

PLANNING PROPOSAL

Waverley Local Environmental Plan (Amendment No. 33) 1996

1. Objectives and Intended Outcomes

Objectives

The objective of the Planning Proposal is to list new items and heritage conservation areas identified in the Waverley Heritage Policy 2008 and Bondi Junction Heritage Assessment 2004 and to enable the consolidation of heritage items and heritage conservation areas currently contained in other instruments into Schedule 5 of Waverley Local Environmental Plan (Amendment No. 33) 1996 (WLEP Amendment No. 33 1996).

Intended Outcomes

The Planning Proposal will enable the appropriate conservation of and alteration to items and areas which have heritage significance by being recognised under Council's LEP as items or heritage conservation areas which ensure that references to Waverley's history are preserved for future development and generations.

2. Explanation of the provisions

The proposed draft local environmental plan aims to amend *Waverley Local Environmental Plan 1996* as follows:

- (a) To list the 163 proposed heritage items included in the Waverley Heritage Assessment 2008 in Schedule 5 – Environmental Heritage, Part 1 Buildings and Townscape Items;
- (b) To list the 9 proposed urban conservation areas and 1 landscape conservation area included in the Waverley Heritage Assessment 2008 in Schedule 5 – Environmental Heritage, Part 2 Heritage Conservation Areas;
- (c) Remove the heritage listed property located at 29 Wallangra Road, Dover Heights from Schedule 5 – Heritage Items of the Waverley LEP 1996;
- (d) To list the 28 proposed heritage items included the Bondi Junction Heritage Assessment into Schedule 5 – Environmental Heritage, Part 1 Buildings and Townscape Items;
- (e) To list the heritage items included in the Waverley Woollahra Joint Local Environmental Plan 1991 – Bondi Junction Commercial Centre in Schedule 5 – Environmental Heritage, Part 1 Buildings and Townscape Items;
- (f) To list the heritage conservation area included in the Waverley Woollahra Joint Local Environmental Plan 1991 – Bondi Junction Commercial Centre in Schedule 5 – Environmental Heritage, Part 2 Heritage Conservation Areas; and,
- (g) To replace the existing heritage provisions and heritage definitions with the heritage provisions and heritage decisions set out in the Standard Instrument (Local Environmental Plans) Order 2006.

3. Justification

A. Need for the Planning Proposal

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

The Planning Proposal is the result of an extensive study and assessment of Waverley's Local Government Area to identify and recognise sites, buildings and areas of local heritage significance as heritage listings or as heritage conservation areas.

The Waverley Heritage Assessment commenced in 2001. The Waverley Heritage Assessment was renamed the Waverley Heritage Policy (WHP) in December 2007 to give the document more legal weight. In addition, the Bondi Junction Heritage Assessment 2004 identified properties with heritage significance within the Bondi Junction area.

The addition of 163 items, 9 urban conservation areas and 1 landscape conservation area under Draft WLEP (Amendment No. 33) 1996 ensures that references to Waverley's cultural, social and built heritage are retained; additional consideration is given to the heritage significance of listed properties and works undertaken on these sites is done in a sensitive and appropriate manner.

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

Under the existing LEP the proposed heritage listed items and heritage conservation areas are not recognised as having status or heritage significance.

Should the draft LEP lapse on 1 July 2010 then all proposed heritage listings and heritage conservation areas identified within Draft WLEP (Amendment No. 33) 1996 will lose their status as draft items and be at risk of demolition or alterations that remove the heritage significance of the property and/or area.

Council has invested significant resources into the heritage assessments, reporting and consultation with the community since 2001 and it is essential that the draft LEP be accepted through the Gateway to guarantee that local heritage, identified and recognised by the community and Waverley Council, is not lost.

3. Is there a net community benefit?

Waverley is Sydney's second oldest local government area. The buildings, homes and apartments provide valuable insight into the area's historical identity. Waverley Council promotes conservation of the area's built heritage by identifying potential heritage sites, groups and areas, raising community awareness about heritage and offering free heritage and advisory services to home owners.

The *Waverley Heritage Assessment 2008* and *Bondi Junction Heritage Assessment 2004* identified and assessed individual heritage items and heritage conservation groups. The heritage assessments are based on representations made by the Waverley community and consultation with land and property owners.

Some of the community benefits include:

Certainty: Heritage listing provides certainty for owners, neighbours and future purchasers. Heritage buildings cannot be demolished unless consent has been granted by Council. Further, there is no obligation to undertake anything other than normal maintenance on a heritage-listed property.

Access to expert services:

Free heritage advisory service to developers, residents and owners of heritage listed properties in Waverley.

Tax concessions: If the property is listed either locally or on the State Heritage Register, a 'heritage restricted valuation' can be requested for land tax and local rate purpose from the Valuer-General.

B. Relationship to Strategic Planning Framework

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

Waverley is located within the East sub region which contains the following objectives and actions relating particularly to cultural heritage:

- E6.1 Provide a consistent approach to identify and protect Sydney's cultural heritage;
- E6.2 Recognise where Sydney's cultural heritage contributes to its unique character and quality and manage change appropriately to reinforce local distinctiveness; and
- E6.3 Interpret and promote Sydney's cultural heritage.

The Planning Proposal is consistent with the objectives and actions above as adoption of the draft WLEP (Amendment No. 33) 1996:

- Identifies and allows Council to protect significant local and state significant cultural heritage;
- Recognises Waverley's cultural heritage which is also significant within the context of Sydney's history. Heritage listing items and heritage conservation areas reinforces the local distinctiveness of Waverley and allows Council to effectively manage the development of sites and areas through additional consideration of the alteration or removal of items in the future; and
- Promotes the cultural heritage of Waverley.

2. Is the planning proposal consistent with the local Council's Community Strategic Plan or other local strategic plan?

The Planning Proposal is consistent with Part 4 'Planning for our Future' of Council's Strategic Plan which values the "protection of heritage" and contains a Direction that "Waverley's heritage significance is recognised". In addition to this overarching vision and direction Council's Strategic Plan requires the identification, preservation and improvement of "Waverley's existing indigenous, non-indigenous, built and natural heritage" and to "cultivate a sense of community awareness and ownership of heritage, including newly arrived residents" (refer to Attachment G).

Consistency with Council's Strategic Plan is further detailed in the s. 68 Report to the Department contained in Attachment B.

3. Is the planning proposal consistent with applicable state environmental planning policies?

The Planning Proposal is consistent with applicable statement environmental planning policies as demonstrated in Attachment F of this submission.

4. Is the planning proposal consistent with applicable Ministerial Directions (s.117 directions)?

The Planning Proposal is consistent with the applicable Ministerial Directions (s. 117 directions) as demonstrated in Attachment F of this submission.

C. Environmental, Social and Economic Impact

1. 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?

As the Planning Proposal relates to the establishment of heritage listing and heritage conservation areas the proposed amendments to the LEP, impact upon critical habitat, threatened species, populations or ecological communities or their habitats are not envisaged. Gazettal of the draft WLEP (Amendment No. 33) 1996 will ensure that additional consideration is given to the development of the certain properties which are heritage listed, located within the vicinity of a heritage item or located within a heritage conservation area.

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

No other environmental effects as a result of the Planning Proposal are envisaged.

3. How has the planning proposal adequately addressed any social and economic effects?

Social

Waverley's programme of heritage listing engenders the need to identify items of non-iconic status which, despite alteration and change, retain cultural significance in relation to the history, society and natural features of the Municipality. In this respect the listings may differ from public perception of heritage listings identifying buildings, places or items of iconic, original and undisturbed character.

The purpose of Councils listings, incorporating extensive community nominations, is to achieve retention of original and frequently less intact items which record and maintain the cultural significance of the place. Listing acknowledges the likelihood of future alteration and addition and seeks to ensure that such works are carried out in a manner which retains and is sympathetic to the identified significance of the item.

The Waverley Heritage Assessment 2008 is based on an assessment of community nominated buildings and aims to encourage the sympathetic retention of original (and at times, less intact) buildings in order to improve the streetscape context of surviving pre-war elements.

The Waverley Heritage Assessment 2008 identified a number of themes that relate to the historic development of Waverley. Themes include but are not limited to: European settlement, the provision of roads and infrastructure, the development of flats and bungalows, the growth of leisure activities etc.

The protection and conservation of these fine grain elements (collectively or individually) provide the mechanism to articulate Waverley's character and identity into the future. To this end local heritage listing provides the only opportunity to assess, audit, review, protect and conserve and guide the impacts of development on Waverley's character and identity in a fair and equitable basis within the crucible of development control.

Economic

While research into the impacts of heritage listing on residential properties in New South Wales is limited, the broad assertions regarding the economic impacts of heritage listing were considered in the Productivity Commissions 2006 Report, 'Conservation of Australia's Historic and Heritage Places'.

The Productivity Commission notes that private owners should be given the right to appeal heritage listing if the listing results in 'unreasonable costs' to the owner. The Report states;

‘The following factors establish a prima facie case of unreasonable costs:

- *the zoning of the land permits higher value land use than that allowed under heritage restrictions; or*
- *maintenance, repair or restoration costs required to continue a property’s Heritage significance imposes an unjustifiable hardship on the owner.’*

In Waverley, development potential is generally limited for many reasons (smaller site area, planning controls, available infrastructure, access restriction etc). The majority of developments in Waverley are either: an additional storey, internal alterations with variations to the external building envelope or development of a single dwelling. The exceptions (duplex development, multistorey unit development, commercial mixed use, retail and commercial office) are not the norm.

For the majority of sites, the zoning of the land permits only a marginal increase to what is already there. The heritage listing does not prohibit such development. The current heritage controls of Council provide guidance and advice as to how landowners may undertake their developments in a manner that achieves a consistency and maintenance of character and identity and improvement to the streetscape.

Further, Council’s heritage listing does not impose any maintenance, repair or restoration costs on owners in order to maintain a property’s heritage significance. The burden of maintaining a property remains at the discretion of the property owner. Where elements and or artefacts of heritage value are to be retained or reflected within a development proposal this is to be achieved within the context of a lawfully reasonable and relevant condition of consent. It should also be noted that maintenance works of heritage properties do not require Council’s consent unless Council deems it necessary.

The retention of an entire heritage listed building needs to be considered in light of the lands development potential, permitted land use, the significance attributed to the building, the surrounding development and the land owner’s intention, community reactions, and the appropriateness of the proposed development.

While the Waverley Heritage Assessment 2008 notes buildings of significant local heritage value it is not a recommendation that those buildings should remain intact. This is a decision that remains entirely with the landowner. There are no recommendations in the Waverley Heritage Policy that state a building cannot be altered.

D. State and Commonwealth Interests

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

The Planning Proposal recognises heritage significance in the Waverley Local Government Area. Given the nature of the amendments to the LEP the planning proposal requires no public infrastructure.

2. What are the views of State and Commonwealth Public Authorities consulted in accordance with the gateway determination, and have they resulted in any variations to the planning proposal?

Section 62 Consultation has been carried out seeking the views of State and Commonwealth Public Authorities and a Section 65 Certificate has been issued by the Department of Planning (DoP).

The views of State and Commonwealth Public Authorities have not resulted in any variations to the Planning Proposal. These views are contained in Attachment B of this submission.

4. Community consultation

Community consultation has been undertaken in accordance with Section 66, 67 and 68 of the EP&AA 1979 and as summarized below:

- October 2005 to February 2006 – Waverley Heritage Assessment publicly exhibited
- May 2007 to June 2007 – Waverley Heritage Assessment publicly re-exhibited
89 objections received during public exhibition periods and 34 objections considered of sufficient substance to be considered by an independent heritage review panel (HRP).
- 8 September 2008 – Council consult with relevant planning authorities in accordance with Section 62 of the EP&AA 1979.
- 2 September 2009 to 2 October 2009 – Public exhibition of WLEP (Amendment No. 33) 1996.
67 submissions received during public exhibition period.
- 23 November 2009 – Council consider all submissions received during the public exhibition, in accordance with Section 58 of the EP & AA 1979.
- 3 December 2009 – Council consider a report summarising submissions made during public exhibition.
- 16 March 2010 – Council adopt draft Waverley Local Environmental Plan (Amendment No. 33) 1996

Further details of the community consultation are further detailed in Attachments B and E.