning and servicing for the shared facilities.~~
- ~~5. The provisions of State Environmental Planning Policy (Affordable Rental Housing) 2009 applies to boarding houses.~~
- 6.7 Owners and managers of boarding houses are responsible for the orderly operation of the premises and conduct of the boarders to ensure that the amenity of the neighbourhood is maintained particularly in terms of privacy of adjoining properties and noise generation and to provide amenity for boarding house residents.

A Plan of Management is to be submitted with any Development Application for a boarding house. This Plan must be updated at least annually, maintained and adhered to for the operation and management of the boarding house.

The Plan must contain (but is not limited to) actions in regard to:

- ~~– management of the common room and communal open space;~~
- ~~– anti-social behaviour handling procedures;~~
- ~~– security and visitor to the premises;~~
- ~~– use of basement level and corridors,~~
- ~~– waste collection and management,~~
- ~~– complaint handling procedures,~~
- ~~– administration,~~
- ~~– monitoring and review of management actions;~~
- ~~– cleaning,~~
- ~~– repairs and maintenance.~~

The Plan must contain relevant provisions that ensure compliance with **Boarding Houses Act 2012, Boarding House Regulations 2013** and other relevant legislation.

All future residents of the boarding house must receive the latest copy of the Management Plan and a copy must be kept at the premises at all times and made available to Council upon request.

PART G

Controls for Specific Development Types

G.4 AFFORDABLE HOUSING

The purpose of Part G.4 of WDCP is to outline Council's affordable housing program, which aims to provide housing for people on lower incomes in Willoughby City.

This Part of WDCP should be read in conjunction with WLEP 2012 Clause 6.8 ~~and the Willoughby City Housing Policy~~. Part G.4 of this Plan applies to land identified as Area 3 on the Special ~~Area~~ Provisions Area Maps in WLEP2012.

The principal aims and objectives of Part G.4 of this Plan are:

- To encourage the development of new housing in the City for a diverse residential and working population representative of all income groups;
- To provide clear guidance to the community and the development industry regarding the provision of Affordable Housing; and
- To outline the obligations relating to the ongoing management of Affordable Housing.

G.4.1 What is Affordable Housing?

Affordable Housing means rented housing occupied by people from very low, low and moderate income households within the City of Willoughby, at rents which do not exceed a benchmark of 30% of their actual household income.

Willoughby LEP 1995 introduced planning controls that required 4% of the total accountable floor space of new dwellings within Willoughby Local Housing Precincts to be managed under the Willoughby Affordable Housing Program. These controls were subsequently amended and remade by State Environmental Planning Policy 70- Affordable Housing (Revised Schemes) and WLEP2012.

G.4.2 Background

A. Rationale for Affordable Housing– A Response to Local Needs

An important objective of planning for the Willoughby City community is to provide a variety of housing types and tenures that will suit the changing life circumstances of residents. The area is suited to offering a variety of housing types to attract the workforce necessary for the functions of the local business centres, as well as Chatswood and St Leonards. Housing in these locations also helps to reduce private vehicle trips, assist with access to special job types, such as shift work, and provides access to employment generally with proximity to public transport. As the market alone will not generate lower cost rental housing, a specific program is needed to ensure that the Council's slogan for the Willoughby City area as a 'City

of Diversity' is met. This will help promote equality in access to employment opportunities, community services, recreational and cultural facilities.

In principle, rezoning land in Willoughby City can contribute to the affordability of housing in the Sydney Metropolitan area as a whole, in that it increases the supply of land for housing or increases the available densities for housing. However, the type of housing that is developed in Willoughby City as a result of these rezonings is generally not affordable. The Ministerial Taskforce on Affordable Housing report identified this trend:

...it appears that little of the recent increase in medium-density housing, especially in inner and middle suburbs, has been at the lower levels of the housing market.'
(Taskforce Report 1998:51)

The Department of Housing advised in 2007 that *"Willoughby has significant levels of housing need and considerable pressures on affordability within both the rental and purchase markets, with very limited affordable options now available for low to moderate income households. Active measures are needed to stem the loss of affordable stock and encourage the provision of more affordable housing"*.

The stock of low cost rental accommodation in Willoughby City has decreased over the past 30 years as properties are being redeveloped and then rented at higher rates or become owner occupied. The majority of new residential developments in Willoughby City have been medium to high cost accommodation. Therefore it can be expected that the incoming residents will be in the middle to high income categories for both purchase and rental properties. As a result, the housing market would offer an increasingly narrower housing choice for lower income groups. This may diminish the socio-economic diversity of the community.

Upgrading land uses through increased residential development densities or permitting residential development as a new use for land will produce upward pressures on property values, placing further pressure on purchase and private rental accommodation beyond the means of low to moderate income groups. These groups then compete for the shrinking pool of lower cost housing which subsequently also increases in value.

The owners of land gain a substantial financial benefit from the approval of planning proposals (land rezonings) and development applications. By requiring affordable housing, the community of Willoughby City can receive a direct social benefit.

Therefore before resolving to rezone land by permitting residential development as a new land use or increasing residential development density within Willoughby City, Council should take into consideration the following:

- The need for the proposed rezoning to provide housing that meets the requirements of very low to moderate income residents and workers;
- The impact of the proposed rezoning on the existing housing within the City of Willoughby;
- The impact of the proposed rezoning on the existing mix and likely future mix of residential housing stock within the City of Willoughby; and
- the inclusion of the subject land on the Special Provisions Area Map under clause 6.8 of Willoughby Local Environmental Plan 2012 which requires 4% of the accountable total floor space to which the development application relates to be utilised exclusively for the purpose of providing Affordable Housing.

In 1998, Willoughby City Council had 3.5% of its housing stock in public and community housing, compared with the state average of 6% (Taskforce Report 1998:61). Resulting from changes to the Commonwealth State Housing Agreement and the subsequent funding cuts to the States, the State Government has vastly reduced its capital expenditure on the

construction of public and community managed housing. The 4% of dwellings utilised for Affordable Housing will contribute to the maintenance of the proportion of Willoughby City's lower cost rental housing.

G.4.3 Management and Administration

A. Administration

The dwellings provided under the Affordable Housing Program will be managed by a Community Housing Operator nominated by Council at a rental that does not exceed a benchmark of 30% of actual household income. Rental income will be used to meet management and maintenance costs and all rates and taxes payable in connection with the dwelling/s. All rental received by or on behalf of Council, after deduction of normal landlord's expenses, will be transferred to the Affordable Housing Program to be used only for the purpose of improving, replacing or providing additional Affordable Housing stock within the City of Willoughby.

B. Options for providing Affordable Housing

All developments in Area 3 of the Special Provisions Area Map in WLEP2012 are to be assessed under Clause 6.8(2) of Willoughby LEP 2012 to determine if a condition of consent will be imposed regarding the provision of Affordable Housing.

~~Two options exist for the provision of Affordable Housing:~~

~~Provision of dwellings for the purpose of Affordable Housing on-site; or
Payment of an in-lieu monetary contribution.~~

~~The intention is to provide d~~ Dwellings for the purpose of Affordable Housing are to be provided on-site ~~as a preferred course of action~~. In certain circumstances, negotiation may take place at development application stage to discuss payment of a monetary payment in lieu. Determining which option is most appropriate in the context of the development will be negotiated between the applicant and Council at development application stage, and the agreement reached will form a condition of development consent.

For staged development, affordable housing is to be provided in each development stage or in an agreed consolidated form.

Provision of Affordable Housing

Where Affordable Housing is proposed for on site provision, the applicant must transfer title of the dwellings to Council free of cost. The dwelling(s) to be dedicated to Council as Affordable Housing must be identified on development application plans. The standard of dwelling construction, fittings and finishes must be to the satisfaction of Council, in accordance with the provisions of Willoughby LEP 2012 Clause 6.8. The area to be provided as affordable housing is gross floor area i.e. does not include balconies, car spaces and storage. The area provided as affordable housing is exempt from the calculation of floor space ratio as outlined in Clauses 4.4(2A)(b)(i) of WLEP2012.

Affordable housing units are to be distributed throughout the development with a unit mix generally proportionate to that of the proposed development. The units to be provided as affordable housing units are to be identified on the DA plans and discussed with Council. Any variation to the units provided at a later stage needs to be agreed by Council as provided in the Housing Transfer Deed. 50% of the units are to be adaptable in accordance with Part G.6 of this DCP (rounded up). The allocation of car spaces for affordable housing dwellings is to

be consistent with the relevant car parking requirements for that dwelling size in Part C.4 of the DCP.

Prior to lodgement of the construction certificate, the applicant is to submit a Housing Transfer Deed. A template for this Deed is at Attachment 30.
~~submit to the Council details of all internal fittings and finishes of the dwellings for approval. An agreement to transfer title to the Council must be finalised to the satisfaction of Council and evidence of the transfer provided to Council prior to the granting of a construction certificate. The requirement for the provision of Affordable Housing will be satisfied when the title of the dwelling(s) is transferred to Council.~~

~~The applicant must not lodge an application for an Occupation Certificate and will not permit the occupation of the development until such time as the dwelling(s) have been transferred into the ownership of Council. The applicant must also agree to pay the Council's reasonable legal costs satisfying itself that the agreement is appropriate.~~

The transfer of title must occur within two months of the registration of any strata subdivision for the development.

Monetary or in lieu provision

~~Following negotiation with~~ If Council agrees, alternate arrangements may be made such that an in lieu monetary payment may be provided so that Affordable Housing can be provided elsewhere within the City of Willoughby. The amount of the payment would be equivalent to the market value of the dwellings that would otherwise be required. The equivalent market value is determined by the most current median sales price for similar sized dwellings for the Willoughby local government area as documented in the *Rent and Sales Report NSW* or an equivalent document.

For example, a development with providing 10 units of 100m² each (1000m² total accountable floor space) where the market value is \$1 million would be required to pay:

$$\underline{1000\text{m}^2 \times 4\% / 100 = 0.4 \times \$1\,000\,000 = \$400\,000}$$

$$\underline{\text{Floor space} \times 4\% / 100 = Y \times \text{market value} = X}$$

Prior to the granting of a construction certificate, the principal certifying authority must require ~~the following~~ evidence to be submitted to ensure ~~that the condition of development consent relating to Affordable Housing will be satisfied:~~

~~Evidence that payment of the in lieu amount has been made to Council; or lodgement of a satisfactory bank guarantee with Council to the value of the required amount (see Bank Guarantees below).~~

Prior to granting an occupation certificate for the development, the principal certifying authority is to ensure that the in lieu monetary contribution has been paid in full.

Bank Guarantees

~~Any bank guarantee taken out to provide evidence to Council that an in-lieu monetary payment for Affordable Housing will be paid must be in a form acceptable to Council. Council will generally require a bank guarantee:~~

- ~~• To be issued by an Australian bank;~~
- ~~• To require the bank to pay the guaranteed amount unconditionally to Council where it so demands in writing, after which Council is able to grant the first Occupation~~

~~Certificate or where no occupation certificate is required, the occupation of the development;~~

- ~~• To prohibit the bank from having recourse to the applicant or other person entitled to act upon the consent before paying the guaranteed amount;~~
- ~~• To provide that the bank's obligations will be discharged only when payment is made according to the terms of the bank guarantee, if the consent lapses, or, if Council notifies the bank in writing, that the bank guarantee is no longer required. The bank guarantee will otherwise have no date of termination;~~
- ~~• To require the bank to pay the guaranteed amount, notwithstanding any notice to the contrary by the applicant or other persons entitled to act upon the consent; and~~
- ~~• To provide that the maximum payable, if not paid in the same financial year as the development consent to which it relates, shall be indexed annually on March 1 on the basis of the Established House Price Index for Sydney for the preceding year (December to December- using arithmetic averages of the quarterly index numbers) as published by the Australian Bureau of Statistics (Cat. No. 6416.0).~~

Schedule 3- Dictionary of Terms

Delete definition of Willoughby Local Housing

ATTACHMENT 30

Affordable housing transfer deed

Affordable Housing Transfer Deed

Dated

Willoughby City Council ("WCC")
#

Pikes & Verekers Lawyers
Level 2, 50 King Street
Sydney NSW 2000
Ph: (02) 9262 6188
Fax: (02) 9262 6175

DX 521 Sydney

Affordable Housing Transfer Deed

Details

Interpretation – definitions are at the end of the General terms

Parties **Willoughby City Council and**

Council	Name	Willoughby City Council
	ABN/CAN/ARBN	47 974 826 099
	Address	31 Victor Street, Chatswood, NSW
	Telephone	(02) 9777 7646
	Fax	(02) 9777 1038
	Attention	

Applicant	Name
	ABN
	Address
	Telephone
	Fax
	Attention

Recitals	A	# owns the Property and intends to develop it pursuant to the Consent.
	B	Conditions # of the Consent require that certain parts of the Development be used for the purpose of Affordable Housing.
	C	# has agreed to transfer to the Council the Dwellings # as Affordable Housing.

Governing Law	New South Wales
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Date of Deed	See Signing page
---------------------	------------------

Housing Transfer Deed

Details

1 OBLIGATIONS

1.1 #

In consideration of the Council paying the Transfer Fee to # and otherwise complying with its obligations in this Deed, # agrees:

- (a) to transfer the Dwellings to the Council in accordance with Clause 2;
- (b) that it must not lodge an application for amendment of the Consent which would substantially amend or have the result of substantially amending, if approved, the Dwellings' access, size or position within the Development or otherwise without the prior written consent of the Council (which may be withheld in its sole discretion) and # must withdraw immediately any application lodged in breach of this Clause 1.1(b) upon request by the Council;

1.2 Council

In consideration of # complying with all of its obligations in this deed, the Council agrees to:

- (a) accept the transfer of the Dwellings in accordance with Clause 3;
- (b) pay the Transfer Fee to #; and
- (c) pay GST in accordance with Clause 3.5(c).

1.3 Transfer Fee

acknowledges receipt of the Transfer Fee and agrees that the Council has paid the Transfer Fee to # in consideration of # entering this Deed and complying with all of its obligations.

2 CAVEAT

2.1 Caveatable Interest

acknowledges this Deed creates a caveatable interest in the Property in favour of the Council.

2.2 Lodging Caveat

The Council may lodge and maintain a caveat against the title to the Property from the dates of this Deed. # agrees to sign all documents necessary to permit the registration of a caveat by the Council on the title to the Property and that # will not take any steps to remove the caveat without the consent of the Council.

2.3 Release of Caveat

- (a) If the Council lodge a caveat against the title to the Property pursuant to the provisions of this clause the Council must, if requested to do so by#, consent to the registration of any dealing to be lodged by or with the consent of # provided that dealing does not prejudice the interests of the Council under this Deed.
- (b) The Council must withdraw its caveat at the time of registration of the Transfer pursuant to this Deed.

3 TRANSFER

3.1 # Warranty

warrants that it holds legal title to the Property and, once constructed, to the Dwellings, and is capable of transferring the legal title to the Dwellings free of any mortgage, charge, liability for rates or taxes, lien or any other interest excluding any easements for services.

3.2 Transfer

agrees that it must transfer to the Council the legal title free of any mortgage, charge, lien or other interest (excluding any easement for service) to Dwellings within:

- (a) two (2) months of the registration of any plan creating separate titles to the Dwellings and/or within six (6) months of the issue of an Occupation Certificate for the Dwellings whichever is the earlier.

The Council agrees to accept the transfer of the Dwellings and execute any document reasonably necessary to facilitate that transfer within 14 days of receipt.

3.3 Dwellings Standard

agrees that the Dwellings must be transferred to the Council ready for immediate use including:

- (a) connected to all services (including sewer, stormwater, potable water, electricity, telephone and gas) to the satisfaction of the Council to the surrounding residential units in the Development to the satisfaction of the Council;

- (b) finished with all internal finishes, fittings and services to the same standard as other units in the development to the satisfaction of the Council.

3.4 Transfer Costs

Subject to Clause 3.5, # agrees to pay all costs involved in the Transfer including costs for preparation of the Transfer Documents and all fees required to lodge the Transfer Documents with Land and Property Information and any other relevant authority.

3.5 Council Costs

The Council agrees to pay:

- (a) all stamp duty payable or assessed on the Transfer;
- (b) all stamp duty payable or assessed on this Deed; and
- (c) all GST payable or assessed on the Transfer upon production of a valid tax invoice from # to the Council and in accordance with Clause 4.

3.6 # Costs

agrees to pay all reasonable legal costs of the Council (including GST) in the preparation and settlement of the terms of this Deed within 14 days of receipt of a tax invoice from the Council for these costs.

3.7 Occupation Certificate Costs

agrees to pay all costs and fees associated in obtaining an occupation certificate for the Dwellings.

3.8 Unit Entitlements

agrees and acknowledges that the unit entitlements of the Dwelling's under any strata plan registered pursuant to Clause 3.2 must be treated no less favourably in terms of rights, duties and obligations (including levies, fees and voting rights) than any other unit in that strata plan by reason of that Dwelling's use as Affordable Housing.

4 GST

4.1 Supply

If a supply made by one party (the “**Supplier**”) to the other (the “**Recipient**”) under this Deed is subject to GST, the Recipient agrees to pay to the Supplier an additional amount equal to the amount of the consideration for the supply multiplied by the prevailing GST rate.

4.2 Time and Payment

The additional amount is payable at the same time and in the same manner as the consideration of the supply to which the additional amount relates.

4.3 Supplier's Obligations

The Supplier must:

- (a) give the Recipient documentation in the nature of a tax invoice prior to receiving an amount payable under this clause;
- (b) comply with any relevant provision of the Competition and Consumer Act 2010 (Cwth); and
- (c) refund any overpayment made by the Recipient under Clause 4 within 14 days after the actual amount of overpayment is ascertained.

"Amount of Consideration" means:

- (a) the amount of any payment for a supply; and
 - (b) in relation to non-monetary consideration, the GST exclusive market value of that consideration.
-

5 ASSIGNMENT AND DEALINGS

5.1 Assignment

Before the Transfer of the Dwellings, # must not assign this Deed or transfer the Property to any person without the prior written consent of the Council.

5.2 Transfer

Before transferring its interest in the entire Property to any person (the **"transferee"**), # must procure that any transferee enters into a Deed in favour of the Council or such other person as the Council nominates to #, in the same terms as this Deed maintaining all of the rights of the Council under this Deed.

5.3 Counterpart

must deliver to the Council a counterpart of the new Deed referred to in Clause 5.2 on or before completion of the transfer in Clause 5.2.

5.4 Council Assignment

acknowledges and agrees that the Council may assign, transfer or sub-licence its rights under this Deed without obtaining the consent of #.

6 GENERAL

6.1 Partial Exercising of Rights

If a party does not exercise a right or remedy fully or at a given time, the party may still exercise it later.

6.2 No Liability for Loss

A party is not liable for any loss caused by the exercise or attempted exercise of, failure to exercise, or delay in exercising the right or remedy.

6.3 Variation and Waiver

A provision of this Deed or a right created under it; may not be waived or varied except in writing, signed by the party or parties to be bound.

6.4 Further Steps

Each party agrees to do anything the other party asks (such as obtaining consents, signing and providing documents and getting documents completed and signed);

- (a) to bind the party and its successors under this Deed;
- (b) to give effect to the intentions of the parties and the objectives of this Deed the transactions contemplated by it including negotiating in good faith with respect to any matters requested by any of the parties to this Deed, and by the execution and delivery of documents and other instruments; and
- (c) to use its best endeavours to cause relevant third parties to do likewise to bind every party intended to be bound under this Deed.

6.5 Construction

No rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this Deed or any part of it.

6.6 Supervening Legislation

Any present or future legislation which operates to vary the obligations of a party in connection with this Deed with the result that another party's rights, powers or remedies are adversely affected (including, by way of delay or

postponement) is excluded except to the extent that its exclusion is prohibited or rendered ineffective by law.

7 SERVICE OF NOTICES

7.1 Address

Where any notice or other communication is to be given in writing pursuant to this Deed, service shall be by hand, facsimile or prepaid post as follows:

- (a) if given by #, signed by # and addressed to the Council at the address set out in the Deed or as otherwise notified in writing by the Council; or
- (b) if given by the Council, signed by the Council and addressed to # at the address set out in the Deed or as otherwise notified in writing by #.

7.2 Service

A notice is given on the date that it is delivered to the addressee or it is received by the addressee's facsimile.

8 INTERPRETATION

8.1 Definitions

In this Deed, except where the context otherwise requires:

Affordable Housing has the meaning given to it by the Willoughby Local Environmental Plan 2012.

Approved Plans means the plans approved by the Council in the conditions to the Consent.

Consent means

Council means Willoughby City Council.

Development means development permitted by the Consent.

Dwellings means

GST means the tax imposed by the A New Tax System (Goods and Services Tax) Act 1999 (Cth) and the related imposition of Acts of the Commonwealth and supply, consideration and tax invoice have the same meaning under those Acts.

Property means

Transfer means the transfer of the legal title of the Dwellings free of any mortgage, charge, lien or other interest (but excluding any easement for service) from # to the Council in accordance with Clause 2.1.

Transfer Fee means the sum of A\$1.00 per dwelling.

Transfer Documents means the documents necessary to effect the Transfer.

8.2 References to Certain General Terms

Unless the contrary intention appears, a reference to this Deed to:

- (a) **(variations or replacement)** a document (including this Deed) includes any variation or replacement of it;
- (b) **(clauses, annexures and schedules)** a clause, annexure or schedule is a reference to a clause in or annexure or schedule to this Deed;
- (c) **(reference to statutes)** a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (d) **(law)** law mean common law, principles of equity, and laws made by parliament (and laws made by parliament include State, Territory and Commonwealth laws and regulations and other instruments under them, and consolidations, amendments, re-enactments or replacements of any of them);
- (e) **(singular includes plural)** the singular includes the plural and vice versa;
- (f) **(person)** the word “person” includes an individual, a firm, a body corporate, a partnership, joint venture, an unincorporated body or association, or any Government Agency;
- (g) **(executors, administrators, successors)** a particular person includes a reference to the person’s executors, administrators, successors, substitutes (including persons taking by novation) and assigns;
- (h) **(two or more persons)** an agreement, representation or warranty in favour of two or more persons is for the benefit of them jointly and each of them individually;
- (i) **(jointly and severally)** an agreement, representation or warranty by two or more persons bind them jointly and each of them individually;
- (j) **(reference to a group of persons)** a group of persons or things is a reference to any two or more of them jointly and to each of them individually;
- (k) **(calculation of time)** if a period of time dates from a given day or the day of an act or event, it is to be calculated exclusive of that day;

- (l) **(reference to a day)** a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later; and
- (m) **(meaning not limited)** the words “include”, “including”, “for example” or “such as” are not used as, nor are they to be interpreted as, words of limitation, and, when introducing an example, do not limit the meaning of the words to which the example relates to that example or examples of a similar kind.

8.3 Headings

Headings (including those in brackets at the beginning of paragraphs) are for convenience and do not affect the interpretation of this Deed.

Housing Transfer Deed

Signing page

DATED: []

THE COMMON SEAL of [COMPANY])
(ACN [no.]) was hereunto affixed by)
authority of the Board of Directors in)
the presence of:

.....)
Director)
.....)
Director / Secretary)

THE COMMON SEAL of WILLOUGHBY)
CITY COUNCIL is duly affixed by)
authority of its directors in the)
presence of:)
)

.....
Signature of authorised person

.....
Signature of authorised person

.....
Office held

.....
Office held

.....
Name of authorised person

.....
Name of authorised person

Extract from G.8

Child Care Services

.....Location

Child care centres should not be located in cul-de-sacs or no through roads, except where more than one street access and egress is available to the site and the Centre has adequate parking and pickup/ drop off space.

In residential areas a minimum 20 metre frontage is required.

These requirements are supported by the following objectives:

- To ensure child care centres are compatible with the surrounding residential neighbourhood in terms of siting, landscaping and access arrangements for both vehicles and pedestrians,
- To identify preferred sites for child care centres on regular lots with a wider frontage,
- To reduce additional traffic generated by a child care centre in a cul-de-sac or no through roads as such locations do not allow for good traffic circulation and to minimise potential adverse impacts on the surrounding area in terms of noise, traffic generation and car parking.
- **To ensure access for emergency vehicles and evacuation options / routes.**

Child care centres may only be located above ground level where:

- a. it can be demonstrated that there are no viable alternatives for the location of a child care centre at ground level in the building or the surrounding area due to the built form of the building and density of the surrounding area;
- b. suitable access to designated play areas is available; and
- c. effective emergency evacuation procedures will be provided.

Above ground child care centres are to be located no higher than the first floor level of a building for emergency evacuation reasons.



NSW GOVERNMENT
Department of Planning

LEP practice note

STANDARD INSTRUMENT FOR LEPS

Note	PN 09-003
Date	12 June 2009
Related	Supersedes (re)classification advice in Best Practice Guideline (1997)

Classification and reclassification of public land through a local environmental plan

The purpose of this practice note is to update (and supersede) previous guidance on the process to classify or reclassify public land through a local environmental plan including a principal plan in accordance with the Standard Instrument.

Introduction

'Public land' is any land (including a public reserve) vested in, or under the control of, council. Exceptions include roads, land to which the *Crown Lands Act 1989* applies, a common, or land to which the *Trustees of Schools of Arts Enabling Act 1902* applies.

'Community' land is generally open to the public, for example, parks, reserves or sports grounds. 'Operational' land may be used for other purposes, for example, as works depots or garages, or held by council as a temporary asset.

'Classification' of public land refers to the process when this land is first acquired and first classified as either 'operational' land or 'community' land. 'Reclassification' of public land refers to the process of changing the classification of 'operational' land to 'community' land or from 'community' land to 'operational' land.

How is public land classified or reclassified?

Depending on circumstances, this is undertaken by either:

- resolution of council under section 31, 32 or 33 of the *Local Government Act 1993* (LG Act) [through section 27(2)], or
- a local environmental plan (LEP) under the *Environmental Planning and Assessment Act 1979* (EP&A Act) [through section 27(1) of the LG Act].

In both cases, it is not possible for councils to delegate their decision to classify or reclassify public land [section 377(1) of the LG Act]. Councils are encouraged to classify or reclassify land through the LG Act wherever circumstances conform to sections 31, 32 or 33 of the LG Act.

The remaining parts of this practice note identify the key areas councils must consider when proposing to classify or reclassify public land by means of a local environmental plan (LEP) under the second option.

This practice note supersedes the sections relating to classification and reclassification in *LEPs and council land*, Best Practice Guideline (Department of Urban Affairs and Planning 1997).

Procedure under the EP&A Act

Where classification or reclassification is proposed through an LEP, council is advised to include the proposal as early as possible in the draft LEP or planning proposal. If the public land to be classified or reclassified is not owned by council, landowner's consent is required prior to either section 54 or section 56 of the EP&A Act (when the Part 3 amendment to the EP&A Act applies).¹

The proposal would then form part of the material presented through either section 54 or section 56 of the EP&A Act (when the Part 3 amendment to the EP&A Act applies).

¹ In relation to the Part 3 amendment, council should also check the changes to the EP&A Act and Regulation once these commence.

To assist councils, the steps in preparing material either as a draft LEP or planning proposal are summarised in Attachment 1. Column 1 of Attachment 1 sets out the requirements in accordance with the EP&A Act **prior to** the Part 3 amendment commencing. Column 2 of the attachment sets out the requirements **after** the Part 3 amendment commences. In relation to the Part 3 amendment, council should also check the savings and transitional arrangements under the EP&A Act, once these commence.

Where land is proposed to be reserved for a public purpose such as provision of public services and facilities, section 117 Direction 6.2—Reserving Land for Public Purposes applies. The Direction also sets out requirements when a reservation of public land for such purposes is no longer required.

A summary of relevant matters that need to be available at the time the planning proposal is first forwarded are listed in Attachment 2 under 'Exhibition'. Other matters for exhibition and later stages are listed separately in that attachment.

Provisions in the Standard Instrument

The following Standard Instrument provisions are relevant to the classification and reclassification of public land.

Clause 5.2—Classification and reclassification of public land

The purpose of this clause is to enable councils to classify or reclassify public land identified in Schedule 4 of the Standard Instrument. Only public land to be classified or reclassified by publication on the NSW legislation website of that principal LEP is to be identified in the schedule. Schedule 4 must not contain a reference to any land already classified or reclassified.

Part 1 Schedule 4—change to 'operational' land, no interest changes

Land is identified in Part 1 of Schedule 4 where the trusts, estates, interests, dedications, conditions, restrictions or covenants over the land are to remain after reclassification to 'operational land', i.e. where **no** interests will change.

Part 2 Schedule 4—change to 'operational' land and an interest will change

Land is identified in Part 2 of Schedule 4 where the land is to be classified or reclassified as 'operational land' and some of the trusts, estates, interests, dedications, conditions, restrictions, or covenants over the land remain. The interests to remain are identified in column 3 of this part of the schedule.

Part 3 Schedule 4—change to 'community' land

Land proposed to be classified or reclassified as 'community land' through the LEP is identified in Part 3 of the schedule.

Where there is no land to be classified or reclassified through the LEP, the clause remains with the schedule empty.

General requirements for exhibition

Public exhibition of the LEP occurs after certification of the LEP (in accordance with section 66 of the EP&A Act). Public exhibition of a planning proposal may occur in accordance with section 57(2) (when the Part 3 amendment to the EP&A Act commences). To assist the public in understanding an exhibited draft LEP or planning proposal to classify or reclassify land, requirements are summarised in Attachment 2.

A copy of council's response to these requirements together with a copy of this practice note is to be part of material displayed during public exhibition of an LEP or planning proposal to reclassify or classify public land.

Public hearing

A public hearing must be held when 'community land' is proposed to be reclassified as 'operational land'.

To ensure council and the community have sufficient time to consider relevant matters associated with the proposed change, the public hearing is held **after** the close of the exhibition period under section 68 of the EP&A Act (section 29 of the LG Act) for an LEP and in accordance with section 57(6) (when the Part 3 amendment to the EP&A Act commences).

Public hearing provisions are set out in the EP&A Regulation (clause 14) and public notice of a hearing must be sent or published **at least 21 days** before the start of the public hearing.

The independence of the person chairing the public hearing and requirements relating to the preparation and inspection of reports from the hearing are specified in section 47G of the LG Act.

Further information

A copy of this practice note, Standard Instrument, and other specific practice notes and planning circulars on using the Standard Instrument, can be accessed on the Department's website <http://www.planning.nsw.gov.au/lep/index.asp>

Authorised by:

Sam Haddad, Director-General

List of attachments:

1. Main steps (in sequence) for classifying and reclassifying public land under the *Environmental Planning and Assessment Act 1979*
2. General requirements for classification or reclassification of land through local environmental plans and planning proposals

Attachment

Department of Planning | practice note PN 09–003

Attachment 1. Main steps (in sequence) for classifying and reclassifying public land under the *Environmental Planning and Assessment Act 1979*

Requirements prior to commencement of the 2008 Part 3 amendment to the EP&A Act	Requirements after commencement of the 2008 Part 3 amendment to the EP&A Act when it applies to a proposal
Council notifies the Department of a decision to prepare a draft LEP including a proposal to classify or reclassify public land (section 54 of the EP&A Act). This notification is accompanied by an appropriate level of information including for the following: - a justification for the proposal - reasons why council acquired an interest - details that would also accompany a plan at exhibition stage (see Attachment 2) - any proposal to extinguish or retain other interests in the land through the reclassification - a justification /explanation as to why such interests are being extinguished - any rezoning associated with the classification/ reclassification - any preliminary comments by a relevant government agency, including agency's consent where land is vested or held by an agency other than council - consideration of any relevant directions e.g. section 117 Direction 6.2—Reserving Land for Public Purposes, where appropriate. Consultation with relevant public agencies and other stakeholders (section 62 of the EP&A Act). After consultation, council submits a draft LEP to the Department and, subject to the issue of a section 65 certificate, the draft LEP is exhibited for a minimum of 28 days and the public invited to provide written submissions to the exhibited LEP within the exhibition period. Where a draft LEP includes reclassification of 'community' land to 'operational' land, council holds a public hearing into the proposal in accordance with section 68 of the EP&A Act (section 29 of the Local Government Act). * Such a hearing follows the requirements of clause 14 of the EP&A Regulation including that a notice of the details for the hearing must be published in a local newspaper and sent to any person requesting a hearing a minimum of 21 days prior to the hearing. Where it is considered appropriate, the draft LEP is submitted to the Director-General together with details of all submissions and the report of the public hearing, together with a statement of other matters set out in section 68 of the EP&A Act. The Director-General furnishes a report to the Minister if the Director-General is satisfied that the draft LEP has been prepared in accordance with any applicable standard instrument under section 33A (section 69 of the EP&A Act). The Minister determines whether to make the LEP under section 70 of the EP&A Act. **	A planning proposal is forwarded by council to the Minister (new section 56 of the EP&A Act), including a proposal to classify or reclassify public land. This proposal contains an appropriate level of information including for the following: - a justification for the planning proposal - reasons why council acquired an interest - details that would also accompany a plan at exhibition stage (see Attachment 2) - any proposal to extinguish or retain other interests in the land through the reclassification - a justification /explanation as to why such interests are being extinguished - any rezoning associated with the classification/ reclassification - any preliminary comments by a relevant government agency, including an agency in which the land is vested or held - consideration of any relevant directions, e.g. section 117 Direction 6.2—Reserving Land for Public Purposes, where appropriate. See below. Following review, at the gateway, if the planning proposal is to proceed, requirements for the various stages of the proposal, including consultation requirements, will be provided to council (new section 56(1), 56(2) of the EP&A Act). Where a planning proposal includes reclassification of 'community' land to 'operational' land, council holds a public hearing into the proposal in accordance with new section 57(6) of the EP&A Act. * Such a hearing follows the requirements of clause 14 of the EP&A Regulation including that a notice of the details for the hearing must be published in a local newspaper and sent to any person requesting a hearing a minimum of 21 days prior to the hearing. Consultation for a planning proposal under new section 57 of the EP&A Act is completed when council has considered any submissions made concerning the proposed instrument and the report of any public hearing. Where the planning proposal is to proceed, the Director-General makes arrangements for the drafting of the LEP to give effect to the final proposal (new section 59 of the EP&A Act). The Minister (or Minister's delegate) determines whether to make the LEP under new section 59 of the EP&A Act. **

Notes:

- * Where a proposal includes a classification of 'operational' land to 'community' land, a public hearing is not generally required.
- ** Where a reclassification proposes to extinguish other interests in the land, the approval of the Governor is required in accordance with section 30 of the LG Act.

3 / 4

Attachment 2. General requirements for classification or reclassification of land through local environmental plans and planning proposals

Exhibition

When exhibiting a planning proposal or draft LEP to classify or reclassify public land, council must provide a written statement including the following:

- the reasons why the draft LEP or planning proposal is being prepared including the planning merits of the proposal, e.g. the findings of a centres' strategy, council's intention to dispose of the land, provision of open space in a town centre
- the current and proposed classification of the land
- the reasons for the reclassification including how this relates to council's strategic framework, council's proposed future use of the land, proposed zones, site specific requirements, e.g. heritage controls, anticipated physical or operational changes resulting from the reclassification
- council's ownership of the land, if this applies
- the nature of council's interest in the land, e.g. council has a 50 year lease over the site
- how and when the interest was first acquired, e.g. the land was purchased in 20XX through section 94
- the reasons council acquired an interest in the land, e.g. for the extension of an existing park; council was given responsibility for the land by a State agency
- any agreements over the land together with their duration, terms, controls, agreement to dispose of the land, e.g. whether any aspect of the draft LEP or planning proposal formed part of the agreement to dispose of the land and any terms of any such agreement
- an indication, as a minimum, of the magnitude of any financial gain or loss from the reclassification and of the type(s) of benefit that could arise e.g. council could indicate the magnitude of value added to the land based on comparable sites such as the land is currently valued at \$1500 per square metre, nearby land zoned for business development is valued at between \$2000 and \$5000 per square metre
- the asset management objectives being pursued, the manner in which they will be achieved and the type of benefits the council wants, i.e. without necessarily providing details of any possible financial arrangements, how the council may or will benefit financially
- whether there has been an agreement for the sale or lease of the land; the basic details of any such agreement and, if relevant, when council intends to realise its asset, either

immediately after rezoning/reclassification or at a later time

- Relevant matters required in plan making under the EP&A Act
- A copy of this practice note must be included in the exhibition material to assist the community in identifying information requirements. Council staff may wish to identify the column in Attachment 1 that applies.

Post-exhibition

Once a decision has been made regarding whether the draft LEP or planning proposal proceeds, everyone who made a written submission must be notified in writing of the decision.

Written notification must occur within 14 days of the decision and needs to clearly identify the reasons for council's decision. An explanation must be included of how issues raised in submissions were addressed including the reasons for council's decision.

The final report after exhibition to either the Director-General or the Minister should include:

- a brief summary of council's interest in the land
- issues raised in any relevant submissions
- the dates of the exhibition and the hearing
- an explanation of how issues raised were addressed or resolved.

Additional matters to be addressed when the Governor's approval is required

The Governor's approval is required for the extinguishment of public reserve status and other interests in land which a council proposes to reclassify from 'community' to 'operational' status under the LG Act.

Council must provide sufficient information in accordance with this practice note to inform the Minister of any public reserve and/or other third party property interests (e.g. trust, covenant, easement) that are proposed to be extinguished upon the making of such a draft LEP or planning proposal.

Important note

This note does not constitute legal advice. Users are advised to seek professional advice and refer to the relevant legislation, as necessary, before taking action in relation to any matters covered by this note.

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10.2 AMENDMENTS TO WILLOUGHBY LOCAL ENVIRONMENTAL PLAN 2012 AND WILLOUGHBY DEVELOPMENT CONTROL PLAN

ATTACHMENTS:	1. PLANNING PROPOSAL 2. WDCP AMENDMENTS TO PART B.4 CATEGORY C NOTIFICATION PERIOD 3. WDCP AMENDMENTS TO PART D.1 PRIVATE RECREATION FACILITIES FOR DWELLING HOUSES, DUAL OCCUPANCIES AND SECONDARY DWELLINGS 4. WDCP AMENDMENTS TO PART E1.7 OPEN SPACE REQUIREMENTS FOR SHOP TOP HOUSING DEVELOPMENTS 5. WDCP AMENDMENTS TO PART G.2 BOARDING HOUSES 6. WDCP AMENDMENTS TO PART G.4 AFFORDABLE HOUSING 7. WDCP AMENDMENTS TO PART G.8 CHILD CARE SERVICES 8. PLANNING ADVICE NOTE ON CLASSIFICATION AND RECLASSIFICATION OF PUBLIC LAND
RESPONSIBLE OFFICER:	LINDA MCCLURE - STRATEGIC PLANNING MANAGER
AUTHOR:	JANE GIBSON - STRATEGIC PLANNER
CITY STRATEGY LINK:	3.1.1 PLAN FOR HOUSING CHOICE 3.1.3 LOCAL CHARACTER 5.1.1 LOCAL BUSINESS
MEETING DATE:	7 OCTOBER 2014

Purpose of Report

This report includes details of:

- (i) a planning proposal prepared by Council officers which seeks to amend Willoughby Local Environmental Plan 2012 (WLEP 2012) by:
 - the correction of anomalies and discrepancies
 - the inclusion of a proposed heritage item of local significance at Castlecove Golf Course
 - reclassification of land at 7-13 Herbert Street, St Leonards from community to operational.
 - Rezoning of public schools to SP2 Educational Establishment.
- (ii) Proposed amendments to the Willoughby Development Control Plan (WDCP). The proposed changes comprise of corrections and firming of controls where there have been issues regarding clarification and implementation.

The report recommends that Council support the planning proposal amendments to Willoughby Local Environmental Plan and the planning proposal be forwarded to the NSW Department of Planning and Environment for a Gateway Determination. The report also

recommends the exhibition of the proposed WDCP amendments together with the planning proposal.

OFFICER'S RECOMMENDATION

1. Council support the planning proposal and forward it to the Department of Planning & Environment seeking a Gateway Determination under Section 56 of the Environmental Planning and Assessment Act 1979.
2. Council supports the draft WDCP amendments and that the amendments be exhibited in accordance with the Environmental Planning and Assessment Regulation 2000 concurrently with the planning proposal exhibition.
3. Council proceed with the reclassification of certain land at 7-13 Herbert Street from community to operational.

COMMITTEE RECOMMENDATION

1. Council support the planning proposal and forward it to the Department of Planning & Environment seeking a Gateway Determination under Section 56 of the Environmental Planning and Assessment Act 1979.
2. Council supports the draft WDCP amendments and that the amendments be exhibited in accordance with the Environmental Planning and Assessment Regulation 2000 concurrently with the planning proposal exhibition.
3. Council proceed with the reclassification of certain land at 7-13 Herbert Street from community to operational.

MOVED COUNCILLOR NORTON

SECONDED COUNCILLOR SLOANE

CARRIED

Voting

For the Recommendation: Councillors Giles-Gidney, Eriksson, Hill, Mustaca, Norton, Rozos, Rutherford, Sloane, Stevens and Wright.

Against: Nil