

# FOR ACTION

COUNCIL

19/03/2024

TO: Director, Planning, Sustainability and Compliance (Rayner, Fletcher)

**Subject:** Planning Proposal - Waverley Local Environmental Plan - General Update - Exhibition  
**Item Number:** CM/7.2/24.03  
**Target Date:** 02/04/2024  
**File Reference:** PP-1/2024 D24/3204  
**Notes:**

## MOTION / UNANIMOUS DECISION

Mover: Cr Masselos  
Seconder: Cr Keenan

That Council:

1. Forwards the planning proposal attached the report (Attachment 1) on a general update to the *Waverley Local Environmental Plan 2012* to the Department of Planning, Housing and Infrastructure (DPHI) for Gateway Determination for the purposes of public exhibition.
2. Publicly exhibits the planning proposal in accordance with any conditions of the Gateway determination or amendments requested by the DPHI.
3. Requests and accepts, if offered, the role of the Local Plan Making Authority from the DPHI to exercise the delegations issued by the Minister under section 3.36 of the *Environmental Planning and Assessment Act 1979* to amend the *Waverley Local Environmental Plan 2012*.
4. Publicly exhibits the draft Display of Goods on Footpath Policy attached to the report (Attachment 2) for a minimum of 42 days.
5. Officers prepare a report to Council following the exhibition period.

## Division

**For the Motion:** Crs Betts, Burrill, Fabiano, Goltsman, Gray, Kay, Keenan, Lewis, Masselos, Murray, Nemesh and Wy Kanak.

**Against the Motion:** Nil.

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## REPORT

### CM/7.2/24.03



**Subject:** Planning Proposal - Waverley Local Environmental Plan - General Update - Exhibition

**TRIM No:** PP-1/2024

**Manager:** George Bramis, Executive Manager, Urban Planning Policy and Strategy

**Director:** Fletcher Rayner, Director, Planning, Sustainability and Compliance

#### RECOMMENDATION:

That Council:

1. Forwards the planning proposal attached the report (Attachment 1) on a general update to the *Waverley Local Environmental Plan 2012* to the Department of Planning, Housing and Infrastructure (DPHI) for Gateway Determination for the purposes of public exhibition.
2. Publicly exhibits the planning proposal in accordance with any conditions of the Gateway determination or amendments requested by the DPHI.
3. Requests and accepts, if offered, the role of the Local Plan Making Authority from the DPHI to exercise the delegations issued by the Minister under section 3.36 of the *Environmental Planning and Assessment Act 1979* to amend the *Waverley Local Environmental Plan 2012*.
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#### 1. Executive Summary

This planning proposal seeks to amend the *Waverley Local Environmental Plan* (WLEP) 2012 as per Table 1 of this report to:

- Address minor wording and mapping errors and inconsistencies,
- Resolve issues related to recently introduced clauses, and
- Introduce a development pathway for the display of goods on the footpath.

Table 1. Proposed changes to WLEP 2012.

Section of the WLEP 2012	Proposal	Reason
<b>Schedule 2 - Exempt development</b>	<p>New objective:</p> <p><b>Use of the footpath for displays of retail goods</b></p> <p>(1) Must be on a public road within the</p>	To allow the operators of retail premises to place displays of goods on the footway outside of their premises with a checklist

	<p>meaning of the Roads Act 1993;</p> <p>(2) Must be associated with a lawful shop;</p> <p>(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</p> <p>(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.</p>	<p>approval and applicable leasing fee.</p> <p>This new objective will be supported by a new Local Approvals Policy for the Display of Goods on the Footpath.</p>
<b>Clause 4.3 - Height of buildings</b>	<p>Amend the clause as follows:</p> <p><i>a) <del>To ensure building heights preserve the environmental amenity of neighbouring properties and public spaces and, if appropriate, the sharing of views,</del> <b>To establish limits on the overall height of development to preserve the environmental amenity of neighbouring properties and public spaces.</b></i></p> <p><i>b) 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><i>c) <del>To maintain satisfactory solar access to existing buildings and public areas,</del></i></p> <p><i>d) To establish building heights that are consistent with the desired future character of the locality <b>and streetscape.</b></i></p>	<p>The current wording needs to be strengthened to protect against adverse overshadowing, overlooking and view loss.</p>
<b>Clause 4.4A - Exceptions to floor space ratio</b>	<p>Amend the clause as follows:</p> <p><i>Despite clause 4.4, the maximum floor space ratio for a dwelling house, <b>attached dwelling, semi-detached dwelling</b> or dual occupancy on land in Zone R2 Low Density Residential, Zone R3 Medium Density Residential or Zone R4 High Density Residential is as follows—</i></p> <p><i>(a) for lots with an area less than 100 square metres—1:1,</i></p> <p><i>(b) for lots with an area of 100 square metres to 550 square metres—<math>[(550 - \text{lot area}) \times 0.0011] + 0.5</math>:1,</i></p> <p><i>(c) for lots with an area greater than 550 square metres—0.5:1.</i></p>	<p>This change is proposed to make other low-density forms of residential development eligible to use the exception.</p> <p>It is reasonable for the added building types to have a similar scale as a dwelling house or dual occupancy in order to achieve visually consistent streetscapes.</p>
<b>Clause 4.5 - Calculation of floor space ratio and site area</b>	<p><i>(3) Site area</i></p> <p><i>In determining the site area of proposed development for the purpose of applying a floor space ratio, the site area is taken to be—</i></p> <p><i>(a) if the proposed development is to be carried out on only one lot, the area of that lot, or</i></p> <p><i>(b) if the proposed development is to be carried</i></p>	<p>Providing clarity for how a DA applying Cl4.4A should determine site area.</p>

	<p>out on 2 or more lots, the area of any lot on which the development is proposed to be carried out that has at least one common boundary with another lot on which the development is being carried out.</p> <p><b>(c) For proposed development applying Clause 4.4A, if the proposed development is to be carried out on 2 or more lots that has at least one common boundary with another lot on which the development is being carried out and comprises of 1 domicile per lot (maximum), then the respective area of each individual lot.</b></p> <p>In addition, subclauses (4)–(7) apply to the calculation of site area for the purposes of applying a floor space ratio to proposed development.</p>	
<b>Clause 6.14 - Waste minimisation and recycling</b>	<p>Amend subclause (2) as follows:</p> <p><i>(2) This clause applies to <b>the alteration and addition of or the erection of a building</b> for the following purposes—</i></p> <p><i>(a) mixed use development,</i></p> <p><i>(b) residential flat buildings,</i></p> <p><i>(c) shop top housing.</i></p>	To ensure that buildings undergoing alterations and additions are also subject to high standards of waste management.
<b>Mapping - Heritage, Lot Size, Land Zone</b>	Refer to Part 4 of the planning proposal document for details on housekeeping mapping changes.	As lots have adjusted their boundary lines some mapping affectations have not been updated accordingly to reflect the new cadastre and lot outline. This proposal seeks to amend these minor inconsistencies.
<b>Mapping - Terrestrial Biodiversity Map</b>	Refer to Part 4 of the planning proposal document for details on terrestrial biodiversity mapping changes.	One Council-owned site and a minor portion along the rear boundary of one privately owned site has been identified on the recent 2020 remnant vegetation map (non-LEP map), so needs to be added to the WLEP Terrestrial Biodiversity Map for consistency.

## 2. Introduction/Background

Since the last update of the WLEP in September 2022, a number of minor matters have arisen that require amendment to ensure that the WLEP contains up to date, accurate, robust and relevant provisions. Table 1 details the reasons for each proposed change.

### 3. Relevant Council Resolutions

Nil.

### 4. Discussion

The majority of changes proposed under this planning proposal (Attachment 1) are not a result of a strategic study or report—rather a need to provide clarification or strengthen an existing provision based on feedback since original implementation of the particular clause being altered.

#### Display of goods on footpath

The proposed addition of an exempt development objective for the display of goods on the footpath is the result of local business enquiries and best practice review.

The new exempt development approach would allow operators of retail premises to place displays of goods on the footway outside of their premises without development assessment. A one-time application fee and yearly permit fee will apply as per Council's Fees and Charges Policy for the use of the footpath. There is already an applicable fee in the Fees and Charges.

Officers have prepared a draft local approvals policy under part 3 ('Adoption of local policies concerning approvals and orders') of the *Local Government Act 1993* for the Display of Goods on the Footpath (Attachment 2), to be exhibited concurrently with this planning proposal. The intent of the draft local approvals policy is to encourage uses of minimal environmental impact on public land when those uses create interest and urban character whilst maintaining access and safety.

The policy details the distances from street furniture and other obstacles that must be maintained, the clear path of travel that must be maintained, expectations over the management and maintenance of goods displays, and restrictions over the types of goods that can be displayed. Where the display of goods meets all the criteria of the policy, no development assessment is required from Council and the goods can be displayed following the processing of payment for the use of the footpath.

The intention of the new LEP exempt development clause and supplementary Local Approvals Policy is to streamline the process for local businesses to display goods on the footpath with an easy to understand policy and simple payment form. This simultaneously decreases the assessment and administrative workload of Council officers.

#### Clause 4.4A – Exceptions to floor space ratio

A recent class 4 appeal in the NSW Land and Environment Court has identified that clause 4.4A (technically) does not apply to semi-detached dwellings or attached dwellings. The proposed amendment seeks to allow for semi-detached dwellings and attached housing (e.g. terraces) to have the same floor space ratio (FSR) control applied as occurs for dwellings and dual occupancies. This amendment would be consistent with other implementations of the clause in Woollahra and Randwick Council LEPs and support applicants and assessment staff to interpret the clause as always intended.

The proposed amendment is also consistent with the floorspace permitted by the NSW Government's *State Environmental Planning Policy (Exempt and Complying Development) 2008* for complying development certificates.

**Mapping changes**

The Heritage, Lot Size and Land Use map changes are a result of land consolidation and subdivision, whereby the boundary lines and cadastre of each lot have slightly changed and the mapping affectation no longer matches the outline of the property.

The proposed Terrestrial Biodiversity mapping change is a result of the findings of the *Waverley Biodiversity Action Plan: Remnant Sites 2022-2031*, which revealed remnant vegetation in North Bondi which requires consideration under any future development.

**Administrative information**

The planning proposal is considered a 'principal' planning proposal, in line with the LEP Making Guidelines (August 2023) criteria as it contains multiple housekeeping amendments and a combination of other more significant changes.

Council requests to be appointed the planning proposal Authority (PPA) and Local Plan-Making Authority (LPMA).

**Strategic merit test**

The proposal is considered to have strategic merit because it:

- Demonstrates consistency with the Region Plan, District Plan, Waverley Local Strategic Planning Statement, *Waverley Local Environment Plan*, Waverley Local Housing Strategy and Waverley Community Strategic Plan.
- Gives effect to the findings of the *Waverley Biodiversity Action Plan: Remnant Sites 2022-2031*, which identified land with significant remnant vegetation.

**Site-specific merit test**

The planning proposal clarifies and strengthens existing clauses relating to FSR, building height and waste management, and mapping related to land use, lot size, heritage and terrestrial biodiversity. Doing so allows development in Waverley LGA to have a positive impact on the natural and built environment, and on the existing uses, approved uses and likely future uses of the land affected.

**5. Financial impact statement/Time frame/Consultation****Financial Impact**

There have been no upfront or recurrent costs associated with this planning proposal other than staff costs associated with the administration.

**Time frame**

It is estimated that this amendment to the WLEP will be completed by late 2024.

**Community consultation**

Public exhibition is likely to include at minimum a display on the Council's website. The Gateway Determination will specify the level of public consultation that must be undertaken in relation to the planning proposal.

Pursuant to division 3.4 of the Act, a planning proposal must be placed on public exhibition for a minimum of 28 days, or as specified in the Gateway Determination for the proposal. The Responsible Planning Authority must consider any submissions made concerning the proposed instrument and the report of any public hearing.

## **6. Conclusion**

This planning proposal seeks to amend the WLEP to address minor wording and mapping errors and inconsistencies. These changes will strengthen the operation of the LEP when assessing development applications. The update of clause 4.4A is necessary to address a recent class 4 appeal whereby the intended scope and application requires amendment to also apply to semi- detached and attached dwellings.

The introduction of a development pathway for the display of goods on the footpath, in alignment with the new proposed local approvals policy, will allow the operators of retail premises to place displays of goods on the footway outside of their premises without the need for Council approval.

## **7. Attachments**

1. Planning proposal - General LEP update [↓](#)
2. Draft Display of Goods on the Footpath Policy [↓](#)