



IRF 24/2582

## Gateway determination report – PP-2024-1750

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General LEP Update

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# Acknowledgment of Country

The Department of Planning, Housing and Infrastructure 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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Table 1 Reports and plans supporting the proposal

Relevant reports and plans
Waverley Local Planning Panel Advice (28 February 2024)
Extract of Waverley Council Meeting Agenda and Minutes (19 March 2024)
Waverley Council Draft Display of Goods on the Footpath Local Approvals Policy

# 1 Planning proposal

## 1.1 Overview

**Table 2 Planning proposal details**

<b>LGA</b>	Waverley
<b>PPA</b>	Waverley Council
<b>NAME</b>	General LEP Update
<b>NUMBER</b>	PP-2024-1750
<b>LEP TO BE AMENDED</b>	Waverley Local Environmental Plan 2012 (Waverley LEP 2012)
<b>ADDRESS / DESCRIPTION</b>	Waverley LGA
<b>RECEIVED</b>	8/08/2024
<b>FILE NO.</b>	IRF24/2365
<b>POLITICAL DONATIONS</b>	There are no donations or gifts to disclose and a political donation disclosure is not required
<b>LOBBYIST CODE OF CONDUCT</b>	There have been no meetings or communications with registered lobbyists with respect to this proposal

## 1.2 Objectives of planning proposal

The planning proposal contains objectives and intended outcomes that explain the intent of the proposal.

The proposal seeks to amend the Waverley LEP 2012 to correct errors and anomalies, address issues with existing clauses and permit the display of goods on the footpath as exempt development.

The objectives of this planning proposal are clear and adequate.

## 1.3 Explanation of provisions

The planning proposal seeks to amend the Waverley LEP 2012 per the changes discussed in Sections 1.3.1 and 1.3.2 of this report.

The proposal includes example draft provisions to illustrate the proposed intent. A Gateway condition is recommended that the planning proposal is updated prior to exhibition to include a plain English explanation of how the proposed amendment will apply and include a disclaimer that the wording is indicative only and that the final wording will be subject to Parliamentary Counsel drafting, should the proposal proceed to finalisation.

The planning proposal contains an explanation of provisions that, subject to the changes required by the Gateway conditions, adequately explains how the objectives of the proposal will be achieved.

### 1.3.1 Proposed instrument only amendments

The proposed instrument only changes to the Waverley LEP 2012 are outlined in Table 3 below.

**Table 3 Proposed amendments to existing provisions**

Provision	Proposed amendments	Department comment
<b>Clause 4.3 Height of buildings</b>	<p>Amend clause 4.3 objectives to strengthen protections preventing adverse overshadowing, overlooking and view loss.</p> <p>The proposal states that under the current objective <i>“Council has been unable to effectively argue against the impacts of overshadowing, overlooking and unnecessary bulk...”</i> (p.7).</p> <p>The planning proposal included the following indicative changes to the clause:</p> <p>(1) <i>The objectives of this clause are as follows—</i></p> <p>(a) <del>to ensure building heights preserve the environmental amenity of neighbouring properties and public spaces and, if appropriate, the sharing of views;</del> <u>To establish limits on the overall height of development to preserve the environmental amenity of neighbouring properties and public spaces</u></p> <p>(b) <i>to accommodate taller buildings on land in Zone E2 Commercial Centre in the Bondi Junction Centre and establish a transition in scale between adjoining zones to protect local amenity,</i></p> <p><del>(c) to maintain satisfactory solar access to existing buildings and public areas;</del></p> <p>(d) <i>to establish building heights that are consistent with the desired future character of the locality</i> <u>and streetscape.</u></p> <p>(2) <i>The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.</i></p>	<p>Clause 4.3 of the LEP is an optional but standard clause which allows council to set maximum building heights for development on the Height of Buildings Map. It helps establish primary building envelopes to provide certainty to the community and landowners about the acceptable bulk and scale of development.</p> <p>The proposed amendments seek to strengthen the wording of the existing objectives to minimise amenity impacts of development, including solar access, visual privacy and view sharing.</p> <p>Council also indicates in the proposal that it wishes to ensure that consideration of solar access includes impacts on private open space. However, it is unclear how Council intends for this to be achieved within the amendments it has proposed in Table 2 of the planning proposal.</p> <p>It is noted that the clause objectives were last revised by Amendment No. 24 which implemented the Waverley Local Strategic Planning Statement (PP-2021-3272) in September 2022. Council was consulted on the wording of the draft LEP before it was made.</p> <p>The drafting of LEPs is undertaken by NSW Parliamentary Counsel Office in accordance with its drafting practices, which may change from time to time. The drafting would have regard to the policy intent, the objectives and explanation of provisions described in the planning proposal but isn't bound by wording suggested by Council.</p> <p>Whilst the Department has no objections in principle to Council amending the clause objectives, the planning proposal does not provide adequate justification for the need for the amendments or adequately explain the intended outcome of the changes. The proposed amendments are not supported in their current form and should be removed from the proposal prior to consultation.</p>

Provision	Proposed amendments	Department comment
<b>Clause 6.14 Waste minimisation and recycling</b>	<p>The proposal seeks to amend clause 6.14 to ensure that development for extensive alterations and additions which substantially alter the existing development on the site consider waste minimisation and recycling.</p> <p>The proposal states that <i>“It is common in Waverley for large scale development to be technically classified as Alterations and Additions and not New Development, even when substantial changes to the fabric of the building are proposed”</i> (p.8).</p> <p>The planning proposal includes indicative changes to the clause.</p>	<p>Clause 6.14 of the Waverley LEP 2012 is an additional local provision that seeks to ensure the erection of a building for the purposes of mixed-use development, residential flat buildings and shop top housing, has the highest standard of waste and recycling management for the environment and community health and well-being.</p> <p>The proposed amendments seek to strengthen the existing provision by extending its application, to ensure waste minimisation and recycling is a consideration for substantial development that may be characterised as alterations and additions.</p> <p>The planning proposal should be updated prior to consultation to clarify the extent of the alterations and additions it will apply to; i.e. it may not be appropriate to apply the clause to development for alterations and additions which do not significantly increase height or GFA nor generate increased adverse impacts on adjoining properties. In this regard, it is also recommended that the indicative clause wording is removed prior to consultation.</p> <p>Gateway conditions are recommended to ensure the planning proposal is updated prior to consultation.</p>
<b>Schedule 2 Exempt development</b>	<p>Council seeks to amend Schedule 2 ‘Exempt Development’ of the Waverley LEP 2012 to introduce a new clause to allow the operators of retail premises to place displays of goods on the footway outside of their premises without the need for development consent. This provision would be supported by a new Local Approvals Policy.</p> <p>The planning proposal included the following indicative clause:</p> <p><u><a href="#">Use of the footpath for displays of retail goods</a></u></p> <p><u><a href="#">(1) Must be on a public road within the meaning of the Roads Act 1993;</a></u></p> <p><u><a href="#">(2) Must be associated with a lawful shop;</a></u></p>	<p>The proposal seeks to permit as exempt development the use of the footpath for the display of retail goods associated with a lawful shop. The intention is to remove the requirement for submission of a development application (DA) and reduce the regulatory burden on businesses in the LGA.</p> <p>While ‘retail goods’ is not a defined term in the Standard Instrument LEP (SILEP), goods associated with retail premises are captured under the definition of ‘retail premises’:</p> <p><b><i>retail premises</i></b> means a building or place used for the purpose of selling items by retail, or hiring or displaying items for the purpose of selling them or hiring them out, whether the items are goods or materials (or whether also sold by wholesale), and includes any of the following—</p> <p>(a), (b) (Repealed)</p> <p>(c) food and drink premises,</p> <p>(d) garden centres,</p>

Provision	Proposed amendments	Department comment
	<p><a href="#"><u>(3) Must be carried out in accordance with any approval issued by Council under Division 3 of Part 9 of under the Roads Act 1993; and</u></a></p> <p><a href="#"><u>(4) Be carried out in accordance with any approval under section 68, or be exempt from approval under any policy adopted by Council under section 161 of the Local Government Act 1993.</u></a></p>	<p>(e) hardware and building supplies, (f) kiosks, (g) landscaping material supplies, (h) markets, (i) plant nurseries, (j) roadside stalls, (k) rural supplies, (l) shops, (la) specialised retail premises, (m) timber yards, (n) vehicle sales or hire premises, but does not include farm gate premises, highway service centres, service stations, industrial retail outlets or restricted premises.</p> <p><b>Note—</b> <i>Retail premises are a type of <b>commercial premises</b></i></p> <p>A Gateway condition is recommended that the proposal be updated to be consistent with defined land uses in the SILEP to avoid confusion as to where the provision will apply.</p> <p>The Department has no objection to the intent of the proposed amendment and acknowledges that the proposal seeks to emulate a similar approach adopted by other councils. This amendment is suitable to proceed to consultation, subject to the inclusion of text to clarify that the wording of the final clause will be drafted by Parliamentary Counsel. A Gateway condition is recommended in this regard.</p> <p>Whilst most roads in the Waverley LGA are managed by Council, several roads are under State government control. Accordingly, it is recommended that Council consult with Transport for NSW.</p>



### 1.3.2 Proposed map only amendments

The proposed map only amendments are outlined in **Table 4** below.

**Table 4 Proposed mapping amendments**

Provision	Current	Proposed
<b>Land Use Zone</b>	<u>3A Tamarama Street, Tamarama</u> R3 Medium Density Residential	<u>3A Tamarama Street, Tamarama</u> R2 Low Density Residential
<b>Minimum Lot Size</b>	<u>575 Old South Head Road, Rose Bay</u> Part 232m <sup>2</sup> & Part 500m <sup>2</sup>	<u>575 Old South Head Road, Rose Bay</u> 232m <sup>2</sup>
	<u>Public land to the rear of 10 &amp; 12 Mill Hill Road, Bondi Junction</u> 232m <sup>2</sup>	<u>Public land to the rear of 10 &amp; 12 Mill Hill Road, Bondi Junction</u> Remove the minimum lot size control
	<u>24-32 Flood Street, Bondi</u> Part N/A & Part 325m <sup>2</sup>	<u>24-32 Flood Street, Bondi</u> 325m <sup>2</sup>
	<u>58 Military Road, Dover Heights</u> Part 232m <sup>2</sup> & Part 500m <sup>2</sup>	<u>58 Military Road, Dover Heights</u> 500m <sup>2</sup>
<b>Heritage</b>	<u>30 Bronte Road, Bondi Junction</u> Local Heritage Item I171 (Façade only)	<u>30 Bronte Road, Bondi Junction</u> Adjust the boundary of local Heritage Item I171 (Façade only)
	<u>470 Bronte Road, Bronte</u> State Heritage items I508 (Bronte House – building) and I278 (Bronte House – grounds)	<u>470 Bronte Road, Bronte</u> Adjust the boundary of State Heritage items I508 (Bronte House – building) and I278 (Bronte House – grounds)
	<u>Lot 1594 DP 75201 within Victoria Park, Queens Park</u> N/A	<u>Lot 1594 DP 75201 within Victoria Park, Queens Park</u> Adjust the boundary of Queens Park Landscape Conservation Area to include Lot 1594 DP 75201
<b>Terrestrial Biodiversity</b>	<u>1A &amp; 5 Bay Street, North Bondi</u> N/A	<u>1A &amp; 5 Bay Street, North Bondi</u> Apply the terrestrial biodiversity layer to the remnant vegetation at 1A & 5 Bay Street, North Bondi.

A Gateway condition is recommended that the proposal be updated to include the complete address details (including suburb) of the sites subject to the proposed amendments.

### 1.3.2.1 Proposed zoning map amendments

#### 3A Tamarama Street, Tamarama

The proposal seeks to rezone approximately 4.5m<sup>2</sup> of land at 3A Tamarama Street, Tamarama (Lot 2 DP 1188291) (see **Figure 1**) from R3 Medium Density to R2 Low Density Residential.



**Figure 1: Subject land at 3A Tamarama Street, Tamarama (Source: Nearmap, October 2024)**

This amendment seeks to rectify a map anomaly which occurred during subdivision, and the rezoning of the adjoining property at 5 Tamarama Street, Tamarama under Waverley LEP 2012 Map (Amendment No.3) (PP-2023-102) in January 2024.

Given the small size of the affected land, the proposal considers the development potential of the subject site will remain largely unchanged by the proposed residential down zoning.

Notwithstanding the above, the Department notes that a maximum height and FSR control of 9.5m and 0.6:1 (consistent with the neighbouring R3 zoned land), currently applies to the subject land. A Gateway condition is recommended that the proposal be updated prior consultation to clarify whether the proposal also seeks to amend the height and FSR controls to align with the development standards that apply to the adjoining R2 zoned land.

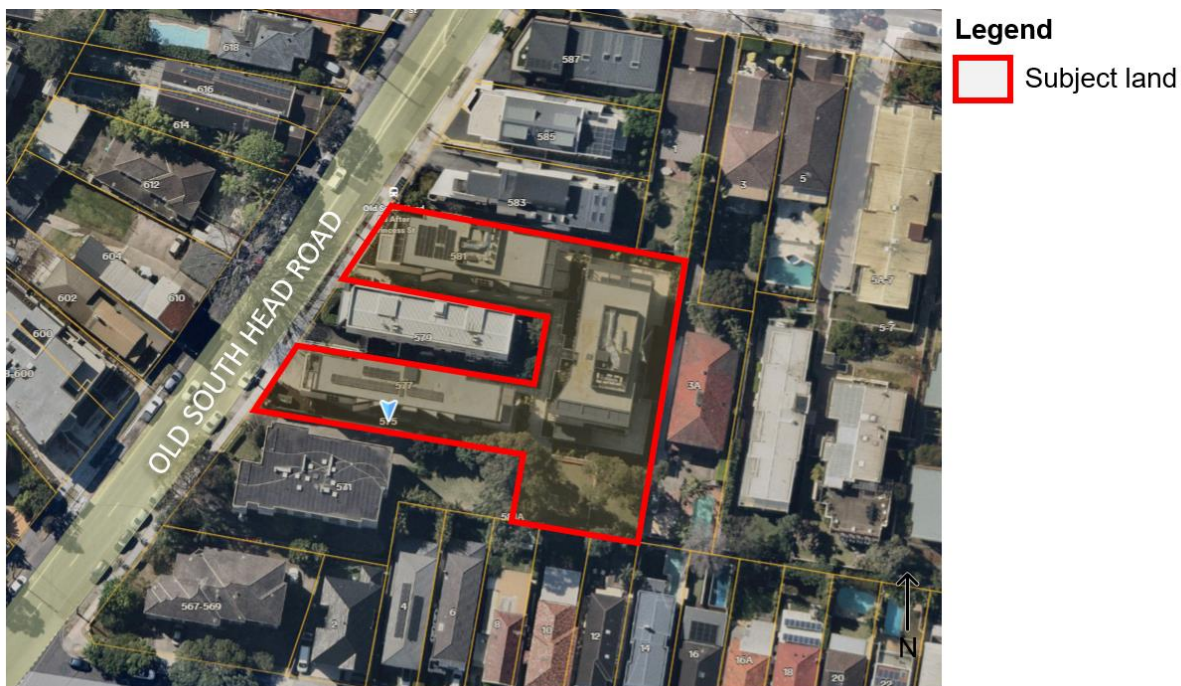
### 1.3.2.2 Proposed minimum lot size map amendments

#### 575 Old South Head Road, Rose Bay

The site at 575 Old South Head Road, Rose Bay (Lot 1, DP 1289792) (**Figure 2**) is zoned R3 Medium Density Residential. A minimum lot size control of 232m<sup>2</sup> and 500m<sup>2</sup> currently applies.

The proposed amendment seeks to apply a minimum lot size control of 232m<sup>2</sup> across the entire site, consistent with the applicable minimum lot size controls for the neighbouring R3 zoned properties fronting Old South Head Road, Rose Bay.

The proposal seeks to rectify a discrepancy resulting from a recent site consolidation (**Figures 15 and 16**).

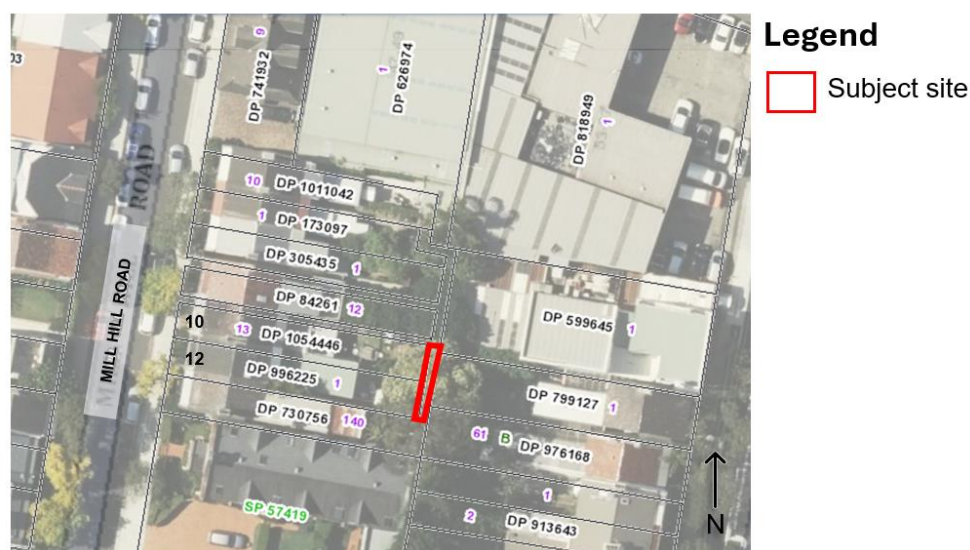


**Figure 2: Subject land at 575 Old South Head Road, Rose Bay (Source: Six Maps, October 2024)**

#### Public land to the rear of 10 & 12 Mill Hill Road, Bondi Junction

The proposal seeks to remove the minimum lot size control of 232m<sup>2</sup> that currently applies to public land at the rear of 10 & 12 Mill Hill Road, Bondi Junction (**Figures 3, 17 and 18**). The proposal states it aims to rectify a discrepancy in controls that likely occurred as result of an historical boundary adjustment.

A Gateway condition is recommended that the proposal be updated prior to exhibition, to clarify whether the proposal seeks to retain the existing height and FSR controls that apply to the public land at the rear of 10 & 12 Mill Hill Road, Bondi Junction, to align with the controls applying to the public land located immediately north.

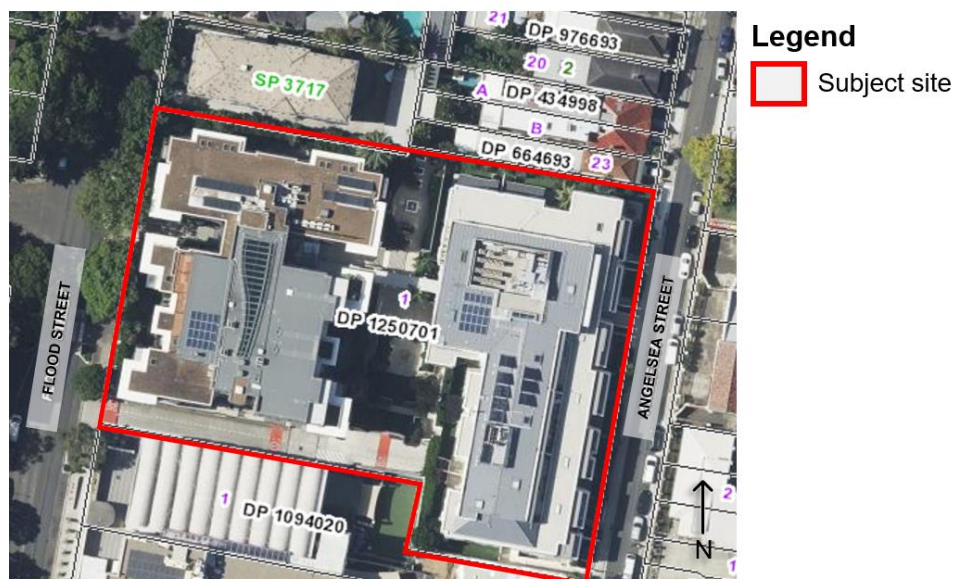


**Figure 3: Subject land at rear of 10 & 12 Mill Hill Road, Bondi Junction (Source: Six Maps, October 2024)**



24-32 Flood Street, Bondi

The site at 24-32 Flood Street, Bondi (Lot 1 DP 1250701) (**Figure 4**) is approximately 5,695m<sup>2</sup> and zoned R3 Medium Density Residential. The eastern part of the site is subject to a minimum lot size



requirement of 325m<sup>2</sup>.

**Figure 4: Subject land at 24-32 Flood Street, Bondi (Source: Six Maps, October 2024)**

The proposal seeks to apply a minimum lot size control of 325m<sup>2</sup> across the entire site, reflecting consolidation with land at 33-53 Anglesea Street, Bondi and ensuring consistency with the minimum lot size controls in the locality (**Figures 19 and 20**).

58 Military Road, Dover Heights

The site at 58 Military Road, Dover Heights (SP 104691) (**Figure 5**) has an area of approximately 662.5m<sup>2</sup> and is zoned R2 Low Density Residential.



**Figure 5: Subject land at 58 Military Road, Dover Heights (Source: Six Maps, October 2024)**

A minimum lot size control of 500m<sup>2</sup> currently applies to most of the site, however a small part of the site has a minimum lot size requirement of 325m<sup>2</sup>. The proposal notes that this discrepancy in minimum lot size controls is likely the result of an historical consolidation of land. It seeks to correct this anomaly by applying a minimum lot size control of 500m<sup>2</sup> across the entire site (**Figures 21 and 22**). It is also recommended that the proposed Minimum Lot Size control mapping for the site be updated prior to consultation to clearly show that the proposed 500m<sup>2</sup> control will apply to the entirety of the site.

### 1.3.2.3 Proposed heritage map amendments

#### 30 Bronte Road, Bondi Junction

The proposal seeks to adjust the boundary of the existing local Heritage Item I171 (Façade only) located at 30 Bronte Road, Bondi Junction (Lot 2 DP 1297720) (**Figure 6**). The proposal states that this is to correct an anomaly resulting from a recent subdivision (**Figures 23 and 24**).



**Figure 6: Subject land at 30 Bronte Road, Bondi Junction (Source: Six Maps, October 2024)**

#### 470 Bronte Road, Bronte

The proposal seeks to adjust the boundary of the existing State listed Heritage item (Bronte House) located at 470 Bronte Road, Bronte (Lot 1 DP123571 & Lot 8 DP 15134) (**Figure 7**) to correct a mapping anomaly (**Figures 25 and 26**).



**Figure 7: Subject land at 470 Bronte Road, Bronte (Source: Six Maps, October 2024)**

While the proposed mapping amendment is administrative in nature, it is recommended that Council consult Heritage NSW (Department of Climate Change, Energy, the Environment and Water) on the proposal during exhibition, as it pertains to an existing state heritage listing.



The Department also notes the existing state heritage listing in Schedule 5 of the Waverley LEP 2012 for land at 470 Bronte Road, Bronte, comprises both Lot 1, DP 123571 and Lot 8, DP 15134 however, it appears that Lot 8 DP 15134 has been excluded from the proposed updated heritage map for this site (see **Figure 26**).

As such, a Gateway condition is also recommended that Council ensure the proposed heritage map and Schedule 5 are consistent and reflect the existing state heritage listing for 470 Bronte Road, Bronte prior to consultation.

#### Victoria Park, Queens Park

The proposal seeks to adjust the boundary of the existing Queens Park Heritage Conservation Area - Landscape (C55) at Victoria Park, Queens Park (Lot 7415 DP 1181328).



**Figure 8: Subject land at Victoria Park, Queens Park (Source: Six Maps, October 2024)**

This amendment will extend the application of the existing landscape HCA map to include Lot 1594 DP 75201 (approximately 94m<sup>2</sup>) which within Victoria Park (**Figures 8, 27 and 28**).

The proposal states that this area of crown land was formerly occupied by a Boy Scout Hall however, this building has since been demolished, and the site turfed. *“the [subject] site is now indistinguishable from the surrounding parkland and has been for 10 years, it is reasonable to include the land in the landscape heritage item. For this same reason, it is consistent with the LCA statement of significance”* (p.9).

#### 1.3.2.4 Proposed terrestrial biodiversity map amendments

The proposal seeks to identify land containing remnant vegetation in North Bondi on the Terrestrial Biodiversity map (**Figures 29 and 30**), including a remnant patch of Sea-cliff Grassland located on:

- Council owned land at 1A Bay Street, North Bondi (Lot 2 DP 530991) on the coastline
- Part of private land at 5 Bay Street, North Bondi (Lot C DP 331848) occupied by a two-storey dwelling (**Figure 9**).

This amendment is the result of the Waverley Biodiversity Action Plan: Remnant Sites 2022-2031 (Waverley Biodiversity Action Plan), which was adopted by Council in April 2022, see extract in **Figure 10**.

The proposal states that the amendment will *“provide greater protection to the vegetation, which also assists to provide a special scenic quality to the North Bondi coastline”* (p.21).



Figure 9: Subject land at 1A and 5 Bay Street, North Bondi (Source: Six Maps, October 2024)

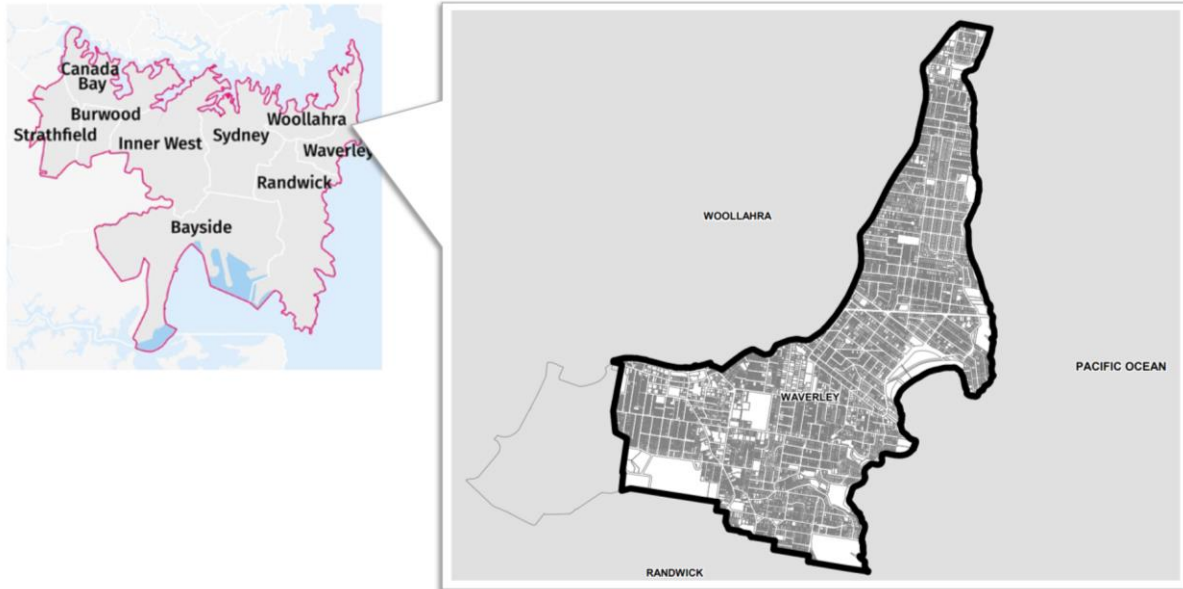


Figure 10: Extract from Waverley Biodiversity Action Plan: Remnant Sites 2022-2031 (Source: Planning Proposal, August 2024, p.12)

## 1.4 Site description and surrounding area

The planning proposal applies to land within the Waverley Local Government Area (LGA), which is located within the Eastern City District as shown in **Figure 11 and 12**.

Certain amendments to the Land Zoning, Minimum Lot Size, Heritage and Terrestrial Biodiversity maps apply to specific sites in Bondi, Bondi Junction, Bronte, Dover Heights, North Bondi, Queens Park, Rose Bay and Tamarama, as outlined in Section 1.3 of this report.



**Figure 11 and 12: Subject land (Source: Eastern City District Plan 2018 and Waverley LEP 2012 Land Application Map)**

## 1.5 Mapping

The planning proposal includes mapping showing the proposed changes to the Land Zoning, Minimum Lot Size, Heritage and Terrestrial Biodiversity maps of the Waverley LEP 2012.

The existing and proposed maps are shown in **Figures 13 to 30**.

A Gateway condition is recommended that the proposal and supporting maps be updated to include complete street addresses (including suburbs), map legends, and clear map labelling (where relevant) to identify key features and ensure the proposal is suitable for community consultation.

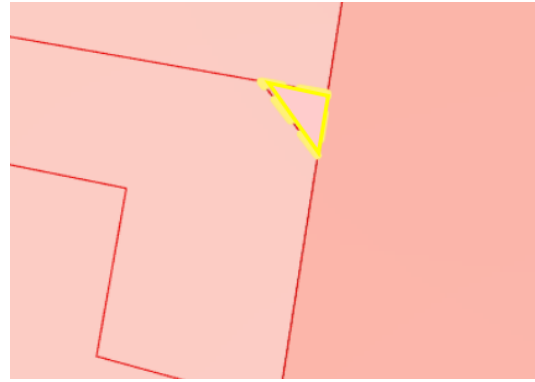
The mapping is considered adequate for consultation, subject to the changes required by the Gateway conditions.



**Legend**

- R2 Low Density Residential
- R3 Medium Density Residential
- Subject site

**Figure 13 Existing Land Use Zoning for land at 3A Tamarama Street, Tamarama (Source: NSW Planning Portal Spatial Viewer, September 2024)**

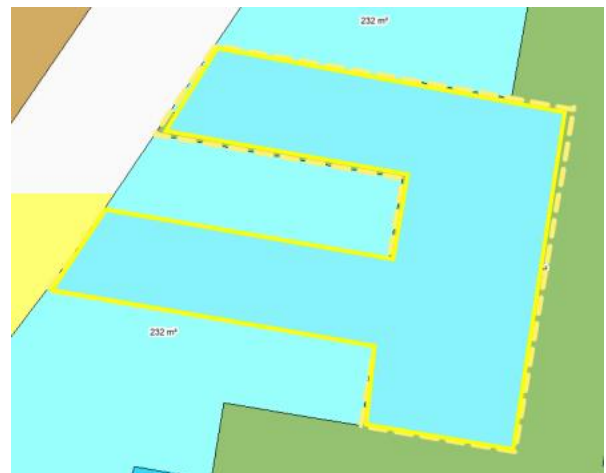


**Figure 14 Proposed Land Use Zoning for land at 3A Tamarama Street, Tamarama (Source: Planning Proposal, August 2024, p.22)**

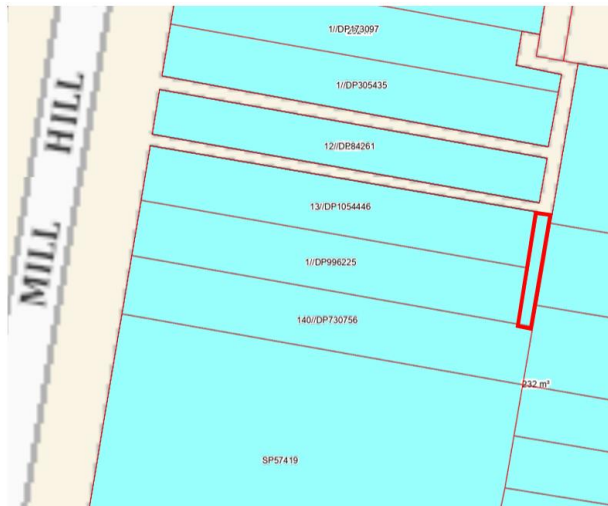
**Legend**

- 232m<sup>2</sup>
- 325m<sup>2</sup>
- 500m<sup>2</sup>
- Subject site

**Figure 15 Existing Minimum Lot Size controls for land at 575 Old South Head Road, Rose Bay (Source: NSW Planning Portal Spatial Viewer, September 2024)**



**Figure 16 Proposed Minimum Lot Size control for land at 575 Old South Head Road, Rose Bay (Source: Planning Proposal, August 2024, p.18)**

**Legend**

- 232m<sup>2</sup>
- Subject land

**Figure 17 Existing Minimum Lot Size controls for land at 10 & 12 Mill Hill Road, Bondi Junction (Source: NSW Planning Portal Spatial Viewer, September 2024)**



**Figure 18 Proposed Minimum Lot Size control for land at 10 & 12 Mill Hill Road, Bondi Junction (Source: Planning Proposal, August 2024, p.23)**

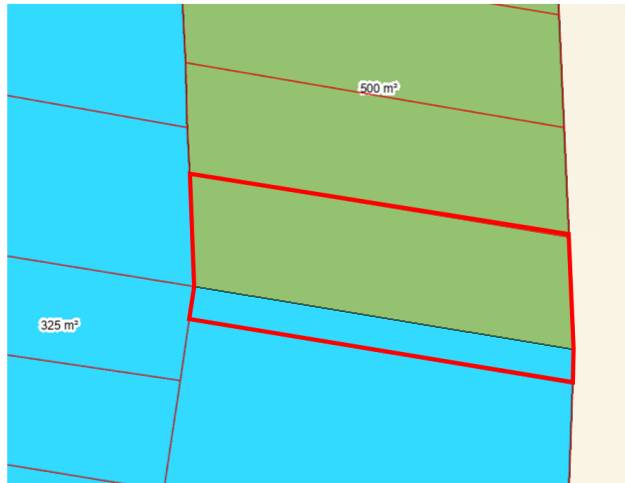
**Legend**

- 325m<sup>2</sup>
- Subject site

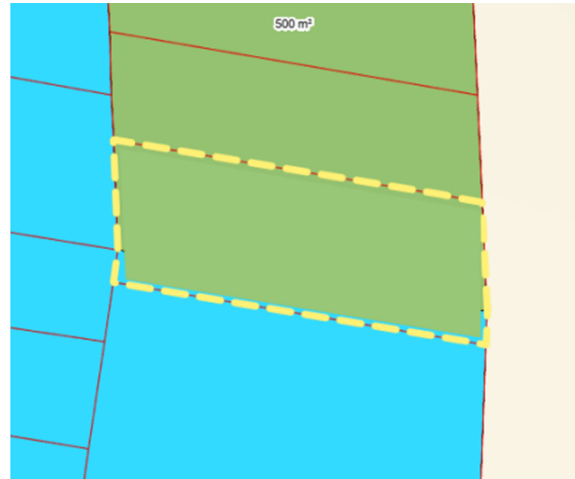
**Figure 19 Existing Minimum Lot Size controls for land at 24-32 Flood Street, Bondi (Source: NSW Planning Portal Spatial Viewer, September 2024)**



**Figure 20 Proposed Minimum Lot Size control for land at 24-32 Flood Street, Bondi (Source: Planning Proposal, August 2024, p.23)**



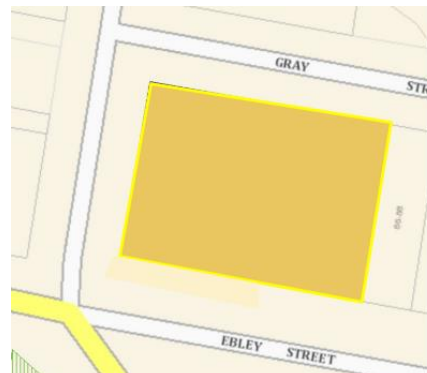
**Figure 21 Existing Minimum Lot Size controls for land at 58 Military Road, Dover Heights (Source: NSW Planning Portal Spatial Viewer, September 2024)**



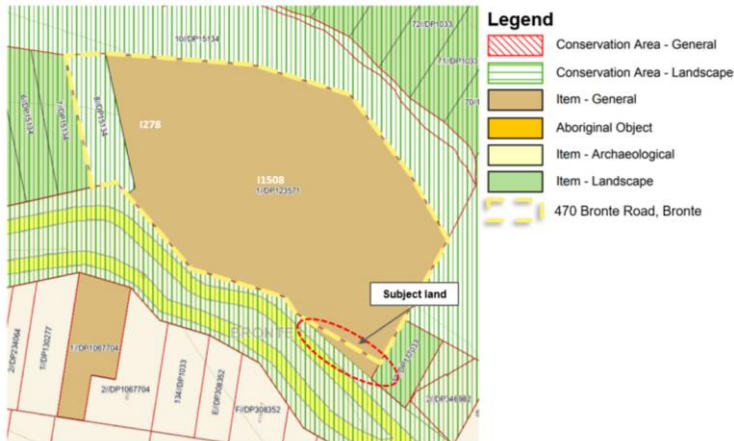
**Figure 22 Proposed Minimum Lot Size control for land at 58 Military Road, Dover Heights (Source: Planning Proposal, August 2024, p.23)**



**Figure 23 Existing Heritage controls for land at 30 Bronte Road, Bondi Junction (Source: Adapted from NSW Planning Portal Spatial Viewer, September 2024)**



**Figure 24 Proposed Heritage controls for land at 30 Bronte Road, Bondi Junction (Source: Planning Proposal, August 2024, p.21)**



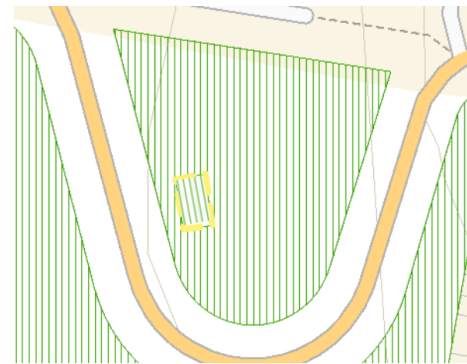
**Figure 25 Existing Heritage controls for land at 470 Bronte Road, Bondi (Source: NSW Planning Portal Spatial Viewer, September 2024)**



**Figure 26 Proposed Heritage controls for land at 470 Bronte Road, Bronte (Source: Planning Proposal, August 2024, p.22)**



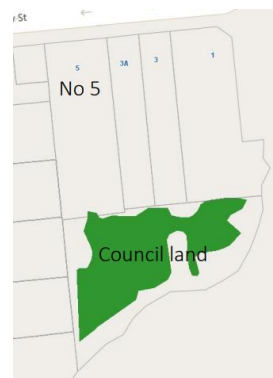
**Figure 27 Existing Heritage controls for land at Victoria Park, Queens Park (Source: NSW Planning Portal Spatial Viewer, September 2024)**



**Figure 28 Proposed Heritage controls for land at Victoria Park, Queens Park (Source: Planning Proposal, August 2024, p.22)**



**Figure 29 Existing Terrestrial Biodiversity mapping for land at 1A and 5 Bay Street, North Bondi - Lot C DP 331848 & Lot 2 DP 530991 (Source: NSW Planning Portal Spatial Viewer, September 2024)**



**Figure 30 Proposed Terrestrial Biodiversity mapping for land at 1A and 5 Bay Street, North Bondi - Lot C DP 331848 & Lot 2 DP 530991 (Source: Planning Proposal, August 2024, p.21)**

## 1.6 Background

A summary of key background information is provided in **Table 5** below.

**Table 5 Background relating to the planning proposal**

Date	Event
5 April 2022	Waverley Biodiversity Action Plan: Remnant Sites 2022-2031 (February 2022) was adopted by Council on 5 April 2022.
28 February 2024	Waverley Local Planning Panel provided advice to Council on the proposal.
19 March 2024	Council resolved to forward the proposal for a Gateway determination.
28 March 2024	Planning proposal (PP-2024-677) lodged for Gateway assessment.
18 June 2024	Request for additional information for the proposal to be considered adequate for Gateway assessment sent to Council.
16 July 2024	Updated proposal submitted to the Department for Gateway determination.

## 2 Need for the planning proposal

The planning proposal has been prepared to amend the Waverley LEP 2012 to make policy and housekeeping amendments including:

- rectify minor mapping anomalies identified by Council
- include remnant vegetation recently identified in the Waverley Biodiversity Action Plan: Remnant Sites 2022-2031 (Waverley Biodiversity Action Plan) in North Bondi on the Terrestrial Biodiversity Map
- amend Clause 4.3 Height of buildings objectives
- apply waste sustainability provisions to large-scale redevelopment of land characterised as alteration and additions
- permit 'display of goods on the footpath' as exempt development.

A planning proposal to amend the LEP instrument and maps is considered the best mechanism to rectify the identified errors and amend the existing LEP provisions.

As previously outlined in **Section 1.3** of this report, a Gateway condition is recommended that the proposal be updated prior to exhibition to remove the proposed amendments to clause 4.3 Height of buildings.

## 3 Strategic assessment

### 3.1 Regional Plan

The Greater Sydney Region Plan – A Metropolis of Three Cities (the Region Plan), released by the NSW Government in 2018, integrates land use, transport and infrastructure planning and sets a 40-year vision for Greater Sydney as a metropolis of three cities. The Region Plan contains objectives, strategies and actions which provide the strategic direction to manage growth and change across Greater Sydney over the next 20 years.



Under section 3.8 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) a planning proposal is to give effect to the relevant District Plan. By giving effect to the District Plan, the proposal is also consistent with the Regional Plan. Consistency with the District Plan is assessed in Section 3.2 as follows.

## 3.2 District Plan

The Waverley LGA is located within the Eastern City District. The Eastern City District Plan (the District Plan), released by the former Greater Sydney Commission in March 2018, applies to the site.

The Plan contains planning priorities and actions to guide the growth of the district while improving its social, economic and environmental assets. **Table 6** includes an assessment of the planning proposal against relevant planning priorities of the District Plan.

The Department is satisfied the planning proposal gives effect to the District Plan in accordance with section 3.8 of the EP&A Act 1979 subject to the recommended Gateway conditions.

**Table 6 District plan assessment**

District Plan Priorities	Justification
Planning Priority E5 Providing housing supply, choice and affordability, with access to jobs, services and public transport	<p>This priority encourages delivery of increased supply of diversity and affordable housing choices.</p> <p>The Department notes that while the proposal seeks to rectify a mapping anomaly by rezoning land at 3A Tamarama Street, Tamarama, from R3 to R2 residential, this amendment is considered to have a negligible impact on the supply and choice of housing in the Waverley LGA, given the small portion of land (approximately 4.5m<sup>2</sup>) subject to the proposed down zoning.</p> <p>As the site is too small to be developed in isolation for medium density residential purposes under the current land use zoning, the Department considers any inconsistency of the proposal with this planning priority to be of minor significance.</p>
Planning Priority E6 Creating and renewing great places and local centres and respecting the District's heritage	<p>This planning priority recognises the importance of creating and renewing great places and local centres and respecting the district's rich heritage, and the significant role that streets play in not only facilitating the movement of people and goods between places, but also in providing "<i>places for people and street life, [and] enhancing social and economic participation</i>" (Eastern City District Plan, p.47).</p> <p>The proposed heritage map amendments are administrative in nature and will ensure Waverley LEP 2012 is up to date, to facilitate conservation of Waverley LGA's environmental heritage and provide ongoing protection.</p> <p>The proposed introduction of the 'Display of retail goods on the footpath' as a new exempt development category in Schedule 2 of the LEP, will also support the creation of great places and improve liveability outcomes by providing opportunity to increase street activation.</p> <p>The planning proposal is consistent with this priority.</p>
Planning Priority E15 Protecting and enhancing	<p>Priority E15 recognises the importance of protecting and enhancing the District's bushland and remnant vegetation to support biodiversity, provide habitat and improve environmental outcomes.</p>

District Plan Priorities	Justification
bushland and biodiversity  & Planning Priority E16 Protecting and enhancing scenic and cultural landscapes	<p>Priority E16 recognises the importance of protecting and enhancing scenic and cultural landscapes and identifies the District's coastline as a key asset.</p> <p>The proposal is consistent with this planning priority as it will facilitate protection of remnant vegetation identified under the <i>Waverley Biodiversity Action Plan: Remnant Sites 2022-2031</i>, on land located along the coastline at 1A and 5 Bay Street, North Bondi, by ensuring the existing remnant vegetation is considered in any future development.</p> <p>The planning proposal is consistent with this priority.</p>

### 3.3 Local

The proposal states that it is consistent with the following local plans and endorsed strategies. It is also consistent with the strategic priorities and objectives, as outlined in **Table 7** below:

**Table 7 Local strategic planning assessment**

Local Strategies	Justification
Waverley Local Strategic Planning Statement (LSPS) (March 2020)	<p>The Waverley LSPS was endorsed by the former Greater Sydney Commission in 2020. The LSPS provides a strategic land use vision for the LGA and aligns local planning with the objectives and priorities of the Region and District Plans.</p> <p>The proposal is consistent with the following priorities of the LSPS:</p> <ul style="list-style-type: none"> <li>• <i>Planning Priority 5 – Increase the sense of wellbeing in our urban environment</i></li> <li>• <i>Planning Priority 7 – Recognise and celebrate Waverley's unique place in the Australian contemporary cultural landscape.</i></li> <li>• <i>Planning Priority 8 – Connect people to inspiring and vibrant places, and provide easy access to shops, services, and public transport</i></li> <li>• <i>Planning Priority 13 Protect and grow our areas of biodiversity and connect people to nature</i></li> </ul> <p>Any inconsistency of the proposed residential downzoning of land in Tamarama with Planning Priority 6 'Facilitate a range of housing opportunities in the right places to support and retain a diverse community' is considered justified and of minor significance, for reasons previously outlined in Section 2 and Table 6 of this report.</p>
Waverley Local Housing Strategy (LHS)	<p>The Waverley (LHS) provides a framework to guide the future of housing in the LGA over the next 20 years.</p> <p>The proposal is consistent with Priority <i>H5 Ensure new development is consistent with desired future character</i> of the LHS.</p> <p>Any inconsistency of the proposed residential downzoning of land in Tamarama with Priority H1 'Manage housing growth sustainably and in the right location' is considered justified and of minor significance, for reasons previously outlined in Section 2 and Table 6 of this report.</p>

Local Strategies	Justification
Waverley 2032 – Waverley Community Strategic Plan 2022-2032 (CSP)	<p>Waverley 2032 was adopted by Council in June 2022 and sets out the Waverley community's vision for the next 10 years.</p> <p>The proposal is consistent with the CSP, including the following objectives:</p> <ul style="list-style-type: none"> <li>2.4 <i>Protect and increase our local bushland, parks, urban canopy cover and habitat areas</i></li> <li>2.6 <i>Control and manage development to protect the intrinsic values of the community including aesthetics, size, heritage and population.</i></li> </ul>

## 3.4 Local planning panel (LPP) recommendation

On 28 February 2024 the Waverly LPP advised Council that it supported the proposal proceeding to Gateway and public exhibition and provided the following advice:

- Supports the recommendation for the Planning Proposal to proceed to Gateway Determination and public exhibition,*
- Advises Council to consider amendments to the Draft Display of Goods on Footpath Policy to:*
  - ensure that it is not too restrictive, in particular, review the 0.6m depth for goods displays to allow greater flexibility and ensure that the focus is on the outcome, being a clear path of travel of a certain width.*
  - be consistent with the DCP controls for Footpath Dining,*
  - Allow kerbside displays of goods as only permitted when there is a predominance of kerbside dining / displays and a clear path of travel is maintained, and*
- Recommends Council to split the Planning Proposal into two, with amendments to Clause 4.4A in one Planning Proposal and the remaining amendments to be in another Planning Proposal. This is to ensure that the amendment to Cl4.4A is expedited.*

On 19 March 2024, Council considered the advice of the LPP and resolved to forward the planning proposal for a Gateway determination.

**Note:** The amendment to Clause 4.4A was progressed via a separate planning proposal (PP-2024-668). Waverley LEP 2012 (Amendment No.27) came into effect in July 2024.

## 3.5 Section 9.1 Ministerial Directions

The planning proposal's consistency with relevant section 9.1 Directions is outlined in **Table 8**.

**Table 8 9.1 Ministerial Direction assessment**

Directions	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
3.1 Conservation Zones	Consistent	<p>This direction seeks to protect and conserve environmentally sensitive areas.</p> <p>The proposal is consistent with this Direction as it will facilitate the protection of an area of remnant vegetation (Sea-cliff Grassland) recently identified in North Bondi under the Waverley</p>



Directions	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
		<p>Biodiversity Action Plan: Remnant Sites 2022-2031, by including this land on the Terrestrial Biodiversity map.</p> <p>A Gateway condition is recommended requiring that the proposal is updated prior to consultation to address consistency with this Direction.</p>
3.2 Heritage Conservation	Consistent	<p>This direction seeks to conserve items, areas, objects and places of environmental and indigenous heritage significance.</p> <p>The proposal is consistent with this Direction as it seeks to rectify minor heritage mapping anomalies and ensure the LEP is up to date and accurately reflects heritage in the Waverley LGA.</p> <p>The proposed amendments will not adversely affect the ongoing application of the existing LEP heritage provisions.</p>
6.1 Residential zones	Inconsistent	<p>This Direction seeks to encourage a variety of housing types, make efficient use of existing infrastructure and services, and minimise the impact of residential development on the environment.</p> <p>The proposed rezoning of land at 3A Tamarama Street, Tamarama, from R3 to R2 seeks to rectify an anomaly which occurred during subdivision, and provide alignment with the low density zoning of the adjoining land.</p> <p>While the proposed downzoning of this land would reduce the range of residential uses permissible on the site, it will have a negligible impact on supply and choice of housing in the Waverley LGA, as the affected site is too small (approximately 4.5m<sup>2</sup>) to be developed in isolation.</p> <p>The inconsistency with this direction is minor and justified.</p>

### 3.6 State environmental planning policies (SEPPs)

An assessment against the relevant SEPPs is provided in **Table 9** below. The Department considers the proposal will not hinder the application of any relevant SEPPs.

**Table 9 State environmental planning policy assessment**

SEPP	Consistent / Not Applicable	Reasons for Consistency or Inconsistency
SEPP (Biodiversity and Conservation) 2021	Consistent	<p>Chapter 2 of the Biodiversity &amp; Conservation SEPP seeks to protect the biodiversity values of trees and other vegetation in non-rural areas of the State.</p> <p>The proposed amendment to the Waverley LEP 2012 Terrestrial Biodiversity map will provide greater protection to the remnant</p>

SEPP	Consistent / Not Applicable	Reasons for Consistency or Inconsistency
		<p>patch of Sea-cliff Grassland vegetation recently identified on land at 1A and 5 Bay Street, North Bondi.</p> <p>The proposed amendment is supported by the Waverley <i>Biodiversity Action Plan: Remnant Sites 2022-2031</i>.</p>
SEPP (Exempt and Complying Development Codes) 2008	Consistent	<p>The Codes SEPP aims to provide streamlined assessment processes for development that complies with specified development standards.</p> <p>The proposal seeks to provide an exempt development pathway for the 'display of goods on the footpath' through the Waverley LEP 2012 and will not hinder the application the Codes SEPP.</p>

## 4 Site-specific assessment

### 4.1 Environmental

The proposal is not anticipated to have any adverse impacts on critical habitat areas, threatened species, populations or ecological communities or their habitats.

Heritage conservation and biodiversity are addressed in Section 3.5 of this report.

### 4.2 Social and economic

The proposed amendments are not anticipated to result in any adverse social or economic impacts as they are largely administrative in nature.

The proposed introduction of the 'display of goods on footpaths' as exempt development will support local businesses by streamlining approval processes and provide opportunity to increase street activation and improve community safety through passive surveillance.

### 4.3 Infrastructure

The proposal applies to land located within an established urban area which is serviced by infrastructure and utilities.

## 5 Consultation

### 5.1 Community

Council proposes a community consultation period of 28 days.

The planning proposal is categorised as standard under the Department's Local Environmental Plan Making Guidelines (August 2023).

Accordingly, a community consultation period of 20 working days is recommended and has been included in the Gateway conditions.

## 5.2 Agencies

The proposal does not identify any specific agencies to be consulted.

Given the nature of the proposal, it is recommended the following agencies be consulted on the planning proposal and given 30 working days to comment:

- Transport for NSW
- Crown Lands
- Heritage NSW (Department of Climate Change, Energy, the Environment and Water).

## 6 Timeframe

Council proposes a 5-month timeframe (from Gateway determination) to complete the LEP.

The LEP Plan Making Guidelines (August 2023) establishes maximum benchmark timeframes for planning proposal by category. This planning proposal is categorised as a standard.

The Department recommends an LEP completion date of 31 July 2025 in line with its commitment to reducing processing times and with regard to the benchmark timeframes.

A condition to the above effect is recommended in the Gateway determination.

## 7 Local plan-making authority

Council has advised that it would like to exercise its functions as a local plan-making authority.

The Department recommends that Council be authorised to be the local plan-making authority for this proposal as it is considered of local significance.

## 8 Assessment summary

The planning proposal is supported to proceed with conditions for the following reasons:

- The proposal is generally consistent with the relevant overarching state and local strategic plans and policies and ministerial directions, and inconsistencies have been adequately justified.
- The proposal will improve the accuracy of the Waverley LEP 2012 by rectifying several errors and anomalies.
- The proposal will improve planning outcomes by ensuring the protection of heritage items, newly identified remnant vegetation, strengthening existing waste minimisation and recycling provisions and simplifying the approvals process for the 'display of goods on the footpath' across the Waverley LGA.
- The proposal is not anticipated to generate any adverse environmental, social or economic outcomes.

The proposed amendments to clause 4.3 Height of buildings are not supported in their current form and should be removed from the proposal prior to consultation. A Gateway condition is recommended to this effect.

## 9 Recommendation


It is recommended the delegate of the Secretary agree that the inconsistency with section 9.1 Direction 6.1 is of minor significance and justified in accordance with the terms of the Direction.

It is recommended the delegate of the Minister determine that the planning proposal should proceed subject to conditions.

The following conditions are recommended to be included on the Gateway determination:

1. The planning proposal is to be updated prior to consultation to:
  - include a plain English explanation of how the proposed amendment to Schedule 2 will apply and include a disclaimer that final wording is indicative only and will be subject to Parliamentary Counsel drafting, should the proposal proceed to finalisation.
  - Remove indicative clause wording illustrating the proposed amendments to clause 6.14 Waste minimisation and recycling and clarify the extent of the alterations and additions the proposed amendments will apply to.
  - Remove all references to the proposed amendments to clause 4.3 Height of buildings of the Waverley LEP 2012.
  - Ensure consistency of the proposed amendment to Schedule 2 of the Waverley LEP 2012 with the defined land uses in the SILEP to avoid confusion as to where the provision seeks to apply.
  - Clarify whether the proposal also seeks to amend the height and FSR controls that currently apply to the site at 3A Tamarama Street, Tamarama, to align with the applicable development controls of the adjoining R2 zoned land.
  - Clarify whether the proposal also seeks to amend the existing height and FSR controls that apply to the subject land located at the rear of 10 & 12 Mill Hill Road, Bondi Junction.
  - Ensure the proposed Minimum Lot Size control mapping for land at 58 Military Road, Dover Heights, clearly shows that the proposed 500m<sup>2</sup> control will apply to the entire site.
  - Ensure the proposed heritage map and property description in Schedule 5 are consistent with the existing state heritage item listing at 470 Bronte Road, Bronte.
  - Ensure the proposal and the supporting maps include complete street addresses (including suburbs), map legends, and clear map labelling (where relevant) to identify key features and ensure the proposal is suitable for community consultation.
  - Address consistency with Direction 3.1 Conservation Zones.
2. Consultation is required with the following government agencies and public authorities:
  - Transport for NSW
  - Crown Lands
  - Heritage NSW (Department of Climate Change, Energy, the Environment and Water).

Each public authority is to be provided with a copy of the planning proposal and any relevant supporting material and given at least 30 working days to comment.
3. The planning proposal should be made available for community consultation for a minimum of 20 working days.
4. Given the nature of the planning proposal, it is recommended that the Gateway authorise council to be the local plan-making authority.
5. The timeframe for the LEP to be completed is on or before 31 July 2025.



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6 January 2025

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