



IRF24/765

Gateway determination report – PP-2024-668

Proposed amendment to cl.4.4A 'Exceptions to floor space ratio' of the Waverley LEP 2012

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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 and present.

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Table 1 Reports and plans supporting the planning proposal

Relevant reports and plans
Waverley Local Planning Panel Advice – 28 February 2024
Waverley Council Meeting Agenda and Minutes – 19 March 2024

1 Planning proposal

1.1 Overview

Table 2 Planning proposal details

LGA	Waverley
PPA	Waverley Council
NAME	Amendment to Clause 4.4A
NUMBER	PP-2024-668
LEP TO BE AMENDED	Waverley Local Environmental Plan 2012 (Waverley LEP 2012)
ADDRESS	R2, R3 and R4 residential zoned land in the Waverley LGA
RECEIVED	27/03/2024
FILE NO.	IRF24/765
POLITICAL DONATIONS	There are no donations or gifts to disclose and a political donation disclosure is not required
LOBBYIST CODE OF CONDUCT	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 adequately explain the intent of the proposal.

The objective of the proposal is to resolve issues identified with the existing clauses 4.4A and 4.5(3), by providing clarity regarding the consideration of floor space ratio (FSR) controls.

Specifically, the proposal seeks to clarify that these existing provisions which permit exemptions to FSR standards for 'dwelling houses' and 'dual occupancies' were intended to also apply to 'attached dwellings' and 'semi-detached dwellings' on residential zoned land.

The objectives of this planning proposal are clear and adequate.

1.3 Explanation of provisions

The planning proposal seeks to amend existing clause 4.4A *Exceptions to floor space ratio* of the Waverley LEP 2012, to permit exemptions to FSR standards for 'attached dwellings' and 'semi-detached dwellings' on land in the R2 Low Density, R3 Medium Density and R4 High Density residential zones. The planning proposal contains draft version to illustrate this change in blue text:

4.4A Exceptions to floor space ratio

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 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— $\frac{[(550 - \text{lot area}) \times 0.0011] + 0.5}{1}$:1,*
- (c) *for lots with an area greater than 550 square metres—0.5:1.*

It is recommended that the planning proposal be updated prior to exhibition, to acknowledge that the proposed provisions will be subject to Parliamentary Counsel drafting, should the proposal proceed to finalisation.

The planning proposal also seeks to amend Clause 4.5 *Calculation of floor space ratio and site area* to insert a new provision under subclause (3) *Site area* which seeks to clarify how site area should be calculated when applying Clause 4.4A. The planning proposal contains example drafting of the provision to be inserted under subclause (3) *Site area*:

- (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.*

It is unclear based on the information in the planning proposal how this provision would apply to all the land uses under 4.4A and why it is needed to achieve the intended outcomes of the planning proposal. Accordingly, the Department cannot support this proposed amendment, as discussed in Section 2. A Gateway condition is recommended that the proposal be updated prior to exhibition, to remove references to the proposed amendment to clause 4.5(3).

The planning proposal contains an explanation of provisions that adequately explains how the objectives of the proposal will be achieved, subject to the Departments recommended changes.

1.4 Site description and surrounding area

The planning proposal applies to all R2 Low Density Residential, R3 Medium Density Residential and R4 High Density Residential zoned land in the Waverley Local Government Area (LGA). The Waverley LGA is located within the Eastern City District, as shown in **Figure 1**.

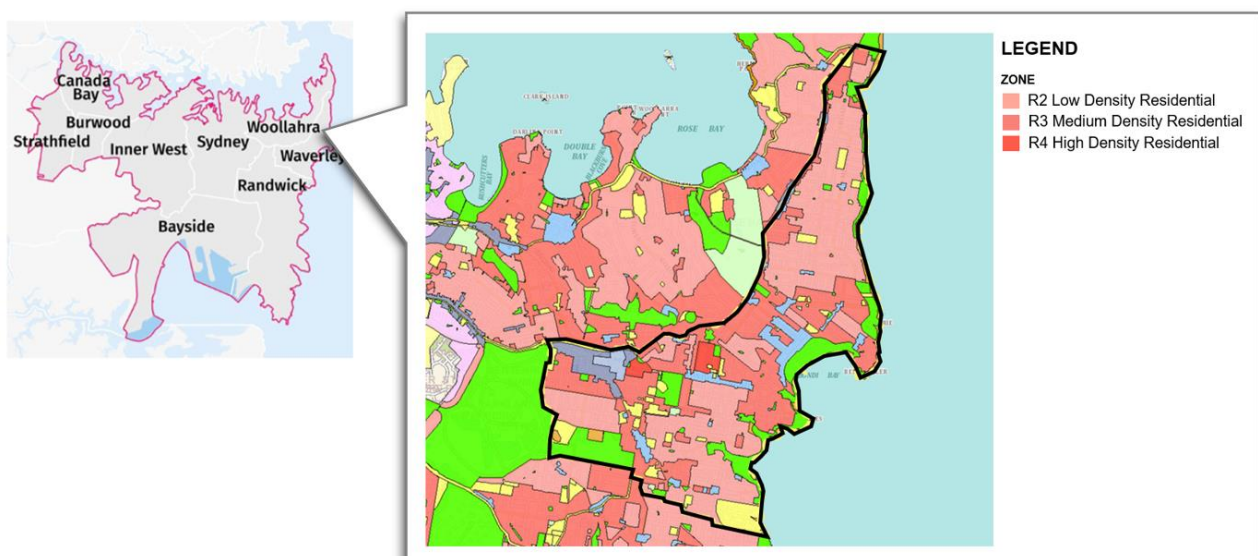


Figure 1 Land to which this proposal applies (Source: Eastern City District Plan, 2018 and NSW Planning Portal Spatial Viewer, April 2024)

1.5 Mapping

No amendments to the LEP maps are proposed.

2 Need for the planning proposal

The planning proposal is not a result of a strategic study or report. The planning proposal seeks to amend the Waverley LEP 2012, to resolve issues identified in applying provisions to exceptions to FSR standards under the existing clauses 4.4A and reflect Council's intent that it apply to 'attached dwellings' and 'semi-detached dwellings'.

Under the Waverley LEP 2012, 'attached dwelling' and 'semi-detached dwelling' are defined as:

attached dwelling means a building containing 3 or more dwellings, where—

- (a) each dwelling is attached to another dwelling by a common wall, and
- (b) each of the dwellings is on its own lot of land, and
- (c) none of the dwellings is located above any part of another dwelling.

Note—Attached dwellings are a type of residential accommodation—see the definition of that term in this Dictionary.

semi-detached dwelling means a dwelling that is on its own lot of land and is attached to only one other dwelling.

Note—Semi-detached dwellings are a type of **residential accommodation**—see the definition of that term in this Dictionary.

The proposal seeks to amend the Waverley LEP 2012 to the expand the application of clause 4.4A to enable other lower density residential typologies to be eligible to the same FSR controls which currently apply to 'dwelling houses' and 'dual occupancies' in Waverley LGA's R2, R3 and R4 zones. The planning proposal states that this will achieve the development outcome Council originally intended.

The planning proposal notes that the LEPs for nearby councils including Woollahra and Randwick include similar provisions which permit FSR exemptions for 'semi-detached dwellings', as well as 'dual occupancies' and 'dwelling houses'.

The Department is satisfied that this amendment will not reduce housing choice in the Waverley LGA and is generally consistent with the relevant zone objectives. A planning proposal is the best mechanism to amend the LEP and achieve the stated objectives and intended outcomes.

While adequate justification has been provided to demonstrate the need for the proposed amendments to clause 4.4A, a Gateway condition is recommended that the proposal be updated prior to exhibition, to include a plain English explanation to clearly explain to the community how the provision applies and the potential impacts the existing R2, R3 and R4 residential zoned land within the Waverley LGA.

The proposal also seeks an amendment pertaining to the calculation of floor space ratio and site area under clause 4.5(3) of the Waverley LEP 2012. As discussed in section 1.3 of this report, this component of the planning proposal cannot be supported by the Department as there is insufficient justification to explain the need and application of the proposed amendment. Clause 4.5 is an optional but standard clause, which provides direction to the calculation of site area for floor space ratio calculations. A Gateway condition is recommended to remove references to the proposed amendment to clause 4.5(3) prior to consultation.

3 Strategic assessment

3.1 Regional Plan

The Greater Sydney Region Plan – *A Metropolis of Three Cities* (the Region Plan) was released by the NSW Government in 2018. The Plan contains objectives, strategies and actions which seek to manage growth and change across Greater Sydney over the next 20 years.

Objective 10 *Greater housing supply* recognises the importance of providing ongoing housing supply and a range of housing types in the right locations, in creating more liveable neighbourhoods and accommodating the needs of Greater Sydney's growing population.

The Department considers the proposal to be consistent with this objective as it does not seek to inhibit housing supply outcomes and will support housing choice in residential zones across the Waverley LGA.

3.2 District Plan

The site 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, sets out the planning priorities and actions to guide the growth of the district while improving its social, economic and environmental assets.

Section 3.8 of the Environmental Planning and Assessment Act 1979 requires planning proposals to give effect to the relevant District Plan.

Planning Priority E5: *Providing housing supply, choice and affordability with access to jobs, services and public transport* seeks to deliver housing supply, diversity and affordability within the Eastern City District.

The Department considers the proposal to be consistent with this planning priority as it does not seek to inhibit housing supply outcomes and will support housing choice in residential zones across the Waverley LGA.

3.3 Local

The planning proposal is generally consistent with the local strategic plans for the Waverley LGA. An assessment of the consistency of the proposal with the relevant local plans is included in **Table 3**.

Table 3 Local strategic planning assessment

Local Strategies	Justification
Waverley Local Strategic Planning Statement 2020-2036	<p>The Waverley LSPS plans for Waverley's economic, social and environmental needs to 2036.</p> <p>The planning proposal is consistent with the relevant priorities and actions of the Waverley LSPS, including:</p> <ul style="list-style-type: none"> <i>Planning Priority 6: Facilitate a range of housing opportunities in the right places to support and retain a diverse community</i> <i>Housing Priority H5 Ensure new development is consistent with desired future character</i> <p>The Department considers the proposal is consistent with the priorities of the LSPS as it does not seek to inhibit residential development. Rather, it seeks to enable other lower density forms of residential development to be eligible to the same FSR controls that currently apply to dwellings and dual occupancies within the Waverley LGA's R2, R3 and R4 zones.</p>
Waverley Community Strategic Plan 2022-2032	<p>The Waverley Community Strategic Plan (Waverley 2032), adopted by Council in June 2022, sets out the Waverley community's vision for the next 10 years. It identifies the priorities for the future and objectives and strategies to achieve the community vision, including:</p> <ul style="list-style-type: none"> <i>Objective 2.6 Control and manage development to protect the intrinsic values of the community including aesthetics, size, heritage and population</i> <p>The Department considers the proposal is consistent with the CSP as it seeks to clarify existing exceptions to FSR provisions and support local character consistent with the land use zone objectives.</p>
Waverley Local Housing Strategy 2020-2036	<p>The Waverley Local Housing Strategy (LHS) provides the framework to guide the future of housing in Waverley over the next 20 years. The LHS was endorsed by the Department in July 2021, subject to requirements and advisory notes.</p> <p>The Department considers the proposal to be consistent with the relevant local priorities of the LHS, including:</p> <ul style="list-style-type: none"> <i>Priority H1 Manage housing growth sustainably and in the right location</i> <i>Priority H5 Ensure new development is consistent with the desired future character</i> <p>The proposal does not seek to inhibit housing growth and will ensure existing FSR provisions apply consistently to low-density residential development in Waverley's R2, R3 and R4 zones.</p>

3.4 Local planning panel (LPP) recommendation

On 24 February 2024 the Waverley LPP considered a report on a planning proposal which sought general updates to the Waverley LEP 2012, including the proposed amendments to clause 4.4A.

The WLPP advised Council (amongst many things) that it:

- Supported the progression of the proposal for Gateway determination and public exhibition.

- Recommended that Council split the proposal in two, with amendments to Clause 4.4A in one Planning Proposal and the remaining amendments to be in another Planning, to ensure the amendment to clause 4.4A is expedited.

On 19 March 2024 Council considered a report on the proposal and the advice of the LPP. Council resolved to support the proposed amendment to the LEP proceeding to Gateway and to request to undertake the role Local Plan-Making Authority.

The planning proposal was updated to address the recommendations of the Waverley LPP. On 27 March 2024, the subject proposal (PP-2024-668) was submitted separately for Gateway determination.

3.5 Section 9.1 Ministerial Directions

The planning proposal's consistency with relevant section 9.1 Directions is discussed below:

Table 4 9.1 Ministerial Direction assessment

Directions	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
1.1 Implementation of Regional Plans	Consistent	<p>The objective of this direction is to give legal effect to the vision, land use strategy, goals, directions and actions contained in Regional Plans.</p> <p>Consistency with these plans is discussed assessed in Section 3.1 of this report.</p>
6.1 Residential zones	Consistent	<p>Direction 6.1 aims to encourage a variety of housing types, make efficient use of infrastructure and service and minimise the impact of residential development on the environment and resource lands.</p> <p>This Direction applies to any planning proposal that would affect land within an existing residential zone and is relevant as the proposal relates to land within the existing R2, R3 and R4 residential zones in the Waverley LGA.</p> <p>The proposal is consistent with this direction as it does not seek to alter the existing residential zoning or reduce the permissible residential density of the subject land.</p> <p>The proposal will ensure exceptions to FSR standards are consistently permitted for low density residential land uses in the R2, R3 and R4 zones. The planning proposal states that this was Council's intended effect of the clause and will support local character, consistent with the land use zone objectives.</p> <p>The planning proposal is consistent with this Direction.</p>

3.6 State environmental planning policies (SEPPs)

The Department has considered the proposal against key SEPPs considered of relevance to the proposal.

SEPPs	Consistent/ Inconsistent/ Unresolved	Reasons for Consistency or Inconsistency
State Environmental Planning Policy (Exempt and Complying Development Codes) 2008	Consistent	The Department is satisfied that the proposal will not hinder the operation of the SEPP.

4 Site-specific assessment

4.1 Environmental

The planning proposal states that there are unlikely to be any adverse environmental effects as a result of the planning proposal.

The planning proposal applies to residential zoned land within an established urban area. It is not expected to have any adverse environmental impacts and is unlikely to adversely impact critical habitat areas or threatened species, populations or ecological communities, or their habitats within the Waverley LGA.

The proposal does not seek to rezone land. It seeks to apply existing exemptions to FSR provisions in the Waverley LEP 2012 that apply to dual occupancies and dwelling houses to other permissible low-rise residential uses on residentially zoned land. This is consistent with the objectives of the R2, R3 and R4 where these uses are permitted. Accordingly, impacts are within the bounds of what is expected in these zones.

For abundant clarity during consultation, it is recommended that the planning proposal is updated to provide a simple plain English explanation for the community to understand the impact and intended outcome in residential areas in the Waverley LGA.

4.2 Social and economic

The proposal is unlikely to generate any significant adverse social or economic impacts.

The proposal does not seek to rezone land or reduce the permissible density of land in the Waverley LGA. It seeks to expand the application of the existing LEP provisions for 'exception to floor space ratio' controls to include 'attached dwellings' and 'semi-detached' dwellings. The planning proposal states that this was originally intended by Council.

The Department considers the impact of any potential increase in the permissible FSR for these development types to be of minor significance, as the proposed amendments to the existing clause 4.4A will ensure consistency in the bulk and scale of the low-rise housing types across Waverley LGA's residential zones.

4.3 Infrastructure

There is no specific infrastructure demand that will directly result from the planning proposal. Notwithstanding this, infrastructure need will be subject to detailed assessment as part of any subsequent DA's in the Waverley LGA's residential zones.

5 Consultation

5.1 Community

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, consistent with the benchmark timeframes of the Guideline.

Council proposes a community consultation period of 28 days which is commensurate to the benchmark timeframes.

5.2 Agencies

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

Given the administrative nature of the planning proposal, agency consultation on this proposal is not considered necessary.

6 Timeframe

Council proposes a 7 month timeframe 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 7 March 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 relates to a local planning matter and is consistent with the overarching strategic plans and relevant Ministerial Directions.

8 Assessment summary

The planning proposal to amend clause 4.4A of the Waverley LEP 2012 is supported to proceed with conditions for the following reasons:

- The proposal is consistent with the relevant overarching state and local strategic plans and policies and directions.
- The proposal will expand clause 4.4A to apply to permissible low-rise housing types increasing consistency of development standards in residential zones.

- An amendment to the Waverley LEP 2012 is the best means of achieving the objectives and intended outcomes of the planning proposal.

Based on the assessment outlined in this report, the proposal must be updated before consultation to:


- Remove all references to the proposed amendment to clause 4.5(3) of the Waverley LEP 2012.
- Include a statement that the proposed provisions will be subject to Parliamentary Counsel drafting should the proposal proceed to finalisation.
- Include a plain English explanation to help the community understand the impacts on existing R2, R3 and R4 residential areas in the Waverley LGA.

9 Recommendation

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 to:
 - Remove all references to the proposed amendment to clause 4.5(3) of the Waverley LEP 2012.
 - Include a statement that the proposed provisions will be subject to Parliamentary Counsel drafting should the proposal proceed to finalisation.
 - Include an additional plain English explanation of the potential implications of the proposed LEP amendments on the existing R2, R3 and R4 residential zoned land.
2. The planning proposal should be made available for community consultation for a minimum of 20 working days.
3. Given the nature of the planning proposal, it is recommended that the Gateway authorise council to be the local plan-making authority.
4. The timeframe for the LEP to be completed is on or before 7 March 2025.



30/4/2024

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