



IRF22/2489

Plan finalisation report – PP-2021-6852

Woollahra Local Environmental Plan 2014 -
Amendment No. 25 – Earthworks and Dewatering

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Acknowledgment of Country

The Department of Planning and Environment acknowledges the Traditional Owners and Custodians of the land on which we live and work and pays respect to Elders past, present and future.

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1 Introduction

1.1 Overview

1.1.1 Name of draft LEP

Woollahra Local Environmental Plan (LEP) 2014 (Amendment No. 25).

1.1.2 Site description

The planning proposal applies to the entire Woollahra Local Government Area (LGA). The application area is depicted below in **Figure 1**.

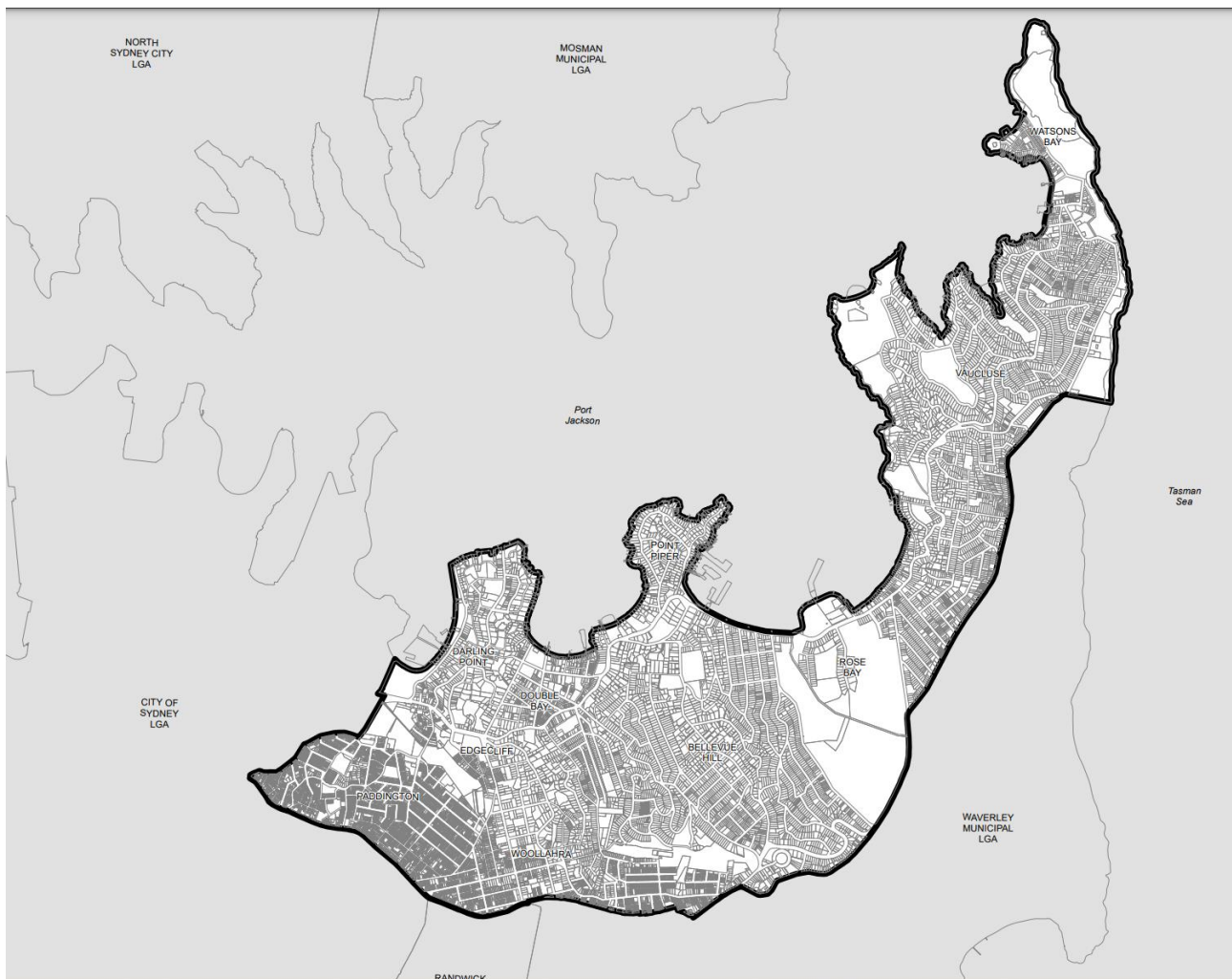


Figure 1: Woollahra Local Government Area - Application Map (Source: Woollahra LEP 2014)

1.1.3 Purpose of plan

The planning proposal seeks to amend Woollahra LEP 2014 to strengthen the provisions for considering earthworks and associated groundwater dewatering in the development assessment process.

The intent of the proposal is to mitigate risks and adverse impacts from groundwater drawdown associated with underground structures.

Specifically, the proposal seeks to amend clauses 1.2 *Aims of Plan* and 6.2 *Earthworks* of Woollahra LEP 2014 as follows:

Amendment to Clause 1.2 *Aims of Plan*

- A revision to sub-clause (2)(m) to specify the need to minimise and manage impacts associated with excavation, including ‘the potential impact of the change in the groundwater regime’.

Amendment to Clause 6.2 *Earthworks*

- Sub-clause (1) – Expand the objective of the clause to address earthworks ‘and associated groundwater dewatering’ to mitigate any detrimental impacts.
- Sub-clause (2) – To require development consent for earthworks ‘and associated groundwater dewatering’, except for exempt development, or ancillary development that is permitted without consent or to development for which consent has been given.
- Sub-clause (3) – To apply specific matters for consideration to groundwater dewatering associated with earthworks.
- Sub-clause (3)(d) – To require consideration of earthworks and associated groundwater dewatering on the amenity of the ‘surrounding’ properties, instead of ‘adjoining’. The proposal states that the amendment is to address impacts which could extend over a considerable distance.
- New sub-clause (3)(i) – To include an additional requirement for the consideration of ‘the effect of the development on the structural stability of the existing surrounding properties’.

1.1.4 State electorate and local member

The site falls within the Vaucluse and Sydney state electorates. Gabrielle Upton MP is the State Member of Vaucluse and Alex Greenwich MP is the State Member of Sydney.

The site falls within the Wentworth federal electorate. Allegra Spender MP is the Federal Member.

To the team’s knowledge, none of the abovementioned MPs has made any written representations regarding the proposal.

There are no donations or gifts to disclose, and a political donation disclosure is not required.

There have been no meetings or communications with registered lobbyists with respect to this proposal.

2 Gateway determination

The Gateway determination issued on 21 December 2021 determined that the proposal should proceed subject to conditions.

The Gateway determination included conditions requiring the proposal to be updated prior to public exhibition to address specific matters, including:

- Providing justifications for applying the proposed amendment across the entire LGA, noting that the supporting geotechnical and hydro-geological study only relates to the suburb of Double Bay;
- Providing a plain English explanation of the proposed provisions;
- Addressing relevant actions and objectives of the Greater Sydney Region Plan and Eastern City District Plan; and
- Including administrative changes.

Council has updated the proposal to address these conditions prior to exhibition. Compliance with these conditions is further discussed in section 4.1 of this report.

The revised planning proposal acknowledges that the geotechnical and hydro-geological study was only prepared for the Double Bay area. However, the proposal notes that other areas of the LGA including Rose Bay and Watsons Bay also have a high water table. Council states that it would be best planning practice to elevate the consideration of potential impacts of groundwater dewatering for all of the municipality.

The proposal explains that in the event where groundwater dewatering is not a relevant matter for consideration in the context of a development proposal, the proposed amendments will not impose onerous requirements on applicants. Like many existing controls, additional information can be requested on a discretionary basis.

Council's explanation is considered to be satisfactory.

3 Public exhibition

The proposal was publicly exhibited by Council from 9 February 2022 to 11 March 2022 (31 days), consistent with the requirements of the Environmental Planning and Assessment Act and the Gateway determination.

A total of two community submissions were received, both of which are in support of the proposal. Council officers provided a summary of their consideration of the submissions received in the post-exhibition report to the Council's Environmental Planning Committee.

3.1 Advice from agencies

Condition 3 of the Gateway determination required Council to refer the planning proposal to the following public agencies:

- Water Group of NSW Department of Planning and Environment;
- Water NSW; and
- Environment, Energy and Science (EES) Group of the NSW Department of Planning and Environment.

Two responses were received from agencies. Water NSW responded providing no comment on the proposal and the EES Group of the Department supported the proposed amendments. No response has been received from the Water Group of the Department.

There are no outstanding objections or concerns for Council to address.

4 Department's assessment

The proposal has been subject to detailed review and assessment through the Department's Gateway determination and subsequent planning proposal processes. It has also been subject to public consultation and engagement.

The following reassesses the proposal against relevant Section 9.1 Directions, State Environmental Planning Policies (SEPPs), Regional and District Plans and Council's Local Strategic Planning Statement. It also reassesses any potential key impacts associated with the proposal (as modified).

The following tables identify whether the proposal is consistent with the assessment undertaken at the Gateway determination stage. Where the proposal is inconsistent with this assessment, requires further analysis or requires reconsideration of any unresolved matters these are addressed in Section 4.1.

As per the Gateway determination, the planning proposal was updated to address relevant objectives and priorities of the applicable strategic plans and planning instruments, including the following:

- Objectives 13 (*Environmental heritage is identified, conserved and enhanced*) and 25 (*The coast and waterways are protected and healthier*) of the Greater Sydney Region Plan.
- Planning Priorities E6 (*Creating and renewing great places and local centres, and respecting the District's heritage*) and E14 (*Protecting and improving the health and enjoyment of Sydney Harbour and the District's waterways*) of the Eastern City District Plan.
- The new State Environmental Planning Policy (Housing) 2021 and remove references to the former repealed housing related SEPPs.
- Section 9.1 Ministerial Direction 4.3 Flooding (currently Direction 4.1).

Table 1 Summary of strategic assessment

	Consistent with Gateway determination report Assessment	
Regional Plan	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No, refer to section 4.1
District Plan	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No, refer to section 4.1
Local Strategic Planning Statement	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1
Local Planning Panel (LPP) recommendation	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1
Section 9.1 Ministerial Directions	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No, refer to section 4.1
State Environmental Planning Policies (SEPPs)	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No, refer to section 4.1

Table 2 Summary of site-specific assessment

Site-specific assessment	Consistent with Gateway determination report Assessment	
Social and economic impacts	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1
Environmental impacts	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1
Infrastructure	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1

4.1 Detailed assessment

The following section provides details of the Department's assessment of key matters and any recommended revisions to the planning proposal to make it suitable.

4.1.1 Greater Sydney Region Plan

Condition 1(d) of the Gateway determination required the planning proposal to be updated prior to public exhibition to address Objectives 13 and 25 of the Region Plan.

Objective 13: Environmental heritage is identified, conserved and enhanced

The proposed amendments will ensure issues associated with dewatering and structural stability of neighbouring properties are considered at the development assessment stage. This will provide protection to existing heritage items that are located near future development sites.

Objective 25: The coast and waterways are protected and healthier

Council notes that the proposed changes will not affect the health of nearby waterways. Council highlights that any dewatering applications will still be assessed by Water NSW as part of the development application process.

4.1.2 Eastern City District Plan

Condition 1(e) of the Gateway determination required the planning proposal to be updated prior to public exhibition to address Planning Priorities E6 and E14 of the District Plan. Council has updated the planning proposal to address its consistency with the priorities

E6: Creating and renewing great places and local centres, and respecting the District's heritage

Council outlines that the proposal will help protect heritage items and buildings in conservation areas, aligning with Action 20. Adherence to the amended clause will ensure that buildings near construction sites are not affected by dewatering issues.

The Department notes the update made by Council and is of the view that the proposed amendments will indirectly encourage the protection of the District's existing heritage, as the proposal will ensure greater consideration of potential groundwater dewatering impacts on buildings near future development sites.

E14: Protecting and improving the health and enjoyment of Sydney Harbour and the District's waterways

Council notes that Action 75 of the District Plan requires consent authorities to avoid locating new urban development in areas exposed to natural and urban hazards and consider options to limit the intensification of development in existing areas most exposed to hazards.

Council outlines that the proposal is consistent with this, as it will strengthen existing provisions to ensure the risks associated with dewatering are minimised during and after construction.

The Department considers that the proposal actively seeks to implement the action and priority, as it would ensure greater consideration of potential hazards deriving from groundwater dewatering caused by earthworks and excavation at the development application stage.

4.1.3 State Environmental Planning Policy (SEPP) Housing 2021

Condition 1(f) of the Gateway determination required the planning proposal to be updated to address SEPP Housing 2021 and remove references to the repealed housing related SEPPs.

The planning proposal has been updated to address Housing SEPP and will not hinder its application.

4.1.4 Section 9.1 Directions

Condition 1(g) of the Gateway determination required the planning proposal to be updated to address Section 9.1 Direction 4.3 Flooding (currently Direction 4.1).

Council notes that the proposal is consistent with the direction as it does not seek to rezone flood prone land or affect the application of controls that ensure development on flood prone land will not result in risk to life or damage to property.

The Department notes the updates to the proposal and considers that it is consistent with the direction.

5 Post-assessment consultation

The Department consulted with the following stakeholders after the assessment.

Table 3 Consultation following the Department's assessment

Stakeholder	Consultation	The Department is satisfied with the draft LEP
Mapping	The planning proposal does not require any amendments to Woollahra LEP 2014 maps.	<input checked="" type="checkbox"/> N/A
Council	<p>Council was consulted on the terms of the draft instrument under clause 3.36(1) of the <i>Environmental Planning and Assessment Act 1979</i>.</p> <p>Council confirmed on 25/07/2022 that it does not object to the draft LEP and that the plan should be made.</p>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No, see below for details
Parliamentary Counsel Opinion	On 1/08/2022 , Parliamentary Counsel provided the final Opinion that the draft LEP could legally be made.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No, see below for details

6 Recommendation

It is recommended that the Minister's delegate as the local plan-making authority determine to make the draft LEP under clause 3.36(2)(a) of the Act because:

- The planning proposal is consistent with and gives effect to the relevant provisions of the Greater Sydney Region Plan, Eastern City District Plan, applicable SEPPs and section 9.1 Ministerial Directions and local strategic plans.
- The proposal will facilitate the mitigation of risks and adverse impacts from groundwater drawdown on the environment, neighbouring uses, cultural and heritage items and surrounding land.
- There are no outstanding objections from the community or public agencies.
- Council has generally satisfied the conditions of the Gateway determination.



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