WAVERLEY
COUNCIL

PLANNING PROPOSAL

Amendments to Clause 4.4A
PP-1/2024/A

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Planning Proposal Information

Table 1 – Council Versions

No.	Date	Version
1	19 February 2024	Sent to Waverley Local Planning Panel
2	08 March 2024	Sent to 19th March Council Meeting
3	27 March 2024	Separated from General LEP Update and submitted to DPHI

EXECUTIVE SUMMARY

This Planning Proposal prepared by Waverley Council seeks to update the Waverley Local Environmental Plan 2012, by amending Clause 4.4A to clarify the residential accommodation typologies which the clause was always intended to apply to.

This Planning Proposal amendment applies to land zoned R2 Low Density Residential, R3 Medium Density Residential and R4 High Density Residential.

The change proposed under this Planning Proposal is 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.

The Planning Proposal is considered a 'minor' planning proposal, in line with the LEP Making Guidelines (August 2023) criteria as it seeks to implement a housekeeping clarification.

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

PART 1 – OBJECTIVES AND INTENDED OUTCOMES

1.1 Objective

This Planning Proposal seeks to amend the Waverley Local Environmental Plan (WLEP) 2012 as per Part 2.1 of this report to:

- resolve issues related to existing clauses, and

1.2 Intended Outcomes

The intended outcomes of the proposed amendments to the WLEP are to:

- provide clarity regarding the consideration of floor space ratio.

PART 2 – EXPLANATION OF PROVISIONS

2.1 Intended Provisions

This Planning Proposal seeks to amend the Waverley Local Environmental Plan 2012 as follows:

Table 2 – Proposed changes to WLEP 2012

Section of the WLEP 2012	Proposal	Reason
Clause 4.4A Exceptions to floor space ratio	Amend the clause as follows: *Despite clause 4.4, the maximum floor space ratio for a dwelling house, attached dwelling, semi-detached dwelling or dual occupancy on land in Zone R2 Low Density Residential, Zone R3 Medium Density*	This change is proposed to make other low-density forms of residential development eligible to use the exception. It is reasonable for the added building types to have a similar

	Residential or Zone R4 High Density Residential is as follows— *(a) for lots with an area less than 100 square metres—1:1,* *(b) for lots with an area of 100 square metres to 550 square metres—[(550 − lot area) × 0.0011] + 0.5]:1,* *(c) for lots with an area greater than 550 square metres—0.5:1.*	scale as a dwelling house or dual occupancy.
Clause 4.5 Calculation of floor space ratio and site area	*(3) Site area* *In determining the site area of proposed development for the purpose of applying a floor space ratio, the site area is taken to be—* *(a) if the proposed development is to be carried out on only one lot, the area of that lot, or* *(b) if the proposed development is to be carried 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.* *(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.* *In addition, subclauses (4)–(7) apply to the calculation of site area for the purposes of applying a floor space ratio to proposed development.*	Providing clarity for how a DA applying Cl4.4A should determine site area.

Waverley Local Planning Panel

The Waverley Local Planning Panel (WLPP) considered this Planning Proposal at a meeting held on 28 February 2024 and have provided the following advice:

"Resolution

For the reasons outlined in the Council officer's report, the Panel:

- *Recommends Council separate the Planning Proposal into two parts, with the amendments to Clause 4.4A placed into one Planning Proposal and the remaining amendments to be placed in another Planning Proposal. This is to ensure that the amendment to Clause 4.4A is expedited and not be categorised as a Principal LEP amendment.*
- *Advises Council to consider amendments to the Draft Display of Goods on the Footpath Local Approvals 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, in particular review the 2m clear path of travel dimension to be 2.5m consistent with the DCP control for Outdoor seating*
    - *allow kerbside displays as only permitted when there is a predominance of kerbside dining / displays and a clear path of travel is maintained, and*

Subject to the above recommendations, the Planning Panel recommends to Council that the Planning Proposals should proceed to Gateway Determination and public exhibition."

A response to the issues raised are addressed in the table below.

Table 3 – Response to WLPP Feedback

Matter	Response
Recommends Council separate the Planning Proposal into two parts, with the amendments to Clause 4.4A placed into one Planning Proposal and the remaining amendments to be placed in another Planning Proposal. This is to ensure that the amendment to Clause 4.4A is expedited and not be categorised as a Principal LEP amendment.	Council will separate the planning proposal into two separate planning proposals, as described, following Council's resolution and before the planning proposal is forwarded to The Department for gateway determination.

PART 3 – JUSTIFICATION OF STRATEGIC AND SITE-SPECIFIC MERIT

This section details the reasons for the proposed LEP amendment and is based on a series of questions and matters for consideration as outlined in the LEP Making Guidelines (August 2023). The issues to be addressed include the strategic planning context of the amendments, Strategic Merit, Site-Specific Merit, potential State and Commonwealth agency interests, and environmental, social and economic impacts.

Table 4 – Assessment of Proposal against Strategic Merit Test

a) Does the proposal:	
Give effect to the relevant regional plan outside of the Greater Sydney Region, the relevant district plan within the Greater Sydney Region, and/or a corridor/precinct plan applying to the site. This includes any draft regional, district or corridor/precinct plans released for public comment or a place strategy for a strategic precinct including any draft place strategy; or	Yes, it is consistent with the Greater Sydney Regional Plan and Eastern City District Plan as discussed later this in this report.
Demonstrate consistency with the relevant LSPS or strategy that has been endorsed by the Department or required as part of a regional or district plan; or	Yes, it is consistent with the Waverley Local Strategic Planning Statement as discussed later this in this report.
Respond to a change in circumstances that has not been recognised by the existing planning framework. Factors that lead to responding to a change in circumstances may include, but not exclusively relate to: • Key infrastructure investment or opportunity to plan for future infrastructure unanticipated by the existing strategic planning framework • Response to key Government priorities – Premier's Priorities, climate change, or a shift in government policy (e.g. NSW Government's Net Zero Plan)	No. The Planning Proposal responds to a change in circumstances created by previous changes to the Waverley LEP.

• Changes to population and demographic trends and associated needs such as housing or jobs.	

Table 5 – Assessment of Proposal against Site Specific Merit Test

b) Does the proposal have site-specific merit, having regard to the following:	
The natural environment on the site to which the proposal relates and other affected land (including known significant environmental areas, resources or hazards).	The changes under this Planning Proposal seek to clarify or strengthen existing clauses, or rectify inaccuracies. As such, the changes are not expected to result in any realised impact upon the natural environment, need for services and infrastructure, or any change to the built form of development.
Existing uses, approved uses, and likely future uses of land in the vicinity of the land to which the proposal relates	The proposed changes will not alter existing, approved or likely future uses. The changes under this Planning Proposal seek to clarify or strengthen existing clauses.
Services and infrastructure that are or will be available to meet the demands arising from the proposal and any proposed financial arrangements for infrastructure provision.	The proposal will not result in any additional use of or need for infrastructure. No changes to housing capacity are proposed.

3.1 Is the Planning Proposal a result of any strategic study or report?

The changes proposed under this Planning Proposal 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.

3.2 Is the Planning Proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

The Planning Proposal is the best means of achieving the identified objectives and intended outcomes as the updates concerns issues arising from previous amendments of principle planning controls.

3.3 Will the planning proposal give effect to the objectives and actions of the applicable regional or district plan or strategy (including any exhibited draft plans or strategies)?

The proposal is consistent with the objectives of a Metropolis of Three Cities Region Plan and the Eastern City District Plan as it is consistent with the applicable objectives and planning priorities as per the following tables.

Table 6 – Metropolis of Three Cities

Relevant Objectives	Comment

Objective 10 – Greater housing supply	Updating the wording of Cl 4.4A to allow attached and semi-detached dwellings to use the FSR formula currently in the clause will ensure that housing supply can be delivered in a reasonable scale that aligns with the site, rather than being restricted to the (in most cases) reduced FSR stipulated on the FSR Map which is better suited to other development types permitted on that land.

Table 7 – Eastern City District Plan

Relevant Planning Priorities	Comment
Planning Priority E5 – Providing housing supply, choice and affordability, with access to jobs, services and public transport	Updating the wording of Cl 4.4A to allow attached and semi-detached dwellings to use the FSR formula currently in the clause will ensure that housing supply can be delivered in a reasonable scale that aligns with the site, rather than being restricted to the (in most cases) reduced FSR stipulated on the FSR Map which is better suited to other development types permitted on that land.

3.4 Is the planning proposal consistent with a council LSPS that has been endorsed by the Planning Secretary or GCC, or another endorsed local strategy or strategic plan?

The Planning Proposal is consistent with applicable local strategies and plans, as per the following tables.

Table 8 - Waverley Local Environmental Plan 2012

Relevant Aims Cl 1.2	Comment
To promote and co-ordinate a range of commercial, retail, residential, tourism, entertainment, cultural and community uses to service the local and wider community,	Provisions relating to low density land use types will be clarified by this PP, by updating Cl 4.4A to make clear that the FSR formula relates to attached and semi-detached dwellings as the clause was originally intended to.

Table 8 – Waverley Local Strategic Planning Statement (March 2020)

Relevant Planning Priorities	Comment
6. Facilitate a range of housing opportunities in the right places to support and retain a diverse community.	Provisions relating to low density land use types will be clarified by this PP, by updating Cl 4.4A to make clear that the FSR formula relates to attached and semi-detached dwellings as the clause was originally intended to.

Table 9 – Waverley Local Housing Strategy

Relevant Priorities	Comment
H1. Manage housing growth sustainably and in the right locations	Provisions relating to low density land use types will be clarified by this PP, by updating Cl 4.4A to make clear that the FSR formula relates to attached and semi-detached dwellings as the clause was originally intended to. This will ensure that low density streetscapes have a consistent character.
H5 Ensure new development is consistent with desired future character	

Table 10 – Waverley Community Strategic Plan 2022-2032

Relevant Direction or Strategy	Comment
2.6 Control and manage development to protect the intrinsic values of the community including aesthetics, size, heritage and population.	Provisions relating to low density land use types will be clarified by this PP, by updating Cl 4.4A to make clear that the FSR formula relates to attached and semi-detached as the clause was originally intended to. This will protect the aesthetic value of the LGA as bulk and scale is managed.

3.5 Is the Planning Proposal consistent with any other applicable State and regional studies or strategies?

There are no other relevant State or regional studies or strategies.

3.6 Is the Planning Proposal consistent with applicable SEPPs?

This Planning Proposal is consistent with applicable State Environmental Planning Policies. Assessed the Planning Proposal against the State Environmental Planning Policies SEPPs:

Table 11 – Assessment of Proposal against the SEPPs

Title	Applicable	Comment
Housing SEPP	N/A	The PP will not impact the application of this SEPP in the LGA.
Design Quality of Residential Apartment Development – SEPP 65	N/A	The PP will not impact the application of this SEPP in the LGA.
Exempt and Complying Development Codes SEPP	Yes	The PP will not impact the application of this SEPP in the LGA.
Transport and Infrastructure SEPP	N/A	The PP will not impact the application of this SEPP in the LGA.
Primary Production SEPP	N/A	The PP will not impact the application of this SEPP in the LGA.
Biodiversity and Conservation SEPP	N/A	The PP will not impact the application of this SEPP in the LGA.
Resilience and Hazards SEPP	N/A	The PP will not impact the application of this SEPP in the LGA.
Industry and Employment SEPP	N/A	The PP will not impact the application of this SEPP in the LGA.
Resources and Energy SEPP	N/A	The PP will not impact the application of this SEPP in the LGA.
Planning Systems SEPP	N/A	The PP will not impact the application of this SEPP in the LGA.
Sustainable Buildings SEPP	N/A	The PP will not impact the application of this SEPP in the LGA.
Precincts SEPPs: Eastern Harbour City SEPP, Western Parkland City SEPP, Central River City SEPP and Regional SEPP	N/A	The PP will not impact the application of this SEPP in the LGA.

3.7 Is the Planning Proposal consistent with applicable Ministerial Directions (section 9.1 Directions) or key government priority?

The proposal is consistent with applicable Ministerial Directions under Section 9.1 of the Environmental Planning and Assessment Act 1979 as outlined in the below table.

Table 12 – Assessment of Proposal against Ministerial Direction

Ministerial Direction	Relevance	Consistency
6.1 Residential Zones	A Planning Proposal must include provisions that encourage the provision of housing that will: • Broaden the choice of building types and locations available in the housing market, • Make more efficient use of existing infrastructure and services, and • Reduce the consumption of land for housing and associated urban development on the urban fringe and • Be of good design.	The proposal is consistent with the objectives of this direction as clarity surrounding FSR and lot size controls will be provided – assisting to manage the scale of housing.

3.8 Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected because of the proposal?

No, there are not expected to be any adverse impacts on critical habitat or threatened species, populations or ecological communities, or their habitats as a result of this Planning Proposal.

3.9 Are there any other likely environmental effects of the Planning Proposal and how are they proposed to be managed?

There are unlikely to be any other environmental effects as a result of the Planning Proposal.

3.10 Has the Planning Proposal adequately addressed any social and economic effects?

The Planning Proposal has adequately addressed the relevant social and economic effects arising from the objectives and intended effects of the proposal.

Social and economic effects of this Planning Proposal are expected to be negligible, as the changes proposed strengthen an existing control.

3.11 Is there adequate public infrastructure for the Planning Proposal?

There is adequate public infrastructure for the Planning Proposal and the planning proposal will not lead to a need for greater public infrastructure.

3.12 What are the views of state and federal public authorities and government agencies consulted in order to inform the Gateway determination?

Consultation with public authorities and government agencies can be undertaken in line with the future Gateway determination, if granted.

PART 4 – MAPPING

There are no mapping changes are proposed under this Planning Proposal:

PART 5 – 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 Planning Proposal Authority must consider any submissions made concerning the proposed instrument and the report of any public hearing.

PART 6 – PROJECT TIMELINE

The following indicative project timeline will assist with tracking the progress of the Planning Proposal through its various stages of consultation and approval. It is estimated that this amendment to WLEP will be completed by late 2024.

The detail around the project timeline is expected to be prepared following the referral to DPHI for a Gateway Determination.

Table 13 – Indicative project timeline

Tasks	Timeframe and/or date
Consideration by Council	February and March 2024
Council decision	March 2024
Gateway Determination	April 2024
Pre-exhibition	April 2024
Commencement and completion of public exhibition period	May - June 2024
Consideration of submissions	July 2024
Post-exhibition review and additional studies	August 2024
Submission to the Department for finalisation (where applicable)	October 2024
Gazettal of LEP amendment	November 2024