



**W A V E R L E Y**  
COUNCIL

## **STRATEGIC PLANNING AND DEVELOPMENT COMMITTEE MEETING**

A meeting of the STRATEGIC PLANNING AND DEVELOPMENT COMMITTEE will be held at Waverley Council Chambers, Cnr Paul Street and Bondi Road, Bondi Junction at:

**7.30 PM, TUESDAY 5 MARCH 2024**

A handwritten signature in black ink, appearing to read 'Emily Scott', is positioned above the printed name.

Emily Scott  
**General Manager**

Waverley Council  
PO Box 9  
Bondi Junction NSW 1355  
DX 12006 Bondi Junction  
Tel. 9083 8000  
E-mail: [info@waverley.nsw.gov.au](mailto:info@waverley.nsw.gov.au)

## Delegations of the Waverley Strategic Planning and Development Committee

On 10 October 2017, Waverley Council delegated to the Waverley Strategic Planning and Development Committee the authority to determine any matter **other than**:

1. Those activities designated under s 377(1) of the *Local Government Act* which are as follows:
  - (a) The appointment of a general manager.
  - (b) The making of a rate.
  - (c) A determination under section 549 as to the levying of a rate.
  - (d) The making of a charge.
  - (e) The fixing of a fee
  - (f) The borrowing of money.
  - (g) The voting of money for expenditure on its works, services or operations.
  - (h) The compulsory acquisition, purchase, sale, exchange or surrender of any land or other property (but not including the sale of items of plant or equipment).
  - (i) The acceptance of tenders to provide services currently provided by members of staff of the council.
  - (j) The adoption of an operational plan under section 405.
  - (k) The adoption of a financial statement included in an annual financial report.
  - (l) A decision to classify or reclassify public land under Division 1 of Part 2 of Chapter 6.
  - (m) The fixing of an amount or rate for the carrying out by the council of work on private land.
  - (n) The decision to carry out work on private land for an amount that is less than the amount or rate fixed by the council for the carrying out of any such work.
  - (o) The review of a determination made by the council, and not by a delegate of the council, of an application for approval or an application that may be reviewed under section 82A of the *Environmental Planning and Assessment Act 1979*.
  - (p) The power of the council to authorise the use of reasonable force for the purpose of gaining entry to premises under section 194.
  - (q) A decision under section 356 to contribute money or otherwise grant financial assistance to persons,
  - (r) A decision under section 234 to grant leave of absence to the holder of a civic office.
  - (s) The making of an application, or the giving of a notice, to the Governor or Minister.
  - (t) This power of delegation.
  - (u) Any function under this or any other Act that is expressly required to be exercised by resolution of the council.
2. Despite clause 1(i) above, the Waverley Strategic Planning and Development Committee does not have delegated authority to accept any tenders.
3. The adoption of a Community Strategic Plan, Resourcing Strategy and Delivery Program as defined under sections 402, 403, and 404 of the *Local Government Act*.

## **Statement of Ethical Obligations**

Councillors are reminded of their oath or affirmation of office made under section 233A of the Act and their obligations under Council's code of conduct to disclose and appropriately manage conflicts of interest.

## **Live Streaming of Meeting**

This meeting is streamed live via the internet and an audio-visual recording of the meeting will be publicly available on Council's website.

By attending this meeting, you consent to your image and/or voice being live streamed and publicly available.

## AGENDA

### PRAYER AND ACKNOWLEDGEMENT OF INDIGENOUS HERITAGE

The Chair will read the following Opening Prayer and Acknowledgement of Indigenous Heritage:

*God, we pray for wisdom to govern with justice and equity. That we may see clearly and speak the truth and that we work together in harmony and mutual respect. May our actions demonstrate courage and leadership so that in all our works thy will be done. Amen.*

*Waverley Council respectfully acknowledges our Indigenous heritage and recognises the ongoing Aboriginal traditional custodianship of the land which forms our Local Government Area.*

#### 1. Apologies/Leaves of Absence

#### 2. Declarations of Pecuniary and Non-Pecuniary Interests

#### 3. Addresses by Members of the Public

#### 4. Confirmation of Minutes

PD/4.1/24.03	Confirmation of Minutes - Strategic Planning and Development Committee Meeting - 6 February 2024 .....	5
--------------	--	---

#### 5. Reports

PD/5.1/24.03	Planning Proposal - Dwelling Density - Exhibition .....	10
PD/5.2/24.03	Planning Proposal - Affordable Housing Contribution Scheme - Post-Exhibition .....	40
PD/5.3/24.03	Waverley Development Control Plan 2022 (Amendment No. 2) - Flood Planning - Adoption .....	49
PD/5.4/24.03	Waverley Development Control Plan 2022 (Amendment No. 3) - Excavation - Exhibition .....	59
PD/5.5/24.03	Clause 4.6 Variations to Development Standards - Quarterly Report - October-December 2023 .....	68
PD/5.6/24.03	Council Emissions, Energy Use and Water Savings - Annual Report .....	73
PD/5.7/24.03	Draft South Head General Cemetery Plan of Management - Exhibition .....	81

#### 6. Urgent Business

#### 7. Meeting Closure



**CONFIRMATION OF MINUTES**  
**PD/4.1/24.03**

**Subject:** Confirmation of Minutes - Strategic Planning and Development Committee Meeting - 6 February 2024

**TRIM No:** A23/0763

**Manager:** Richard Coelho, Executive Manager, Governance

---

**RECOMMENDATION:**

That the minutes of the Strategic Planning and Development Committee meeting held on 6 February 2024 be received and noted, and that such minutes be confirmed as a true record of the proceedings of that meeting.

**Introduction/Background**

The minutes of committee meetings must be confirmed at a subsequent meeting of the committee, in accordance with clause 20.23 of the Code of Meeting Practice.

**Attachments**

1. Strategic Planning and Development Committee Meeting Minutes - 6 February 2024 .



**MINUTES OF THE STRATEGIC PLANNING AND DEVELOPMENT COMMITTEE MEETING  
HELD AT WAVERLEY COUNCIL CHAMBERS, CNR PAUL STREET AND BONDI ROAD, BONDI JUNCTION ON  
TUESDAY, 6 FEBRUARY 2024**

**Present:**

Councillor Steven Lewis (Chair)	Hunter Ward
Councillor Paula Masselos (Mayor)	Lawson Ward
Councillor Sally Betts	Hunter Ward
Councillor Angela Burrill	Lawson Ward
Councillor Ludovico Fabiano	Waverley Ward
Councillor Leon Goltsman	Bondi Ward
Councillor Michelle Gray	Bondi Ward
Councillor Tony Kay	Waverley Ward
Councillor Elaine Keenan	Lawson Ward
Councillor Tim Murray	Waverley Ward
Councillor Dominic Wy Kanak	Bondi Ward

**Staff in attendance:**

Emily Scott	General Manager
Sharon Cassidy	Director, Assets and Operations
Tara Czinner	Director, Corporate Services
Fletcher Rayner	Director, Planning, Sustainability and Compliance
Ben Thompson	Director, Community, Culture and Customer Experience

*At the commencement of proceedings at 7.39 pm, those present were as listed above.*

*Crs Burrill, Kay and Keenan and Wy Kanak attended the meeting by audio-visual link.*

**PRAYER AND ACKNOWLEDGEMENT OF INDIGENOUS HERITAGE**

The General Manager read the following Opening Prayer and Acknowledgement of Indigenous Heritage:

*God, we pray for wisdom to govern with justice and equity. That we may see clearly and speak the truth and that we work together in harmony and mutual respect. May our actions demonstrate courage and leadership so that in all our works thy will be done. Amen.*

*Waverley Council respectfully acknowledges our Indigenous heritage and recognises the ongoing Aboriginal traditional custodianship of the land which forms our local government area.*

**1. Apologies**

Apologies were received from Cr Will Nemesh.

**2. Declarations of Pecuniary and Non-Pecuniary Interests**

The Chair called for declarations of interest and none were received.

**3. Addresses by Members of the Public**

There were no addresses by members of the public.

**4. Confirmation of Minutes**

**PD/4.1/24.02 Confirmation of Minutes - Strategic Planning and Development Committee Meeting - 5 December 2023 (A23/0763)**

**MOTION / UNANIMOUS DECISION**

Mover: Cr Lewis

Seconder: Cr Masselos

That the minutes of the Strategic Planning and Development Committee meeting held on 5 December 2023 be received and noted, and that such minutes be confirmed as a true record of the proceedings of that meeting.

## 5. Reports

### PD/5.1/24.02 Bronte Park and Beach Plan of Management - Adoption (A16/0168)

#### MOTION / UNANIMOUS DECISION

Mover: Cr Masselos

Seconder: Cr Keenan

That Council:

1. Notes the feedback on the draft Bronte Park and Beach Plan of Management received during public exhibition, as set out in the report, and that no substantial changes have been required to the draft Plan of Management as a result of the consultation.
2. Adopts the Bronte Park and Beach Plan of Management attached to the report (Attachment 1) in accordance with section 40 of the *Local Government Act 1993* and section 3.23(6) of the *Crown Lands Management Act 2016*.

### PD/5.2/24.02 Environmental Upgrade Agreements (A22/0263)

#### MOTION / UNANIMOUS DECISION

Mover: Cr Gray

Seconder: Cr Masselos

That Council does not extend its services agreement with Better Building Finance to deliver Environmental Upgrade Agreements due to no agreements being signed in the two-year trial period.

### PD/5.3/24.02 Communication Panels - Update (A24/0099)

#### MOTION

Mover: Cr Murray

Seconder: Cr Fabiano

That Council:

1. Approves the draft list of communication panel locations, as set out in the report, for the purposes of tendering.
2. Approves the advertisement content criteria for the communication panels, as set out in the report.
3. Notes that Council will determine the exact location of the communication panels and bus shelters in its evaluation of the bus shelter advertising tender, which will be reported to Council.

AT THIS STAGE IN THE PROCEEDINGS, A PROCEDURAL MOTION TO MOVE INTO CLOSED SESSION TO DEAL WITH THIS ITEM, MOVED BY CR MASSELOS AND SECONDED BY CR MURRAY, WAS PUT AND DECLARED CARRIED UNANIMOUSLY.

*At 7.50 pm, Council moved into closed session.*

A PROCEDURAL MOTION TO RESUME IN OPEN SESSION, MOVED BY CR MASSELOS AND SECONDED BY CR BETTS, WAS THEN PUT AND DECLARED CARRIED UNANIMOUSLY.

*At 7.59 pm, Council resumed in open session.*

**AMENDMENT**

Mover: Cr Kay  
Seconder: Cr Betts

That clause 1 be amended to read as follows:

‘Approves the draft list of communication panel locations, as set out in the report, for the purposes of tendering, subject to there being only two panels under awnings on Bondi Road (between Park Parade and Denham Street), rather than four.’

THE AMENDMENT WAS PUT AND DECLARED LOST.

THE MOTION WAS THEN PUT AND DECLARED CARRIED.

**DECISION**

That Council:

1. Approves the draft list of communication panel locations, as set out in the report, for the purposes of tendering.
2. Approves the advertisement content criteria for the communication panels, as set out in the report.
3. Notes that Council will determine the exact location of the communication panels and bus shelters in its evaluation of the bus shelter advertising tender, which will be reported to Council.

**Division**

**For the Motion:** Crs Fabiano, Gray, Keenan, Lewis, Masselos, Murray and Wy Kanak.

**Against the Motion:** Crs Betts, Burrill, Goltsman and Kay.

**6. Urgent Business**

There was no urgent business.

**7. Meeting Closure**

**THE MEETING CLOSED AT 8.33 PM.**

.....  
**SIGNED AND CONFIRMED**  
**CHAIR**  
**5 MARCH 2024**

**REPORT**  
**PD/5.1/24.03**

**Subject:** Planning Proposal - Dwelling Density - Exhibition

**TRIM No:** PP-3/2023

**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 to the report (Attachment 1) to limit the loss of residential density in R3 Medium Density Residential and R4 High Density Residential zones 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*.

**1. Executive Summary**

The planning proposal (Attachment 1) seeks to preserve existing residential dwelling density by limiting further loss of dwellings within parts of the Waverley local government area (LGA) that are best suited to accommodate density. Specifically, the planning proposal proposes to amend the *Waverley Local Environmental Plan 2012* (WLEP) as follows:

- Introduce a new local provision (cl 6.17) to limit the reduction of dwelling numbers in R3 and R4 zones by more 15% of all existing dwellings on site, rounded up to the nearest whole dwelling.
- Amend objective in R3 and R4 zones to read 'To increase or preserve residential dwelling density across the site'.

'Residential dwelling density' refers to the number of residential dwellings across one site. It does not relate to the gross floor area (GFA) of buildings containing dwellings, bedroom numbers or the number of occupants that any dwelling is capable of containing.

This planning proposal is considered appropriate under the site-specific and strategic merit tests and is required for Council to achieve its broader strategic vision to increase the availability of housing generally, promoting housing affordability, housing diversity and maintain existing stock of affordable housing.

**2. Introduction/Background**

An emerging development trend in the Waverley LGA has seen existing medium to high density residential buildings being replaced with large single detached dwellings, large luxury apartments or dual occupancies.

This poses an issue for the area due to the loss of often affordable Inter War housing, but also a loss of housing availability generally.

This trend also challenges Council's strategic planning intent of providing density in the right places, given that the limited R3 and R4 zones should be providing Council the opportunity to maintain and increase its dwelling numbers. An assessment of all the development applications and modifications that reduced dwelling density was studied from 1 January 2017 to 22 November 2022. During this time 92 constructed dwellings were submitted for removal, with dozens more reduced from approved buildings.

Without preserving density within the R3 and R4 zones, housing pressures will unreasonably transfer to other zones less suited to increases such as the R2 Low Density Residential zone or business zones.

A new objective was added into the R3 and R4 zones in September 2022 (CM/7.6/22.03), requiring development in those zones 'to increase or preserve residential dwelling density', however, it was found to be unreasonable to refuse consent on the sole basis of inconsistency with the objective, especially if an application was to be appealed in the NSW Land and Environmental Court. Supplementary provisions as included within this planning proposal would support and strengthen the existing objective.

Following CM/8.1/23.12, a Councillor briefing was held on 13 February 2024. Arising from feedback received, the planning proposal has been updated as discussed in this report.

### 3. Relevant Council Resolutions

Meeting and date	Item No.	Resolution
Council 12 December 2023	CM/8.1/23.12	That Council defers this matter to a Councillor workshop in early 2024 for consideration of the planning proposal and to discuss how it fits into Council's strategic vision.
Strategic Planning and Development Committee 5 December 2023	PD/5.2/23.12	That Council: <ol style="list-style-type: none"> <li>1. Forwards the planning proposal attached to the report (Attachment 1) to prevent the loss of residential density in R3 Medium Density Residential and R4 High Density Residential zones to the Department of Planning and Environment (DPE) for Gateway determination for the purposes of public exhibition.</li> <li>2. Publicly exhibits the planning proposal in accordance with any conditions of the Gateway determination that may be issued by the DPE.</li> <li>3. Requests and accepts, if offered, the role of the planning proposal authority from the DPE to exercise the delegations issued by the Minister under section 3.36 of the <i>Environmental Planning and Assessment Act 1979</i> to amend the <i>Waverley Local Environmental Plan 2012</i>.</li> </ol>
Council 15 March 2022	CM/7.6/22.03	That Council: <ol style="list-style-type: none"> <li>1. Supports the planning proposal attached to the report to repeal the <i>Waverley Local Environmental Plan 2012</i> and establish the <i>Waverley Local Environmental Plan 2022</i>, subject to deleting the reference that supports the introduction of the previously proposed land acquisition</li> </ol>

		<p>map (last paragraph of section 2.4, page 87 of Attachment 4 of the report).</p> <p>2. Notes that the War Memorial Hospital Complex is proposed to be listed as a Heritage Conservation Area in the heritage planning proposal.</p> <p>3. Notes the matters raised in the submissions made on the public exhibition of the draft <i>Waverley Local Environmental Plan 2022</i> planning proposal.</p> <p>4. Forwards the submissions, planning proposal and exhibition report to the Department of Planning and Environment, and requests that they take the post-exhibition changes into consideration in the post-Gateway assessment, as set out in Table 1 of the report.</p> <p>5. Requests the Department of Planning and Environment to exercise the delegations issued by the Minister under section 59 of the <i>Environmental Planning and Assessment Act 1979</i> in relation to the making of the new Local Environmental Plan.</p> <p>6. Notifies property owners of Council's decision.</p> <p>7. Notes that despite the 10-week consultation period for the <i>Waverley Local Environmental Plan 2022</i>, the 10 weeks occurred during the time of the Council caretaker period, the Council elections of 2021, as well as the six-week Christmas school holiday period, hampering community engagement and the consultation period.</p>
--	--	---

#### 4. Discussion

This planning proposal seeks to amend the *Waverley Local Environmental Plan 2012* as follows:

*Table 1. Proposed changes to WLEP 2012.*

Section of the WLEP 2012	Existing	Proposed
Land Use Table – R3 Medium Density Residential Zone	Objective: To increase or preserve residential dwelling density.	Update objective: To increase or preserve residential dwelling density across the site.
Land Use Table – R4 High Density Residential Zone	Objective: To increase or preserve residential dwelling density.	Update objective: To increase or preserve residential dwelling density across the site.
Clause 6.17 Residential Dwelling Density in R3 and R4 zones	No existing clause.	Introduce a new local provision (cl 6.17) to prevent the reduction of dwelling numbers in R3 and R4 zones by any more 15% of all existing dwellings on site,



		<p>rounded up to the nearest whole dwelling.</p> <p>The proposed clause would have a census date (date of clause commencement) to address the issue of cumulative impact, particularly in the case of strata unit amalgamation.</p>
--	--	---

This planning proposal does not intend to prevent a change of use to:

- Non-residential permissible uses in the R3 and R4 zones.
- Types of residential accommodation which are inherently more affordable than traditional self-contained residential flat building units – being boarding houses or co-living housing.
- Types of residential accommodation which meets the specific needs of seniors, people who may be socially disadvantaged or people with a disability - being group homes and residential care facilities.

Under this proposal, two adjoining apartment units in any building would be able to be consolidated to meet the needs of a growing family or accessibility requirements of someone ageing in place. Although limited by a development standard of not more than 15% dwelling reduction, the inclusion of a census date would assist to protect against the cumulative impact of separate development applications and assist with preserving existing density in the R3 and R4 zones.

### Impact on housing affordability

Factors that contribute to rental and purchasing affordability challenges include the limited availability of smaller, modest dwellings to meet the growing proportion of small households. The proposal will help to preserve this reasonable stock by preventing modestly sized and often older unit stock (which is inherently more affordable) from being replaced with fewer luxury dwellings.

Many buildings reduced in dwelling density since 2016 contained one or more units identified as 'low rental' as defined under the Housing SEPP 2021. 'Low rental' units provide housing for key workers, and single-person elderly households, demonstrated by ABS Census 2021 data that shows that almost 50% of key workers (working in education, health care and social assistance industries) pay less than the median rental price for the LGA. Without retaining the inherently affordable smaller and older housing stock key workers and single-person elderly households will struggle to stay in Waverley.

### WLPP advice

The planning proposal, which was initially drafted to not allow for any reduction of dwellings, was referred to the Waverley Local Planning Panel (WLPP) on 22 November 2023 for advice (see Attachment 2). The Panel made the following comments unanimously:

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

- *Agrees the proposal has strategic merit as, if implemented, it will preserve the existing residential dwelling density and prevent the further loss of dwellings/units within parts of the Waverley LGA which are best suited to accommodate density,*
- *Supports the recommendation for the planning proposal to proceed to Gateway Determination and public exhibition,*

- *Advises Council to consider the unintended consequences of the impact of the inclusion of this provision, for example on individuals wishing to age in place. Legal advice should be sought to explore mechanisms to allow for variations in exceptional circumstances, and*
- *Recommends Council make a submission to the NSW Department of Planning to implement the provisions of this planning proposal State-wide through the State Environmental Planning Policy (Housing) 2021.*

The Panel explained that the 'age in place' scenario referred to the instance of an individual who owns and occupies a detached house and owns two one-bedroom investment units in an apartment block, may wish to sell the detached house and move into their two units but would like to combine them into one two-bedroom unit to suit their household needs. Another example may include an instance where a growing family lives in a unit and wishes to purchase and amalgamate with an adjoining unit to increase their dwelling floorplate.

In response to the Panel and Councillor feedback, reasonable flexibility has been included within the proposal that will allow for the consolidation of no more than 15% of all dwellings currently constructed on site, rounded up to the nearest number. This will allow for a household to consolidate two units into one, but prevent an entire unit block being converted into one luxury dwelling.

### **Complying development certificate pathway**

Under the complying development certificate (CDC) pathway, development must not result in any additional bedrooms or gross floor area in the building. The amalgamation of units is likely to produce an increase in gross floor area, so applicants would still need to pursue a DA pathway rather than a CDC, resulting in the provisions introduced under this planning proposal to apply and preventing the amalgamation.

Further, a residential flat building cannot be demolished or be subject to a change of use under a CDC, so developers will not be able use the *State Environmental Planning Policy (Exempt and Complying Development) 2008* as a loophole around the proposed provisions.

### **HAC advice**

The planning proposal was presented to the Waverley Housing Advisory Committee (HAC) on 22 November 2023, where positive feedback was received on the matter. Detailed minutes from the recent HAC meeting will be reported to Council in early 2024 after the next HAC meeting, as required under the HAC Terms of Reference.

### **Strategic merit**

This planning proposal is considered to have strategic merit as it would support the objectives of the R3 and R4 zones and achievement of housing targets outlined in the Waverley Local Housing Strategy. It is also consistent with the following Waverley LHS, LSPS and CSP priorities and directions:

- *LHS Priority H1: Manage housing growth sustainably and in the right location.*
- *LHS Priority H2: Encourage a range of housing options to support and retain a diverse community.*
- *CSP Direction 1.7.4: Manage housing supply, choice and affordability with access to jobs, services and public transport.*
- *LSPS Planning Priority 6: Facilitate a range of housing opportunities in the right places to support and retain a diverse community.*

The location, capacity and built form of the R3 and R4 zones have been subject of thorough community consultation since the establishment of the latest Waverley Local Environmental Plan in 2012. The zone boundaries and maximum permissible building heights and floor space ratios establish the possible dwelling

capacity of these areas and represent the density that has been agreed to by the community and Councillors. Facilitating development that aligns with the agreed density achieves the strategic direction of the R3 and R4 zones.

### Site-specific merit

This planning proposal will not result in an adverse natural environment, economic or social impacts, nor have a negative impact on existing or future uses of the affected sites, passing the site-specific merit test.

### Councillor briefing

This matter was presented for discussion at a Councillor briefing held on 13 February 2024. Table 3 details the key questions and comments raised.

*Table 3. Matters raised at the Councillor briefing.*

Question/Comment	Response
How problematic is this trend given that Waverley is meeting its housing targets and is still experiencing an overall net increase of dwelling density? Do we need to intervene?	A planning response is required to address the negative impact on housing targets and loss of somewhat more affordable housing.
What relationship does dwelling density and population density have? Is consolidation reasonable if the resident capacity is preserved?	The trend typically involves the replacement of mostly 2 bedroom apartments, as well as some 1 bedroom apartments, with predominantly larger 2 or 3 bedroom stock. The average household size for the different stock are as follows: <ul style="list-style-type: none"> <li>• 1BR: 1.4 persons</li> <li>• 2BR: 2 persons</li> <li>• 3BR: 2.7 persons</li> <li>• 4BR: 3.4 persons</li> </ul> Therefore, any reduction in dwellings would result in a reduction of population on average.
Will this provision prevent a growing family who do not want to move area from expanding?	The proposed provision has been worded to allow for the amalgamation of no more than 15% of dwellings on a site, rounded up to the nearest dwelling number. This means that a growing family who own two adjoining units can amalgamate them.
Will this provision prevent small, inaccessible and dilapidated units from being upgraded in size and quality?	Upgrades for the purposes of amenity and accessibility will still be possible without reducing dwelling density on site. Recent examples include DA-80/2023 and DA-223/2021 at 241 Bondi Road, Bondi and DA-492/2021 at 11A Fletcher Street, Tamarama. <p>Further, flexibility has been provided within the proposed provision that allows for the reduction of at least 1 unit, which can facilitate amenity upgrades of small, inaccessible and dilapidated buildings.</p>

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

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

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

The planning proposal would apply to R3 and R4 zones as shown on Figure 1 below. The planning proposal has more detailed maps attached and would be used on Council’s Have Your Say website during exhibition.

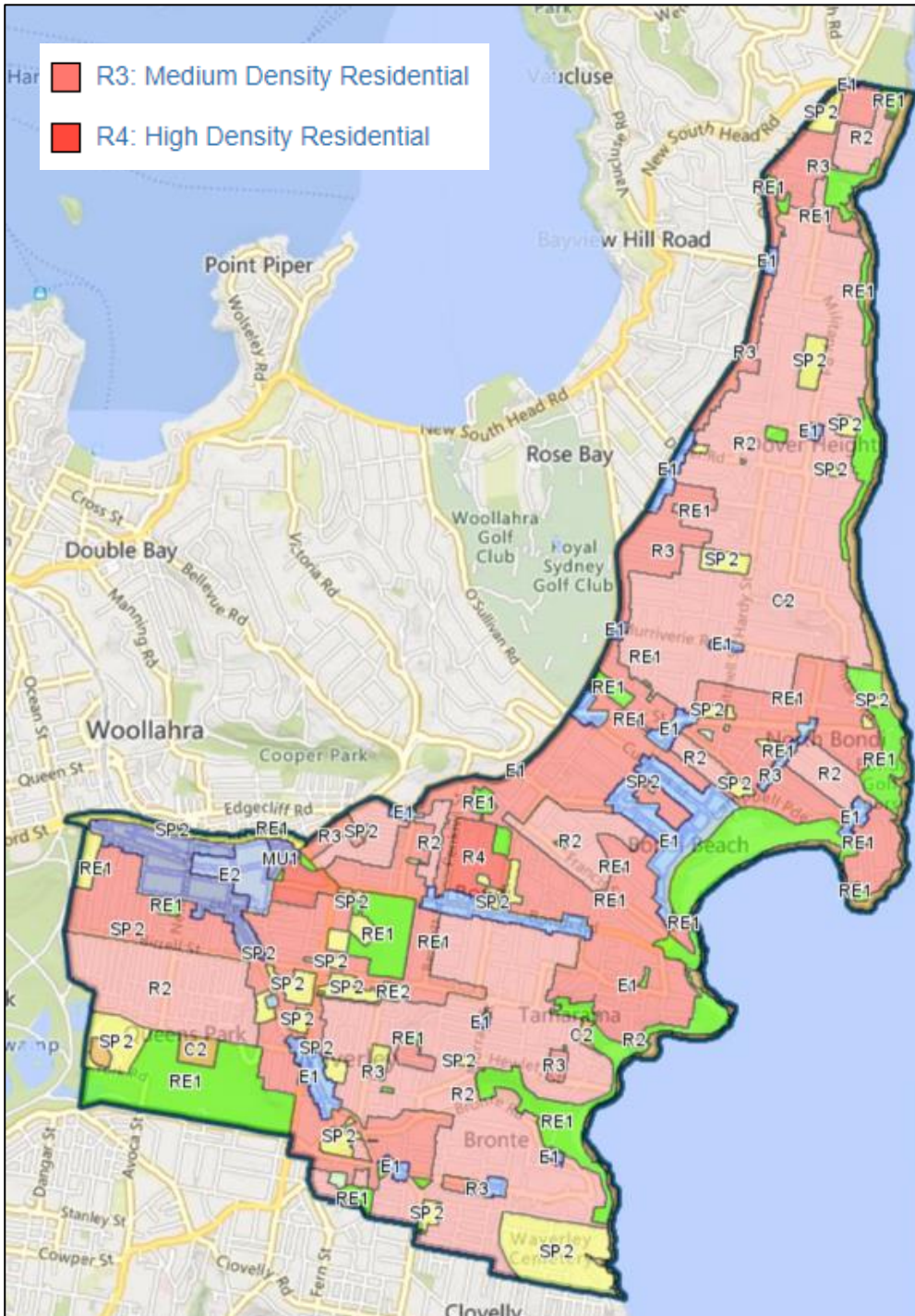


Figure 1. Waverley zone map.

Public exhibition is likely to include at minimum a display on the Council's website. The Gateway determination issued by DPHI 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 (PPA) must consider any submissions made concerning the proposed instrument and the report of any public hearing.

## **6. Conclusion**

The planning proposal (Attachment 1) is expected to help to limit the loss of existing residential dwelling density and prevent the further loss of dwellings/units within parts of the Waverley LGA that are best suited to accommodate density. It is recommended that the planning proposal proceed to DPHI for Gateway determination.

## **7. Attachments**

1. Planning proposal - Dwelling density [↓](#)
2. WLPP - 22 November 2023 - Minutes [↓](#) .



# PLANNING PROPOSAL

Residential dwelling density in the R3 & R4 zones



## CONTENTS

EXECUTIVE SUMMARY.....	3
INTRODUCTION .....	3
PART 1 – OBJECTIVES AND INTENDED OUTCOMES .....	5
PART 2 – EXPLANATION OF PROVISIONS.....	6
PART 3 – JUSTIFICATION OF STRATEGIC AND SITE-SPECIFIC MERIT .....	7
<b>3.1 STRATEGIC MERIT</b> .....	7
<b>3.2 SITE SPECIFIC MERIT</b> .....	14
PART 4 – MAPPING.....	16
PART 5 – COMMUNITY CONSULTATION.....	16
PART 6 – PROJECT TIMELINE .....	16
APPENDIX A – LAND ZONE MAP .....	17

### Planning Proposal Information

Council versions:

No.	Date	Version
1	9 November 2023	Sent to Waverley Local Planning Panel
2	23 November 2023	Sent to 5 December 2023 SPDC Meeting
3	14 February 2024	Sent to 5 March 2024 SPDC Meeting

## EXECUTIVE SUMMARY

This Planning Proposal prepared by Waverley Council seeks to amend the *Waverley Local Environmental Plan 2012* by strengthening the existing objective ‘to increase or preserve residential dwelling density’ through and including a new local provision to preserve the existing residential dwelling density in order to prevent the further substantial loss of dwellings/units within the Waverley LGA.

‘Residential dwelling density’ refers to the number of residential dwellings across one site. It does not relate to the gross floor area (GFA) of buildings containing dwellings, bedroom numbers or the number of occupants that any dwelling is capable of containing.

The objective currently in the R3 and R4 zones – ‘to increase or preserve residential dwelling density’ – seeks to help tackle the problematic trend of RFB’s being converted to luxury dual occupancies and single dwellings in areas that are suitable for greater densities. Any DA that results in a loss of dwelling numbers in the R3 and R4 zones would be inconsistent with this objective and in large, the Waverley Local Housing Strategy and housing targets.

The intended outcomes of the Planning Proposal are as follows:

- Introduce a new local provision (cl 6.17) to prevent the reduction of dwelling numbers in R3 and R4 zones by any more 15% of all existing dwellings on site, rounded up to the nearest whole dwelling.
- Amend objective in R3 and R4 zones to read ‘To increase or preserve residential dwelling density across the site’.

The Planning Proposal is considered a ‘Complex’ Planning Proposal, in line with the LEP Making Guidelines criteria.

## INTRODUCTION

An emerging development trend in the Waverley LGA sees existing medium to high density residential buildings being replaced with large single detached dwellings, large luxury apartments or dual occupancies. This poses an issue for the area due to the loss of often affordable Inter War housing, but also a loss of housing availability generally. In some cases, such as the replacement of two dwelling houses with one dwelling house, or replacement of a RFB with one dwelling house, this trend has the potential to change the character of a streetscape. This trend also challenges the Council’s strategic planning of providing density in the right places, given that the limited R3 and R4 zones should be doing the heavy lifting for Council to increase its dwelling numbers.

## AFFECTED LAND

The affected land includes all R3 and R4 zones across the Waverley LGA. This affects approximately 4813 lots within the R3 zone and approximately 99 lots within the R4 zone.

Refer to the Appendix of this report for detailed mapping of the R3 and R4 areas.



## BACKGROUND TO THIS PLANNING PROPOSAL

Waverley is one of the most dense LGA's in Sydney at 79 people/Ha, with apartments reflecting 66% of housing stock in Waverley. The *Waverley Local Housing Strategy* was adopted in 2020 which outlined specific housing targets over the next 10 to 20 years (Table 1). There is limited available land in the LGA for residential uses that is not already built upon and there are no significant urban renewal opportunities being led by Council or State Government. Therefore, housing growth will come through as infill development, i.e. in the form of modifications or the demolition and reconstruction of existing buildings.

**Table 1 - Housing Targets released in 2020 in the Waverley Local Housing Strategy.**

Target periods	2016-2021	6-10 year	11-20 year	2036 cumulative	Share of District Target
Target development					
Implied projections	700	350	1,450	2500	1.6%
Constant share of GSC target	1,250	993	1,986	4229	2.7%
Historic annual completions	1,250	1,011	1,400	3661	2.3%
Capacity sense-check					
Scenario 1	1,250	734	1,467	3451	2.2%
Scenario 2	1,250	922	1,843	4015	2.5%
Scenario 3 (HMST)	1,250	1,325	2,649	5224	3.3%
Draft Target					
Draft target	1,250	761	1,450	3461	2.2%

The ability for development in Waverley to align with these targets is threatened by an increasing trend in Waverley where Development Applications are being lodged which seek to convert RFBs and other forms of high density residential building types into dwelling houses or fewer, larger apartments. The net loss of units through these developments has been eroding Waverley's higher density built form on sites in the R3 and R4 zones.

Woollahra Municipal Council and City of Sydney Council have reported a similar trend.

As a result of this trend, the WLEP was amended on the 30 September 2022 to mitigate the loss of density in order to facilitate housing targets, the below objective was added to the R3 and R3 zones:

- *To increase or preserve residential dwelling density.*

However, there are concerns that it may be too difficult to refuse consent on the sole basis of inconsistency with the objective above, especially if this basis were to be challenged in an appeal to the Land and Environmental Court. Therefore, it has been identified that changes to the WLEP are required to strengthen the consent authority's decision to maintain residential dwelling density within the R3 and R4 zones.

## HISTORY AND CURRENT PLANNING CONTROLS

Amendment 24 to the WLEP 2012 was finalised on 30 September 2022, which included the addition of the following objection into the R3 and R4 zones:

- *To increase or preserve residential dwelling density.*

This objective aims to stop new developments from reducing the net number of residential dwellings/units across a site.

Prior to 30 September 2022 there were no controls or objectives that related to dwelling density in the LEP or DCP.

## CONTEXT

As identified in the Our Liveable Places Centres Strategy, Waverley is a very walkable LGA, with 90% of residents being within a 20min walk to a local centre with essential goods and services. Whilst this local walkability score is excellent, access to Bondi Junction or the CBD via public transport can be over 30 mins and 60 min respectively from approximately 60% of the LGA.

There is a rising trend in the Waverley LGA where residential flat buildings and shop top housing in the R3 and R4 zones are being demolished or heavily altered, and replaced with dwelling houses, dual occupancies for RFBs with significantly fewer units than the existing structures, resulting in a net loss of dwellings in generally well connected and serviced areas which can handle existing and future growing capacity under the current development standards.

The erosion of density in the R3 and R4 zones is problematic as it is these zones are identified to increase density, as supported by the community and Council endorsed LEP. If these areas continue to lose density, new locations for density would have to be identified in order to meet the LGA's housing targets, which is often challenging, particularly when the density is already so ideally located.

This Planning Proposal is needed to protect existing dwelling density by strengthening the existing dwelling density objective in the R3 and R4 zones, prohibiting residential dwellings in these zones and introducing an additional local provision to complement the dwelling density zone objective.

'Residential dwelling density' refers to the number of residential dwellings across one site. It does not relate to the gross floor area (GFA) of buildings containing dwellings, bedroom numbers or the number of occupants that any dwelling is capable of containing.

## PART 1 – OBJECTIVES AND INTENDED OUTCOMES

### 1.1 Description Statement

The objective of the planning proposal is to amend the Waverley Local Environmental Plan (WLEP) 2012 to strengthen the existing dwelling density objective in the R3 and R4 zones, and

introduce an additional provision to prevent a substantial reduction in the number of residential dwellings on a particular site.

1.2 Intended Outcomes

The intended outcomes of the proposed amendments to the WLEP are to ensure that Council does not grant consent to any development that significantly reduces the net amount of residential dwellings across medium and high density residential zones. The outcome is to maintain residential dwelling density within these denser zones, that are located in well serviced areas with public transport and access to social infrastructure, essential services, community and cultural services and open space and recreation.

This Planning Proposal does not intend to prevent a change of use to:

- Non-residential permissible uses in the R3 and R4 zones;
- Types of residential accommodation which are inherently more affordable than traditional self-contained residential flat building units – being boarding houses or co-living housing; or
- Types of residential accommodation which meets the specific needs of seniors, people who may be socially disadvantaged or people with a disability - being group homes and residential care facilities.

The proposed amendment is consistent with Council’s resolution of the *Waverley Local Housing Strategy*. This strategy supports retaining existing development capacity.

**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	Existing	Proposed
<b>Land Use Table – R3 Medium Density Residential Zone</b>	Objective: To increase or preserve residential dwelling density.	Update objective: To increase or preserve residential dwelling density across the site.
<b>Land Use Table – R4 High Density Residential Zone</b>	Objective: To increase or preserve residential dwelling density.	Update objective: To increase or preserve residential dwelling density across the site.
<b>Clause 6.17 Residential Dwelling Density in R3 and R4 zones</b>	No existing clause.	Introduce a new local provision (cl 6.17) to prevent the reduction of dwelling numbers in R3 and R4 zones by any more 15% of all existing dwellings on site, rounded up to the nearest whole dwelling.

*Note: The specific wording of clause 6.17 is subject to drafting by NSW Parliamentary Counsel. The below is an example for discussion purposes.*

### **6.17 Residential Dwelling Density in Zone R3 and R4 zones.**

- (1) *The objectives of this clause are as follows—*
  - (a) *To ensure that the carrying out of development on any site within the R3 and R4 zones should not result in a reduction in the number of dwellings that existed on the site as of [date of Planning Proposal Gazette].*
  - (b) *To ensure that the number of dwellings on any site are maintained or increased to meet the demand of the area’s existing and projected population;*
  - (c) *To maintain or increase residential dwelling density within the R3 and R4 zones, which are well serviced areas with public transport and access to social infrastructure, essential services, community and cultural services, and open space and recreation;*
- (2) *This clause applies to land in Zone R3 Medium Density Residential and R4 High Density Residential.*
- (3) *This clause applies to development for the purposes of residential accommodation, except for boarding houses, co-living housing, group homes, and residential care facilities.*
- (4) *Development consent must not be granted or a development consent must not be modified for development to which this clause applies unless the consent authority is satisfied that the residential dwelling density of the development site is not being reduced by more than 15% (rounded up to the closest whole dwelling number) compared to the constructed residential dwelling density on the site on <insert date LEP is made>.*
- (5) *In this clause ‘residential dwelling density’ refers to the number of residential dwellings across one site and does not relate to the gross floor area (GFA) of buildings containing dwellings, bedroom numbers or the number of occupants that any dwelling is capable of containing.*

## **PART 3 – JUSTIFICATION OF STRATEGIC AND SITE-SPECIFIC MERIT**

### **3.1 STRATEGIC 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 (December 2021). 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.

This objective seeks to prevent the problematic trend of RFB’s being converted to luxury dual occupancies and single dwellings in areas that are suitable for greater densities. Any development application that results in a loss of dwelling numbers in R3 and R4 zone is inconsistent with this objective and in large, the Waverley Local Housing Strategy (2020 – 2036) and housing targets.

### Section A – Need for the planning proposal (Strategic Merit)

This section establishes the need for a planning proposal in achieving the key outcomes and objectives. The set questions address the strategic origins of the proposal and whether amending the WLEP is the best mechanism to achieve the aims of the proposal.

#### 1. Is the planning proposal a result of any strategic study or report?

This Planning Proposal is a result of recent research into the matter, prompted by an influx of Development Applications seeking development consent for a substantial reduction.

A desktop assessment of all the development applications and modifications to reduce dwelling density was studied from 1 January 2017 to 22 November 2022. During this time 92 constructed dwellings were submitted for removal, with dozens more reduced from approved buildings. The largest losses came from the proposed demolition of existing boarding house development, and sought to replace with new RFB or seniors housing, as is the case with approved DA-94/2021 for Philip Nursing Home (67 to 45 dwellings, loss of 22). Another larger loss came from the demolition of an existing RFB complex with 22 dwellings, and the replacement with multi-dwelling housing of 9 dwellings (loss of 13).

The most common loss was the slow erosion of density within areas of the LGA which have historically provided good density in ideal locations, however, now offer an enticing development opportunity where larger dwellings (detached dwellings or large apartments) attract a higher premium compared to older apartments. There were 11 applications proposing to convert or alter existing apartment buildings or large dual occupancies into single dwellings (26 to 13, loss of 13). There were 10 applications amalgamating two or three, one/two bedroom units to create a larger unit or penthouse apartment with three or more bedrooms.

#### 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 only means of achieving an appropriate measure to preserve and/or increase residential dwelling density within the R3 and R4 zones. The R3 and R4 zone objective alone was the first step in trying to mitigate this problem and the following paragraph explains why alone the objective is not robust enough.

The starting point for a consent authority during Development Assessment is clause 2.3(2). Before the consent authority can grant consent, they must have to “have regard” to the zone objectives, however, consistency with the objective is not explicitly required. Therefore, an additional local provision is required for all DA’s, complying or breaching a development standard, to assess their proposal against dwelling density provision and to allow the consent authority to grant consent accordingly.

### Section B – Relationship to strategic planning framework<sup>3</sup>. 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 and the Eastern City District Plan as it aims to assist in the preservation and increase of residential dwelling.

**Table 3 – Metropolis of three cities consideration**

Liveability – Housing the city	
Objective 10: Greater Housing supply	The proposal is consistent with objective 10 as it will retain affordable and modest housing types. This Planning Proposal will encourage housing supply and will aim to meet the Waverley housing targets. This plan recognises that not all areas of Greater Sydney are appropriate for significant additional development and Waverley is one of them so it is particularly important to preserve the existing residential density within the areas zoned for medium and higher densities.
Objective 11: Housing is more diverse and affordable	<p>The proposal is consistent with objective 11 as the changes to the LEP help preserve and increase housing affordability by preventing modestly sized units (which are inherently more affordable) from being replaced with fewer luxury ones.</p> <p>Factors that contribute to rental and purchasing affordability challenges include the limited availability of smaller dwellings to meet the growing proportion of small household. Waverley LGA is subject to new developments which seek to reduce density of existing medium to high density residential buildings, in order to provide large mansions or luxury apartments to the market. This poses an issue for the area due to the loss of often affordable Inter War housing, but also a loss of housing availability generally.</p>

**Table 4 –Eastern City District Plan consideration**

Direction: Liveability	
Planning Priority E5: Providing housing supply, choice and affordability, with access to jobs, services and public transport.	The proposal will prevent the reduction of housing in areas that have the best access to jobs, services and transport.

**Table 5 – Assessment of Proposal against Strategic Merit Test**

<b>Strategic Merit Test</b>	
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	Yes, it is consistent with the Greater Sydney Regional Plan and Eastern City District Plan as per tables 3 and 4 of this report.

strategy for a strategic precinct including any draft place strategy; or	
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	<p>The Planning Proposal is consistent with the Waverley Local Strategic Planning Statement:</p> <p><b>Planning Priority 6:</b> Facilitate a range of housing opportunities in the right places to support and retain a diverse community.</p> <p>Response: The proposal will prevent the reduction of housing in areas that have the best access to jobs, services and transport.</p>
Respond to a change in circumstances that have not been recognised by the existing planning framework.	N/A

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

Waverley Local Environmental Plan 2012

The Waverley LEP has 13 aims that all Planning Proposals and development should be consistent with where applicable. This Planning Proposal is consistent with the following aims of the Waverley LEP:

(c) To provide for a range of residential densities and a range of housing types to meet the changing housing needs of the community.

(ca) To encourage the development of a variety of housing on land close to public transport, essential goods and services and open space.

The planning proposal meets both objectives through directly targeting the loss of residential flat buildings and the rise of less dense developments such as detached houses and dual occupancies within the R3 and R4 zones. The Waverley LGA is highly accessible with public transport and the R3 and R4 zones have been positioned to be within a short walk to bus stops and the Bondi Junction train station.

Waverley Local Strategic Planning Statement (March 2020)

Refer to Table 5 for the consideration of applicable LSPS priorities and actions.

Waverley Local Housing Strategy and Housing Targets

The *Waverley Local Housing Strategy* identifies a housing target of 3,461 new dwellings by 2036. The following table shows the targets compared against our date of delivery and our predicted future dwelling completions.

It can be concluded that Waverley LGA has exceeded its 0–5-year housing target, and is on track to meet or exceed the 6-10 and 11-20 year ones.

**Table 6 – Updated Waverley Housing Targets**

Target Years	Calendar Years	Target for Year <sup>[1]</sup>	Actual	Projected	Cumulative
0 - 5	2016 - 2021	1,250	1,332 <sup>2</sup> – target exceeded	<i>period has already occurred</i>	1,332
6 - 10	2022 - 2026	761	<i>period has not occurred yet</i>	1,290 <sup>3</sup> – expected to exceed target	2,622
11 - 20	2027 - 2036	1450	<i>period has not occurred yet</i>	1,450 <sup>4</sup> – expected to meet target	4,072
<b>Total</b>		<b>3,461</b>	<b>1,332</b>	<b>2,740</b>	<b>4,072 – expected to exceed target</b>

<sup>[1]</sup> Data from [Waverley Local Housing Strategy](#) draft target figures, page 52.

<sup>2</sup> Data from DPE’s [Greater Sydney Urban Development Program Dashboard](#), FY 16/17 to 20/21 completions inferred from water connection information.

<sup>3</sup> Data from DPE’s [Greater Sydney Urban Development Program Dashboard](#), FY 21/22 to 25/26 (medium growth scenario)

<sup>4</sup> Data from [Waverley Local Housing Strategy](#) implied projections figure (page 52) produced by the NSW Government based on populations projections.

Despite Waverley LGA being on track with housing targets, there is a risk it could slow down due to Bondi Junction reaching its capacity of feasible and profitable sites left for redevelop. There are limited opportunities for comparable redevelopment throughout the rest of the LGA. Future housing should be located close to transport and access to social infrastructure and essential services, community and cultural services and open space and recreation. Generally, all parts of Waverley have good access to these amenities, making it suitable for housing in the context of Greater Sydney.

The recently growing trend in Waverley of new developments reducing residential dwelling density across the R3 and R4 zones is concerning as this is a backwards step towards the projected housing targets. The additional local provision is a housing strategy that aims to protect Council’s housing targets and density growth within the high density residential zones.

The following table details how the proposal is consistent with the LHS priorities:

**Table 7 – Waverley Local Housing Strategy consideration**

Waverley Local Housing Strategy	
Priority H1: Manage housing growth sustainably and in the right location	Waverley has recently experienced significant levels of housing growth, driven by redevelopment of the Bondi Junction strategic centre. There are limited opportunities for comparable redevelopment throughout the rest of the LGA. Surrounding areas zoned for higher densities and located near public transport must therefore sustain and increase housing.



Priority H2: encourage a range of housing options to support and retain a diverse community	The Planning Proposal is consistent with the Priority H2 as changes to the R3 and R4 zones does not limit the range of housing options but preserves the housing options in Waverley LGA.
---	---

### Waverley Community Strategic Plan 2022-2032

This Planning Proposal aligns with the community vision which states:

*“Waverley is a vibrant and resilient community. We take care of each other, our natural environment and local places. Our community is empowered to collaborate for sustainable and connected Waverley for future generations.”*

The Planning Proposal also aligns with the directions presented in the table below:

**Table 8 – Assessment of Proposal against Waverley Community Strategic Plan 2022-2032**

Relevant Directions and Strategies from the Waverley Strategic Plan	Is the proposal consistent with Direction and Strategy?
<b>1.7: Actively drive housing policy to meet the needs of the vulnerable, diverse and growing population.</b>	
1.7.2. Advocate for increased diversity of housing stock that is affordable and accessible.  1.7.4. Manage housing supply, choice and affordability with access to jobs, services and public transport.	The planning proposal aims to preserve the existing dense residential flat buildings to prevent them from being developed into luxury single dwellings. The R3 and R4 zones are especially connected and are well serviced areas including public transport and access to social infrastructure and essential services, community and cultural services and open space and recreation. These areas can handle existing and future growing capacity under the current development standards. This additional provision is expected to assist with preventing this loss of dwellings in the zones.
<b>2.6: Control and manage development to protect the intrinsic values of the community including aesthetics, size, heritage, and population</b>	
2.6.2. Ensure new development provides a high standard of design quality and does not adversely impact the amenity of neighbours or the wider community	This proposal aims to maintain and increase the population within the medium and higher residential density zones. This will allow a diverse and affordable housing stock to remain as apartments are significantly cheaper than houses or units with oversized floorplates.

### 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.

### 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 9 – Assessment of Proposal against the SEPPs**

Title	Applicable	Consistent
Housing SEPP	Yes	The planning proposal is consistent with the following development controls for affordable housing for residential flat buildings, boarding houses, secondary dwellings, group house, built-to-rent housing and seniors living.
Design Quality of Residential Apartment Development – SEPP 65	Yes	The planning proposal is consistent with SEPP 65 and the ADG as residential flat buildings are permissible within the zones. Development applications to renovate older RFBs have to meet these controls with the exception of maintaining the building envelope.
Exempt and Complying Development Codes SEPP	Yes	Exempt and Complying development to apartments in these zones are not changed.
Transport and Infrastructure SEPP	N/A	
Primary Production SEPP	N/A	
Biodiversity and Conservation SEPP	N/A	
Resilience and Hazards SEPP	N/A	
Industry and Employment SEPP	N/A	
Resources and Energy SEPP	N/A	
Planning Systems SEPP	N/A	
Sustainable Buildings SEPP	N/A	
Precincts SEPPs: Eastern Harbour City SEPP, Western Parkland City SEPP, Central River City SEPP and Regional SEPP	N/A	

### 7. Is the planning proposal consistent with applicable Ministerial Directions (section 9.1 Directions)?

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 10 – Assessment of Proposal against Ministerial Direction**

Section 9.1 Ministerial Direction		
Ministerial Direction	Relevance	Consistency
6.1 Residential Zones	<p>The directions are:</p> <p>A Planning Proposal must include provisions that encourage the provision of housing that will:</p> <ul style="list-style-type: none"> <li>• Broaden the choice of building types and locations available in the housing market,</li> <li>• Make more efficient use of existing infrastructure and services, and</li> <li>• Reduce the consumption of land for housing and associated urban development on the urban fringe and</li> <li>• Be of good design.</li> </ul>	<p>The proposal is consistent with the objectives of this direction as the current choice of building types will be preserved through stopping RFBs from being turned into luxury dwellings. Preventing this rising trend will continue to broaden the choice of dwelling types within areas capable of servicing denser housings areas. It will provide variety and choice in housing types.</p>

### 3.2 SITE SPECIFIC MERIT

The Planning Proposal meets the Site-specific Merit Test, the assessment is presented in this table.

**Table 11 – Assessment of Proposal against Site Specific Merit Test**

Site-Specific Merit Test	
b) Does the proposal have site-specific merit, having regard to the following:	
The natural environment (including known significant environmental values, resources or hazards); and	This Proposal will not have any impacts on the natural environment.
The existing uses, approved uses, and likely future uses of land in the vicinity of the proposal; and	This Proposal will not inhibit development within Waverley. The Proposal will ensure that density across the R3 and R4 zones is maintained, and will allow reasonable development that supports higher residential densities in accessible areas. The development standards remain unchanged and development potential remains the same.

The services and infrastructure that are or will be available to meet the demands arising from the proposal; and	Not applicable as this Proposal will not result in the increase of infrastructure demand.
Any proposed financial arrangements for infrastructure provision.	Not applicable as this Proposal will not result in the increase of infrastructure demand.

**Section C – Environmental, social and economic impact**

**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?**

This Planning Proposal does not propose any physical development changes and therefore will not have any adverse impacts on threatened species, populations or ecological communities.

**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.

**10. Has the planning proposal adequately addressed any social and economic effects?**

The current trend of developments seeking a loss in density of existing medium to high density residential buildings, has a direct effect on the existing supply and affordability of housing. This is problematic as the R3 and R4 zones are the places that have an agreed density to them, as supported by the community and the Council endorsed LEP. If these areas continue to lose density, new locations for density would have to be identified to meet the LGA’s housing targets, which is often challenging. The social effects the planning proposal targets is maintaining higher populations close to infrastructure, public transport, access to jobs, community facilities and the environment.

The planning proposal mechanisms aims to ensure appropriate densities are maintained and consistent with the area’s existing or projected population.

**Section D – Infrastructure (Local, State and Commonwealth)**

**11. Is there adequate public infrastructure for the planning proposal?**

This consideration is not applicable to the Planning Proposal.

## Section E – State and Commonwealth Interests

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

Initial feedback from the Department of Planning and Environment (DPE) Places and Infrastructure Team received via email on 5 June 2023 encouraged further considerations of the following items:

- ***There are a range of uses permissible under the R3 and R4 zones, what is Council's position for redeveloping / changing an existing residential use to another use which does not provide housing, e.g. changing the use of or redeveloping a dwelling house to provide a centre-based child care centre?***

Response: A change of use from residential to non-residential is still permissible with consent as the proposed new clause will only apply to Development Applications relating to certain residential accommodation and will have to consider preserving or increasing density from the date of gazettal.

- ***Following from the above, what would be Council's position on development for more affordable forms of housing (e.g. co-living) and residential care facility, in which the accommodation is not in the form of self-contained dwellings?***

Response: The proposed new clause will not apply to boarding houses, co-living housing, group homes, and residential care facilities.

- ***How would such a prohibition under the LEP relate to the Codes SEPP regarding dual occupancy development utilising the CDC pathway?***

Response: Under this proposal dual occupancies and dwelling houses remain permissible.

## PART 4 – MAPPING

No changes are proposed to mapping.

## 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 Responsible Planning 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 DPE for a Gateway Determination.

**Table 12** – Indicative project timeline

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

## APPENDIX A – LAND ZONE MAP

The R3 and R4 zones are shown as the **medium red** and **dark red** shades as follows on figure 1. Figures 2 to 6 show the zones in greater detail, with street names visible.

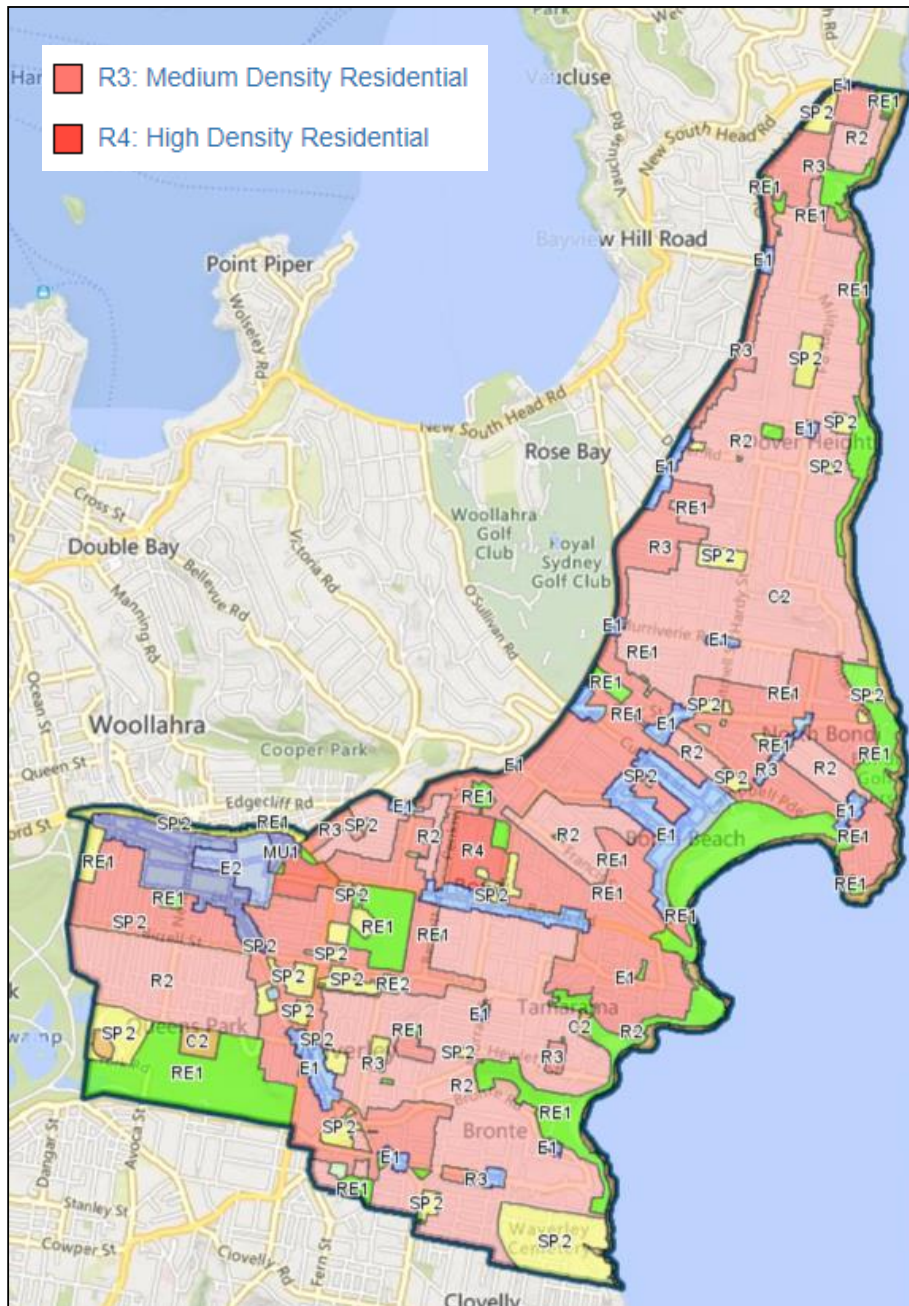


Figure 1. Waverley Zone Map.



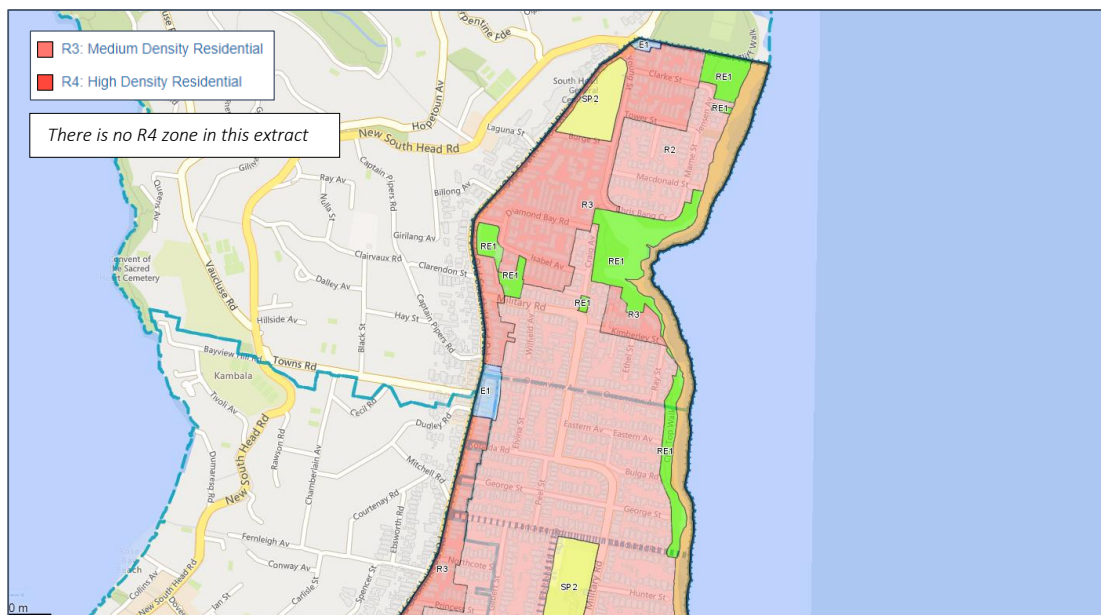


Figure 2. Extract from Waverley Zone Map – Vauclose and Dover Heights

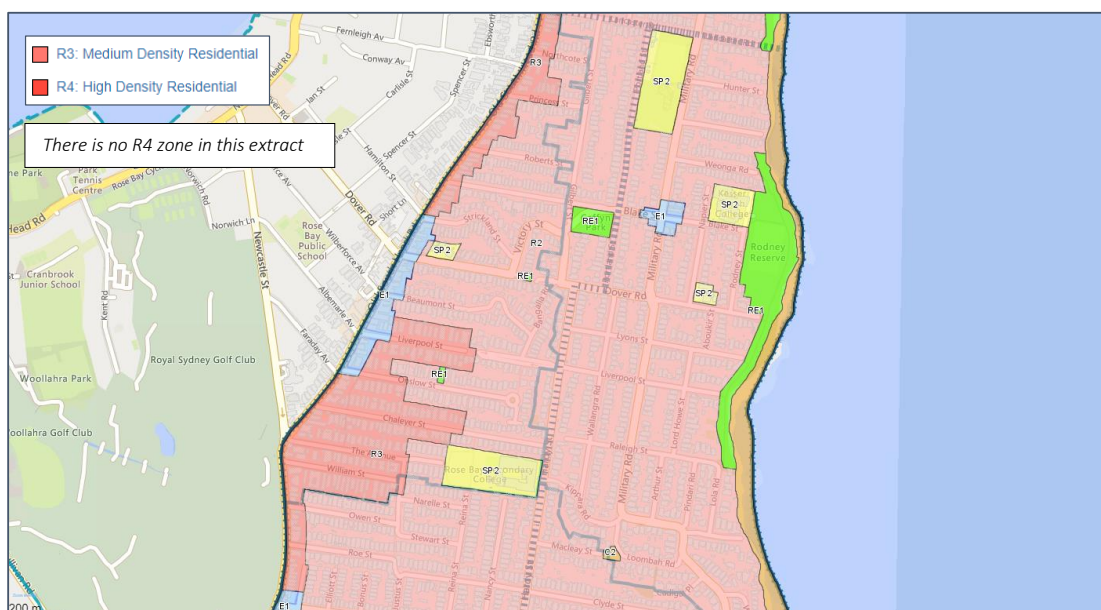


Figure 3. Extract from Waverley Zone Map – Rose Bay, Vauclose and Dover Heights



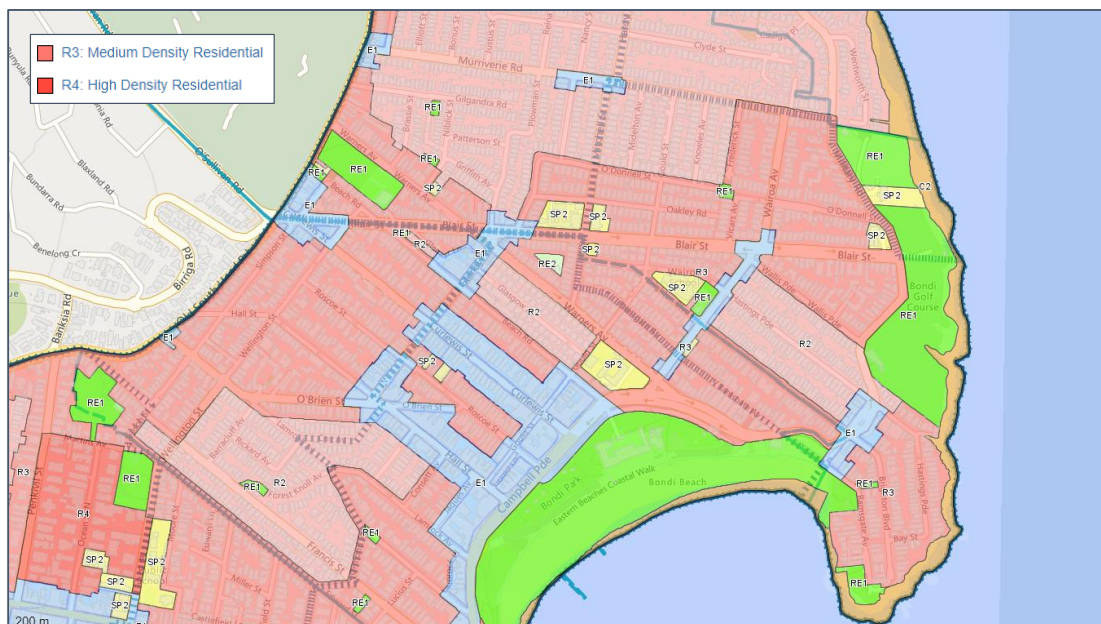


Figure 4. Extract from Waverley Zone Map – Rose Bay, North Bondi, Bondi Beach and Bondi

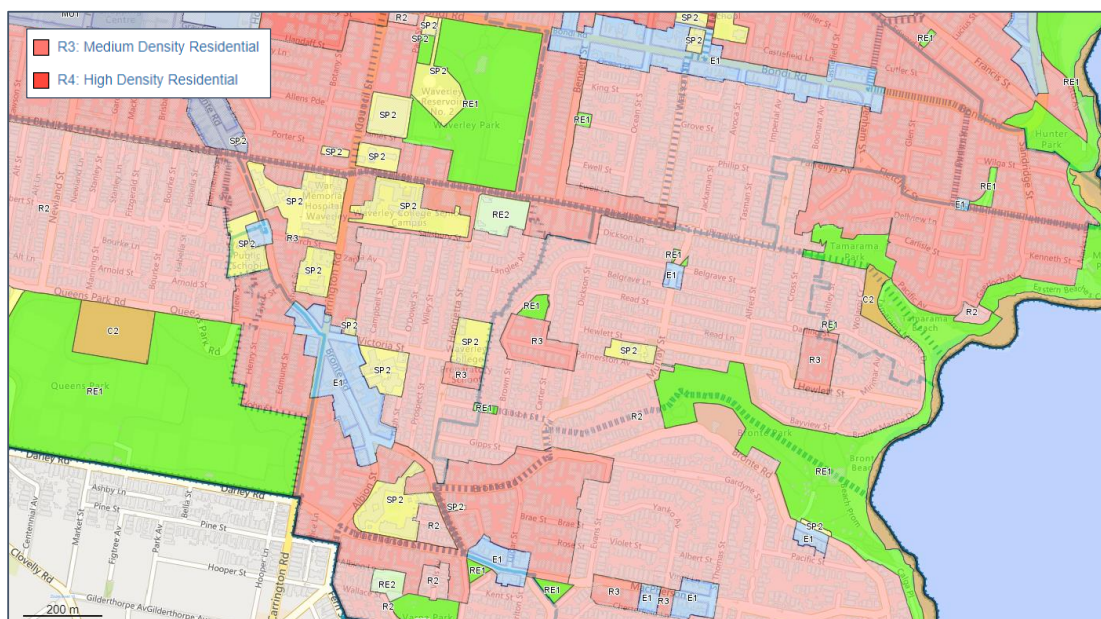


Figure 5. Extract from Waverley Zone Map – Bondi Beach, Tamarama, Bronte and Bondi

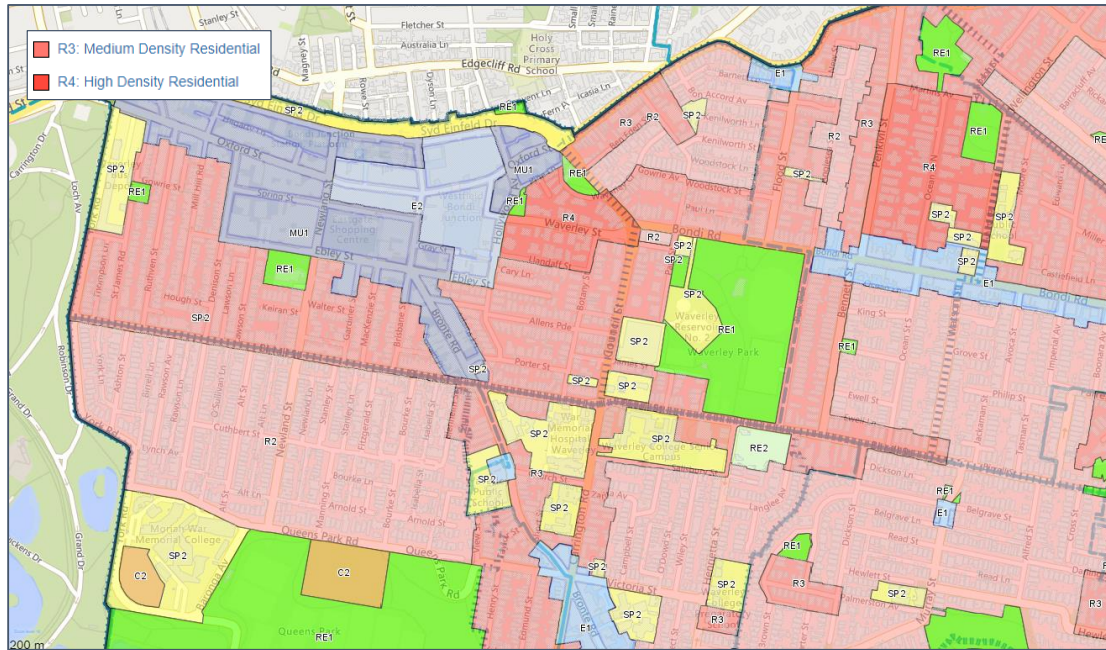


Figure 6. Extract from Waverley Zone Map – Queens Park, Bondi Junction, Bondi and Bronte

**ADVICE OF THE WAVERLEY LOCAL PLANNING PANEL**  
**Planning Proposal PP-3/2023 - Dwelling Density Planning Proposal**  
**Wednesday 22 November 2023**

**SCHEDULE 2, PART 5, ITEM 26 OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979 (NSW)**

**Panel members:**

Jacqueline Townsend (Chair)  
Gabrielle Morrish  
Heather Warton  
Geoffrey Denman (Community Representative)

**Declarations of Interest**

No panel members have declared a reasonably perceived conflict of interest for this item.

**Briefing**

The Panel were provided opportunity to review the Planning Proposal in advance of the meeting. The Panel was also briefed by Emma Rogerson (Senior Strategic Planner) during the meeting.

Following the briefing the Panel discussed the PP and provided advice on the PP on 22 November 2023 under Schedule 2, Part 5, Item 26 of the Environmental Planning and Assessment Act 1979.

**Reasons**

The Panel has considered the information that was circulated to it by Council email prior to the meeting, which included:

- Council officer's WLPP Report
- Planning Proposal

**Resolution**

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

- Agrees the proposal has strategic merit as, if implemented, it will preserve the existing residential dwelling density and prevent the further loss of dwellings/units within parts of the Waverley LGA which are best suited to accommodate density,
- Supports the recommendation for the Planning Proposal to proceed to Gateway Determination and public exhibition,
- Advises Council to consider the unintended consequences of the impact of the inclusion of this provision, for example on individuals wishing to age in place. Legal advice should be sought to explore mechanisms to allow for variations in exceptional circumstances, and
- Recommends Council make a submission to the NSW Department of Planning to implement the provisions of this Planning Proposal State-wide through the *State Environmental Planning Policy (Housing) 2021*.

**Carried unanimously**

Waverley Local Planning Panel – Planning Proposal PP-3/2023 – Dwelling Density Planning Proposal

**REPORT**  
**PD/5.2/24.03**

**Subject:** Planning Proposal - Affordable Housing Contribution Scheme - Post-Exhibition

**TRIM No:** A04/0302

**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 to the report (Attachment 1) to introduce affordable housing provisions in the *Waverley Local Environmental Plan 2012 (WLEP)*, and the submissions received during public exhibition, to the Department of Planning, Housing and Infrastructure (DPHI) with a recommendation to proceed to finalisation and gazettal.
2. Adopts the amended Affordable Housing Contribution Scheme attached to the report (Attachment 2).
3. Publishes the applicable contribution square metre rates on Council's website, as required by the DPHI Gateway Determination attached to the report (Attachment 3).
4. Requests 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 WLEP.

**1. Executive Summary**

Waverley's Affordable Housing Contribution Scheme (AHCS) was first adopted by Council on 1 December 2020. It was established to allow Council to collect monetary or in-kind contributions through the planning system to be used for the purposes of affordable housing, and aims to facilitate a socially diverse and inclusive community by ensuring that lower income households can continue to live and work locally within the Waverley local government area (LGA).

To be able to collect contributions under this Scheme, the Waverley Local Environmental Plan (WLEP) 2012 needs to be amended via a planning proposal (PP) to introduce a new affordable housing contribution clause that allows Council to mandate:

- A contribution on all new residential flat buildings, independent living units, multi-dwelling housing, and shop top housing development of 1% of gross floor area at a flat \$ rate/sqm.
- A contribution of gross floor area (calculated at the time of planning proposal assessment) towards affordable housing for sites that receive planning uplift through planning controls.
- A minor change to the LEP to allow Council to continue to levy for loss of affordable housing contributions under the Housing SEPP 2021.



Based on feedback received from the community and key agencies during public exhibition, it is recommended that the planning proposal (Attachment 1) and the AHCS (Attachment 2) be submitted back to DPHI for finalisation.

## 2. Introduction/Background

The AHCS was exhibited in September 2020 and subsequently endorsed by Council on 1 December 2020. On 13 April 2021, Council adopted minor amendments to the AHCS and supported the submission of a planning proposal to implement the AHCS to the DPHI, which was lodged with the DPHI shortly thereafter.

On 9 January 2023, Council received a Gateway determination for the planning proposal, requesting that the planning proposal be withdrawn and resubmitted with amendments to both the planning proposal and the AHCS within a period of 6 months. The requested changes were made, supported by Council in April 2023, and resubmitted on 5 October 2023.

A second Gateway determination (Attachment 3) was issued by NSW DPHI on 25 October 2023 permitting the PP to proceed to public exhibition subject to the planning proposal being updated to remove the proposed target of 10% for uplift sites and some other minor changes. These changes were applied, and the planning proposal was placed on public exhibition between 2 November and 18 December 2023. Although the DPHI did not support a clause in the LEP stating that sites receiving uplift would be subject to a 10% affordable housing contribution, Council's Affordable Housing Contribution Scheme still states that 10% will be our target affordable housing contribution to be applied to planning proposals as they are lodged. This would be applied to planning proposals as they are assessed.

## 3. Relevant Council Resolutions

Meeting and date	Item No.	Resolution
Strategic Planning and Development Committee 4 April 2023	PD/5.4/23.04	<p>That Council:</p> <ol style="list-style-type: none"> <li>1. Notes that the Affordable Housing Contribution Scheme was adopted by Council in December 2020.</li> <li>2. Notes that Council previously approved the submission and exhibition of a planning proposal to implement the Affordable Housing Contribution Scheme in accordance with any conditions of the Gateway determination that may be issued by the Department of Planning and Environment.</li> <li>3. Publicly exhibits the amended Waverley Affordable Housing Contribution Scheme 2023 attached to the report (Attachments 2 and 3) for 28 days alongside an amended planning proposal, subject to the following amendments:               <ol style="list-style-type: none"> <li>(a) Throughout the document, replace 'multi-dwellings' with 'multi-dwelling houses'.</li> <li>(b) Throughout the document, replace 'spot rezoning' with 'planning proposal'.</li> <li>(c) Page 73 of the agenda, section 2.2, 'Monetary contribution rates in the LEP' – Amend as follows:</li> </ol> </li> </ol>

		<ul style="list-style-type: none"> <li>(i) In the first sentence, replace ‘around the time of the development’ with ‘at the time of the planning proposal being assessed and before a Gateway Determination.’</li> <li>(ii) In the second dot point, add ‘be sought to’ after ‘will’.</li> <li>(iii) After the second dot point, add ‘Sites that have previously received uplift through the planning proposal process and have also provided a contribution in line with Council’s AHCS will not be subject to the prescribed levy of 1% of the total gross floor area at DA stage referred to above.’</li> <li>(d) Page 70 of the agenda, third paragraph, second sentence – Replace ‘upzoning’ with ‘uplift’ and add the following third sentence to the paragraph: “‘Uplift’ in a planning proposal refers to situations where a site’s value increases through increased gross floor area, a change of zoning or other planning variations.’</li> </ul> <p>4. Officers prepare a report to Council following the exhibition period.</p>
<p>Council 26 October 2021</p>	<p>CM/7.6/21.10</p>	<p>That Council:</p> <ul style="list-style-type: none"> <li>1. Requests a variation to the Department of Planning, Industry and Environment (DPIE) conditions as follows: <ul style="list-style-type: none"> <li>(a) There are no Council-led planning proposals to increase density on Curlewis Street and/or Bondi Road.</li> <li>(b) Proponent-led planning proposals will continue to be considered.</li> </ul> </li> <li>2. Seeks a ‘Gateway Review’ at the Independent Planning Commission (IPC) for the Waverley Affordable Housing Contributions Scheme planning proposal to: <ul style="list-style-type: none"> <li>(a) Challenge DPIE’s rejection of the Waverley Affordable Housing Contributions Scheme.</li> <li>(b) Advocate to the DPIE to review its Guideline for Developing an Affordable Housing Contribution Scheme to be more in line with the <i>Environmental Planning and Assessment Act</i>.</li> </ul> </li> <li>3. Endorses the draft Waverley Local Housing Strategy Implementation and Delivery Plan attached to the report for submission to the DPIE.</li> </ul>

<p>Strategic Planning and Development Committee 13 April 2021</p>	<p>PD/5.2/21.04</p>	<p>That Council:</p> <ol style="list-style-type: none"> <li>1. Notes that the Affordable Housing Contribution Scheme was adopted by Council in December 2020.</li> <li>2. Notes that the Waverley Local Planning Panel (WLPP) has reviewed the Affordable Housing Contribution Scheme planning proposal and provided advice, as set out in Attachment 2 of the report.</li> <li>3. Notes that the updates to the planning proposal based on advice from WLPP include a proposed Waverley Local Environmental Plan 2012 clause.</li> <li>4. Adopts the amended Affordable Housing Contribution Scheme attached to the report (Attachment 3) for clarification reasons.</li> <li>5. Authorises officers to forward the planning proposal attached to the report (Attachment 1) to the Department of Planning, Industry and Environment (DPIE) for a Gateway Determination.</li> <li>6. Publicly exhibits the planning proposal for a minimum of 28 days in accordance with any conditions of the Gateway Determination that may be issued by the DPIE.</li> <li>7. Requests the role of local plan-making authority from the DPIE to exercise the delegations issued by the Minister under section 3.36 of the Environmental Planning and Assessment Act 1979 in relation to the making of the amendment.</li> <li>8. Officers prepare a plain English explanation and infographic for the purposes of public exhibition to clarify the application of the proposed policy in various circumstances.</li> </ol>
<p>Strategic Planning and Development Committee 1 December 2020</p>	<p>PD/5.1/20.12</p>	<p>That Council:</p> <ol style="list-style-type: none"> <li>1. Notes the matters raised in the submissions made on the draft Planning Agreement Policy (Amendment No. 3) and the draft Affordable Housing Contributions Scheme during the exhibition period.</li> <li>2. Adopts the Planning Agreement Policy (Amendment 3) attached to the report (Attachment 1) subject to the following changes: <ol style="list-style-type: none"> <li>(a) Page 13, after clause 8, insert a new clause 9: 'That as part of any VPA report, Councillors be provided with an overview of meetings between applicants and staff, and the rationale for the decision.'</li> </ol> </li> </ol>

		<p>(b) Page 7, second paragraph, after the sentence ending 'as amended from time to time', insert: 'Council has resolved and committed to implementing and progressing the LSPS in ways that operate to involve and acknowledge that Aboriginal First Nation Peoples have a custodial ongoing spiritual, social, cultural, economic and traditional relationship to looking after country and people.'</p> <p>3. Adopts the Affordable Housing Contributions Scheme attached to the report (Attachment 3).</p> <p>4. Notifies those people who made a submission of Council's decision.</p> <p>5. Submits a planning proposal to the Department of Planning, Industry and Environment seeking a Gateway Determination to incorporate the Affordable Housing Contributions Scheme into the Waverley Local Environment Plan 2012.</p>
Council 15 September 2020	CM/7.8/20.09	<p>That Council:</p> <p>1. Publicly exhibits for 42 days the draft Waverley Planning Agreement Policy 2014 (Amendment No. 3) attached to the report.</p> <p>2. Notes that the updates to the Policy include an update to the VPA split of contributions to affordable housing from a minimum of 10 to 25%, updated benchmark rates and housekeeping amendments.</p> <p>3. Publicly exhibits for 42 days the draft Waverley Affordable Housing Contributions Scheme attached to the report.</p> <p>4. Investigates using the affordable housing reserve for the provision of Social Housing and Waverley Community Living Program (WCLP) Accommodation in addition to our current affordable housing program.</p>

#### 4. Discussion

The Scheme and PP have been prepared to levy contributions on larger scale residential and mixed-use developments in the Waverley LGA and aims to facilitate a socially diverse and inclusive community by ensuring that lower income households can continue to live and work locally within the Waverley LGA. The proposal seeks to introduce a new affordable housing contribution WLEP 2012 clause to allow Council to request:

- A contribution on all new residential flat buildings, independent living units, multi-dwelling housing, and shop top housing development of 1% of gross floor area at a flat \$ rate/sqm.



- A contribution of gross floor area (calculated at the time of planning proposal assessment) towards affordable housing for sites that receive planning uplift through planning controls.
- A minor change to the LEP to allow Council to continue to levy for loss of affordable housing contributions under the Housing SEPP 2021.

### Strategic merit

The planning proposal has strategic merit as it is consistent with the affordable housing and housing diversity-related planning priorities and actions from the Region Plan and District Plan, and Waverley's Local Strategic Planning Statement (LSPS), Local Housing Strategy (LHS) and Community Strategic Plan (CSP) which encourage an increase in housing affordability and diversity.

### Site-specific merit

The planning proposal has site-specific Merit as feasibility testing has proven that applicants of the development affected by this proposal are able to achieve a minimum 15% profit margin after the contribution in all suburbs and relevant zones—demonstrating economic sustainability. As this planning proposal does not result in any changes to the built form of development, the natural environment and amenity of neighbours to development sites affected by this proposal will not be impacted.

### Agency referral

In accordance with the Gateway determination, this planning proposal was forwarded to the NSW Department of Communities and Justice (DCJ) and the NSW Land and Housing Corporation for consultation. Both supported the planning proposal.

NSW DCJ stressed a particular importance on reintroducing the 10% contribution for planning proposal uplift sites 'as feasibility analysis points to this being a reasonable option and there is very strong need for affordable housing provision in the LGA' and as 'Waverley is a high priced location with increasingly high end new development which is displacing housing for lower income households.' NSW DCJ also highlighted the need for affordable housing, making the following observations:

- *Eastern City is a high priced location for both purchase and rent with strong competition within the housing market because of proximity to employment, health, transport, education and other services and infrastructure. In the Eastern City as a whole, low income renters are managing to stay despite high housing costs relative to income. This is not the case in Waverley. Low income renters, including key workers, have been priced out.*
- *Between June 2020 and June 2022, Waverly Council experienced the strongest increases in median rents for one (14.3%), three (30.9%) and four or more bedroom homes (33.3%) and second strongest for studios (10.2%) and two bedroom homes (13.0%) in the Eastern City. By way of comparison, annual wage growth in 2022 was 3.3% in Australia.*
- *In addition, Waverley has a high proportion of Airbnb properties rented out as total homes (73.6%), and a high proportion of Airbnb rentals relative to the total number of rental properties (15.7%) – suggesting short term rentals may be negatively impacting long term rental availability.*

NSW LAHC requested that the term 'public housing' be replaced with the term 'social housing' throughout the planning proposal. This change has been implemented in Attachment 1, being the only post-exhibition changed throughout the document.

## 5. Financial impact statement/Time frame/Consultation

There have been no upfront or recurrent costs associated with this planning proposal other than staff costs associated with amending the AHCS and preparing the planning proposal. The benefits of implementing this

scheme would serve the community via the ability to charge contributions for affordable housing for new larger scale development.

A review of Construction Certificates registered for the purposes of a new residential flat building, multi dwelling housing, independent living unit, and shop top housing development over the past five years has shown that had a 1% monetary contribution been collected from the developers of these projects, Waverley's Affordable Housing Contributions Reserve could have grown by an additional \$5.76 million.

### Time frame

It is estimated that this amendment to the WLEP would be completed by mid-2024 as detailed in Table 2 below.

Table 2. Indicative project timeline.

Tasks	Time frame and/or date
Submission to the Department for finalisation	February 2024
Gazettal of LEP amendment	April 2024

### Community consultation

The planning proposal was publicly exhibited between 2 November and 18 December 2023, which included:

- Have Your Say page including a feedback survey.
- Waverley website media release.
- Council e-newsletters.
- Email notifications to Precincts.

Including feedback from agencies, six submissions were in support of the proposal, and three submissions were not. Table 3 details the key messages included in those submissions.

Table 3. Response to key matters raised in the submissions.

Submission	Waverley Response
The proposal is supported, and a minimum 10% contribution should be provided for any developments as developers have a habit of trying to reduce such proposals.	A 10% contribution for new residential flat buildings, independent living units, multi-dwelling housing, and shop top housing development constructed within the existing FSR and height controls – and not subject to recent uplift – was not found to be feasible.  However, a 10% contribution for uplift sites was found to be feasible. NSW DPHI forced this target to be removed from the subject planning proposal.
The proposal is not supported because I am not in favour of council being landlord to a very limited number of people who get to access the Affordable Housing scheme. While	The NSW government has permitted Council's to development their own AHCS for the purposes of collecting funds for affordable housing. This system does not allow Council to use the funds

<p>it is expensive to live in Waverley it does not serve the greater good to subsidize a very limited number of residents when the funds could be better used to improve parks, reserves and essential infrastructure which benefits the majority of residents.</p>	<p>for other things, so refusing this proposal because infrastructure upgrades are required will not result in the funds being redirected to anything other than affordable housing.</p> <p>Further, infrastructure upgrades within Waverley are funded by a variety of means, including but not limited to money collected through rates, 7.12 Contributions or grants. In comparison, there are very few ways to collect funds for the purposes of affordable housing.</p>
<p>The proposal is not supported because it will lead to an increase in large developments being constructed.</p>	<p>This Proposal will not result in more development. Whilst it is possible that the funds collected under the AHCS and associated planning proposal can be used by Council to develop units for the purpose of affordable housing, it does not change the developable capacity of sites in the LGA, that would be developed regardless of the AHCS.</p>
<p>The proposal is not supported because the application of local affordable housing contributions has largely proven ineffective in delivering affordable housing. Worse, these levies act as disincentives to the private sector to deliver market housing.</p> <p>The solution to the housing supply crisis requires a drastic step up in housing approvals and completions right across the State – but particularly in those well-located areas with high amenity such as many of the suburbs within the Waverley Local Government Area.</p>	<p>While there has been limited success in delivering affordable and social housing in the LGA in recent years, Waverley does have one of the larger Council portfolios of affordable housing and additional funds under the Waverley Affordable Housing Contribution Reserve will increase the opportunity for affordable housing in the area.</p> <p>There are very few examples of private development resulting in social and affordable housing in perpetuity – proving that the most appropriate approach to long term affordable housing is for government (local and state) to intervene rather than solely relying on the private market.</p> <p>The contributions proposed have been proven to be financially feasible in the local Waverley context, ensuring that developers can continue to provide stock without being financially disincentivised.</p> <p>The Waverley LGA is one of the densest LGA’s in Australia, highlighting that it is already accommodating for large populations. Further, the presence of significantly more DA approvals than completions across the State demonstrates that Council approvals are not restricting housing supply.</p>

## Councillor briefing

This matter was presented for discussion at a Councillor briefing on 13 February 2024. Table 4 details the key questions and comments raised.

*Table 4. Matters raised at the Councillor briefing.*

Question/Comment	Response
Is the delivery of affordable housing better suited to the State Government?	Affordable housing can be successfully delivered by all levels of government. Waverley has a longstanding Affordable Housing Program and a current portfolio of social and affordable housing stock which can be expanded. In 2023, Council unanimously supported investigations into a collaboration project with Woollahra and Randwick Council's to explore opportunities in relation to a shared affordable housing project.  Further, actions and priorities within the Waverley Local Housing Strategy, Local Strategic Planning Statement and Community Strategic Plan agree to increasing affordable housing within the LGA.
The contribution will come from somewhere. Will it drive up unit prices?	The contribution will not increase unit sales prices, as sales prices are determined by what the market is willing to pay rather than what the unit cost to construct. Instead, affordable housing contributions would be either borne by the developer or the landowner.
How does the contribution apply where a DA is providing a Voluntary Planning Agreement (VPA) as well?	The VPA Policy and the AHCS are independent of each other, but in their current forms do both levy contributions towards the Waverley Affordable Housing Program. If the AHCS PP is adopted there will be opportunity to update the VPA Policy to prevent 'double dipping' of funds for AH where a contribution is levied under the AHCS and a VPA is offered at the same time. Where a VPA is offered on uplift, the 25% of the VPA that typically goes towards affordable housing would be discounted by the amount of the 1% affordable housing levy.

## 6. Conclusion

It is a legislative requirement for Council to have an AHCS to levy contributions relating to development and rezoning processes for the purposes of affordable housing. Following the receipt of Gateway determination for the AHCS planning proposal, draft amendments to the AHCS were placed on public exhibition alongside the planning proposal.

It is recommended that the attached planning proposal, with minor amendments following consultation, be submitted to NSW DPPI with a recommendation to proceed to finalisation and gazettal.

## 7. Attachments

1. Planning proposal - Affordable Housing Contribution Scheme (under separate cover)
2. Affordable Housing Contribution Scheme (under separate cover)
3. Gateway determination (under separate cover) .

**REPORT**  
**PD/5.3/24.03**

**Subject:** Waverley Development Control Plan 2022 (Amendment No. 2) - Flood Planning - Adoption

**TRIM No:** SF21/4935

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

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

---

**RECOMMENDATION:**

That Council:

1. Adopts the Waverley Development Control Plan (Amendment No. 2) on flood planning attached to the report (Attachments 1 and 2), to take effect when notified on Council's website.
2. Writes to all those who made submissions advising them of Council's decision.
3. Notes that the draft budget 2024–25 will propose a reduction in fees for Council's TUFLOW Flood Model for smaller developments.

**1. Executive Summary**

A draft amendment (No. 10) to the Waverley Development Control Plan (DCP) 2012— now the Waverley Development Control Plan 2022 was prepared and exhibited to implement changes to flood planning controls and introduce new flood maps, following the adoption of the Waverley local government area (LGA) Flood Study and NSW State Government Flood Prone Land Package reform.

All properties tagged on the new flood maps were notified, resulting in a substantial number of submissions and enquiries from affected residents during and after the exhibition period. Following consideration of feedback, additional work was undertaken, including an independent peer review of the Waverley LGA Flood Study and draft DCP amendment, as well as research on potential implications for property prices and insurance premiums.

A report detailing the findings of this additional work was presented to Council at the 6 June 2023 Strategic Planning and Development Committee. The additional work confirmed the exhibition package was prepared in accordance with NSW State Government requirements and best practice generally. It was also found that the proposed draft amendment was unlikely to impact property prices and insurance premiums. Additional engagement was also undertaken to communicate these findings to interested and concerned residents, including a live webinar.

Since the 6 June 2023 report to Council, the NSW State Government released the Floodplain Risk Management Manual (the Manual) which outlines the requirements for councils when preparing Development Control Plans (DCP). The draft DCP amendment aligns with the new Manual which importantly would provide Council with indemnity from liability in relation to planning advice or determinations on development applications or post consent certificates.

This report recommends adoption of the draft amendment, in line with the findings of the peer review and is supported by updated mapping and fact sheets.

## 2. Introduction/Background

In 2021, the Department of Planning, Housing and Infrastructure (DPHI) introduced changes to the *Environmental Planning and Assessment Regulation* and *Environmental Planning and Assessment Act* relating to flood planning.

The changes meant Council's Flood Planning Area (FPA) maps, which defined properties subject to flood planning development controls, contained within the Waverley Local Environment Plan (WLEP) no longer enjoyed statutory and regulatory weight in the assessment of development applications and post consent certificates.

The changes, as outlined in the Guidelines provided in the Flood Prone Land package, required councils to specify their FPAs and associated development controls within their DCP. Many councils already had this information in their DCP, but Waverley does not. Consequently, Council Officers undertook a review of the DCP and prepared a draft amendment to give effect to the changes introduced by the State Government to ensure new development allowed for adequate protection of property and life in relation to flooding events.

Following a Councillor briefing in October 2021, the draft amendment was endorsed by Council for exhibition in February 2022 where formal exhibition subsequently occurred in June-July 2022. In response to submissions, additional work was undertaken to investigate whether Council had prepared the amendment in line with State Government requirements and best practice, as well as the potential impact on property prices and insurance, should the amendment be adopted. The findings of this work were reported to Council in June 2023. This report provides a further summary of engagement undertaken and recommends that Council adopt the flood planning controls in the draft DCP.

## 3. Relevant Council Resolutions

Meeting and date	Item No.	Resolution
Strategic Planning and Development Committee 6 June 2023	PD/5.1/23.06	<p>That Council:</p> <p>1. Notes:</p> <p>(a) The peer review of the Waverley Local Government Area Flood Study and draft amendment to the Waverley Development Control Plan (DCP) 2022 attached to the report (Attachment 1).</p> <p>(b) The findings of the property price impact report attached to the report (Attachment 2).</p> <p>(c) The findings of the insurance implications research report attached to the report (Attachment 3).</p> <p>(d) The advice provided by Council's insurer attached to the report (Attachment 4).</p> <p>2. Officers update Council at a future Councillor briefing</p>

		session on the proposed draft amendment to the DCP 2022, prior to the final report returning to Council, incorporating any required changes from the documents above and addressing community feedback received, including the letter from Hastings Parade residents group sent to Council on 5 June 2023.
Council 15 February 2022	CM/7.12/22.02	That Council: <ol style="list-style-type: none"> <li>1. Notes that a Councillor workshop on the draft Waverley Development Control Plan 2012 (Amendment No. 10) was held on 19 October 2021.</li> <li>2. Publicly exhibits the draft Waverley Development Control Plan 2012 (Amendment No. 10) attached to the report for a minimum period of 28 days, in accordance with section 3.43 and clause 5 of schedule 1 of the Environmental Planning and Assessment Act 1979.</li> <li>3. Officers prepare a report to Council following the exhibition period.</li> </ol>

#### 4. Consultation

A summary of consultation and outcomes is provided in Attachment 3 – Community Engagement Report. A short summary of the number of submissions received is provided in Table 1.

Affected residents were notified through direct mailout at the start of the exhibition period with 10,638 letters distributed. The draft amendment was promoted through other Council channels such as social media and newsletters.

Table 1 summarises the total quantity of submissions received during the formal exhibition period and outside of the exhibition period. Despite the direct mailout, most submissions were received after formal exhibition, many of which were associated with relevant media coverage of the issue. The total number of submissions received represents 1% of all residents notified. Further discussion and responses to the submissions received is provided in the attachment.

*Table 1. Summary of submissions received.*

Period	Date	Number of submissions
Formal Exhibition	23 June – 21 July 2022	46
Outside of the formal exhibition period	22 July 2022 – Present	70

In response to submissions received and concerns raised, Council:

- Engaged the consultant who prepared the draft amendment to review and provide Council with a response to the issues raised.
- Sought legal advice to determine whether Council had taken appropriate action to date and what, if any additional steps could be taken in response to the concerns raised. In response to this advice, Council undertook the following steps:

- Engaged a consultant to undertake an independent peer review of the Waverley Flood Study and draft DCP amendment.
- Engaged a consultant to undertake an independent review of the potential impacts on property prices.
- Researched the potential insurance implications for residents.
- Sought advice from Council's insurer.

Following the completion of the additional work that was undertaken, Council undertook additional engagement in May 2023 inclusive of:

- Contacted residents who raised concerns or provided a submission on the draft amendment to update them of the outcomes of the additional work completed.
- Published the additional work on Council's Have Your Say page, inclusive of peer review and property price and insurance reports.
- Published extensive revised Frequently Asked Questions (FAQs) on Council's Have Your Say page.
- Hosted a webinar where 35 members of the community attended, with Council staff and Councillors also in attendance.
- Presented the findings at a meeting with interested Precinct Convenors.
- Reported the findings of the additional work to Council on 6 June 2023.

Since the update was provided to residents on 23 May 2023, the Have Your Say page had:

- 261 unique visitors.
- 83 downloads of the peer review
- 55 downloads of the property prices report
- 34 downloads of the insurance report.

Following the report to Council on 6 June 2023, there has been minimal correspondence from residents, with most enquiries related to architects and engineers seeking information about the proposed amendment in relation to development applications and complying development certificates.

## 5. Discussion

### Alignment with NSW State Government requirements

Flood planning activities undertaken by councils should be undertaken in accordance with the relevant State Government Policy.

The draft amendment was prepared in response to the release of the *Flood Prone Land Policy Guidelines (2021)* and in line with the *Floodplain Development Manual (2005)*. Since the last report to Council in June, a new manual—the *Flood Risk Management Manual (2023)*—was released on 30 June 2023. The Manual complements the changes introduced in the 2021 guideline which specify that Flood Planning Areas and associated maps and development controls should be identified in Councils DCP. Specifically, the Manual outlines things that the DCP needs to identify, this includes:

- Objectives for development to consider.
- The land uses compatible with the flood constraints or risks in different areas.
- The controls that are to apply to different types of development in different areas.
- Setting flood planning levels and defining the flood planning area.

The proposed amendment aligns with the above requirements in the newly released manual.

In addition to the above, the Manual also states:



*Strategic land-use planning and development decisions should connect with the best available information and advice on flooding and the constraints flooding places on land.*

In this instance, the adopted Waverley LGA Flood Study 2021 is considered the best available information and consequently should be relied upon for development decisions.

### **Alignment with other councils**

Alignment with other councils was a starting point when the first draft amendment was prepared in 2021. A review of other council controls found that most already outlined development controls and defined the FPA in their DCP. Therefore, no changes were necessary for other Councils DCPs to align with the State Policy and continue to apply development controls.

A table which summarises the number of councils who use the Flood Risk Precinct (FRP)—i.e., Low, Medium and High—approach to classify flood risk is provided below. The table shows that nearly 40% of Councils use this approach.

*Table 2. Use of FRP approach in Greater Sydney.*

<b>Flood Risk Precinct</b>	<b>Quantity</b>
Yes	13
No	18
Proposed	2
<b>Total</b>	<b>33</b>

It is also anticipated an increasing number of councils will adopt the FRP approach in the future due to the gazettal of the new manual which recommends the use of an FRP approach, alongside the imminent arrival of a new Practice Note by the DPPI, which will outline the need to take a risk-based approach for strategic land use planning and development assessment.

The proposed draft amendment would not only bring Council in line with the requirements set out in the State Government Policy but would also bring Waverley in line with many other councils in Greater Sydney.

### **Indemnity from liability – Local Government Act**

The Office of Local Government outlines that councils must take care to exercise their powers properly. Otherwise, their decisions, and any resultant actions, may be declared void by a court, often with consequent financial loss. It notes that a council may be liable for actions carried out negligently that result in damage or injury to persons or property. This liability extends to the actions of employees or other people to whom the Council's functions have been delegated. However, Councillors and employees will not incur personal liability where the Council acted in 'good faith' for the purpose of executing any Act. 'Good faith' can be broadly defined in this context as something done honestly, with the best available information.

Protection from liability for the development of DCPs relating to flood planning matters is provided to councils under section 733 of the *Local Government Act 1993*. To have been considered as acting in good faith, councils must act in accordance with the principles of the relevant Manual most recently notified to be afforded this protection.

Following the concerns raised during public exhibition, Council sought legal advice regarding s 733 of the *Local Government Act*. This advice resulted in Council undertaking the additional steps post-exhibition as previously discussed. The principle relating to the 'withholding of information to achieve an ulterior purpose' in relation to the case of *Mid Density* (1992) is considered strongly relevant to the draft amendment as it relates to flood planning matters.

The legal advice recommended that changing or relabelling the categorisation provided in the draft amendment, particularly as the proposed risk categorisations are public knowledge, could be considered problematic and argued as 'withholding of information to achieve an ulterior purpose.' The review of the case law concluded that if Council can demonstrate it has acted substantially in accordance with the Manual (and now the Guidelines) then the onus is on the Council's opponent to rebut the presumption of good faith under s 733(4) of the *Local Government Act*.

Advice was sought by Council's insurer (previously reported to Council) who recommended that Council proceed with implementing the proposed changes based on the best available up-to-date information, to give itself the best possible protection under s733.

A peer review was also commissioned by Council which found that Council had prepared the draft amendment to the DCP in line with the relevant Manual and Guidelines. As previously discussed, since the peer review, a new Manual has been published and the amendment is also consistent with the newly gazetted Manual.

In addition, concerns regarding potential impacts on property prices and insurance premiums were investigated and responded to. It was found that there would unlikely be any resulting impacts on property prices or insurance premiums if Council adopted the updated DCP. Council has an obligation and responsibility delegated from the State Government to ensure appropriate flood planning measures are in place in its strategic plans - including the WDCP.

Collectively when considering the above, the actions undertaken to date are in 'good faith' and support the preparation and making of a Development Control Plan, in this instance Amendment 2 of the WDCP 2022.

### **Post-exhibition changes and recommendations**

In acknowledging the concerns raised by residents, extensive additional work has been undertaken to respond to and investigate these concerns. The findings of this work concluded that if adopted, the DCP was unlikely to impact residents' property prices and insurance premiums. The peer review also validated the work that had occurred in preparing the draft DCP as being in accordance with State Policy, best practice and fit for purpose and application.

Having considered the outcomes of the engagement undertaken and the large body of work completed since 2021, it is recommended that Council adopt the attached draft amendment to the DCP. The draft amendment has also been revised to incorporate the changes proposed in the peer review, which are summarised below. The detailed proposed changes from the peer review for section B5.2 and associated annexures are provided in Attachment 1 and marked up in blue and green text with additional changes made by Council Officers marked up in red and purple text. Proposed changes to the definitions and abbreviations in Attachment 1 are marked up in red text which are solely recommended changes from the peer review, as well as any relevant housekeeping changes due to the recently published Manual. Council Officers consulted with the author of the peer review to ensure any additional changes made were appropriate.

#### *Change from lot-based map to line-based map*

A key post-exhibition amendment relates to a change from lot-based mapping (where the entire lot is given a single flood risk classification) to line-based mapping which displays the actual flood risk extents and categorisations across the lot.

Flood maps previously identifying the Flood Planning Area in the WLEP were based on a lot tagging approach and did not take into account the level of risk. On these maps, the entire lot was tagged as being in the FPA, even if the entire lot was not affected by the relevant flood planning level (in this instance based on the 1% AEP).

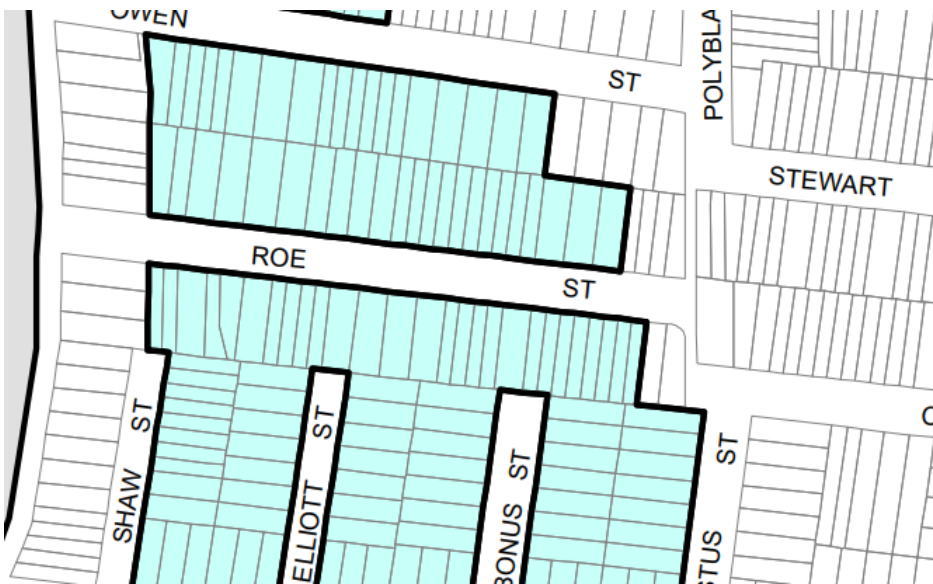


Figure 1. WLEP Flood Planning Area map extract.

Under the proposed exhibited draft DCP, a lot tagging method was again utilised, however the methodology differed from the previous LEP maps as, in addition to the entire lot being tagged, each lot was given a risk classification of low, medium or high (FRP), applied to the entire lot based on a set of criteria to determine what classification should apply.

While this approach was reviewed and deemed appropriate in the peer review for the purposes of applying DCP controls, it was recommended Council should move to apply a line-based map. This was on the basis that the line-based mapping approach will provide for a better representation of actual flood risk, aligns with the NSW State Government Manual and approach by other NSW councils. The new line-based map also shows the FRPs on roads, which provides a better visual representation of the overland flow paths present in Waverley.

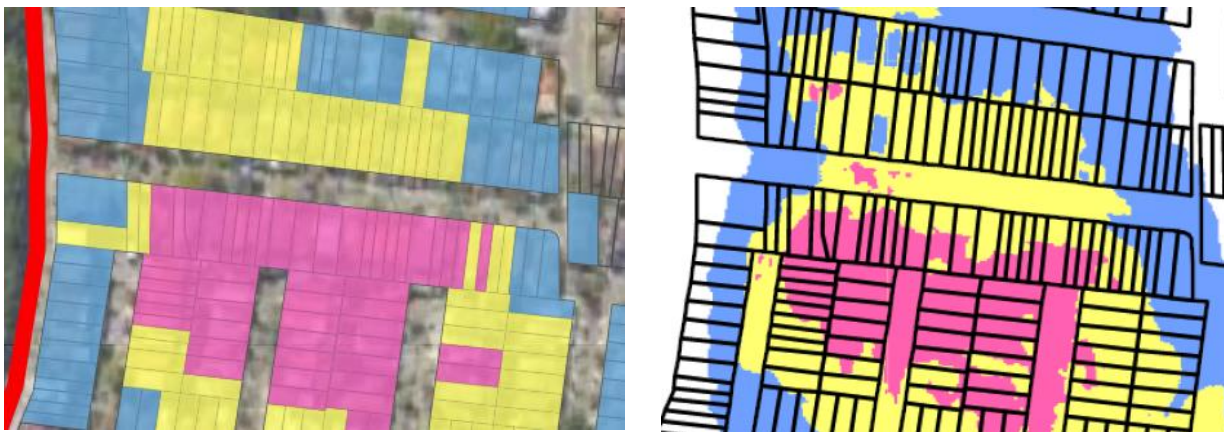


Figure 2. Lot and line-based map comparison.

A comparison of land area affected from the exhibited amendment and the proposed amendment is provided in Table 3. As the line-based map does not use a lot-tagging method, the comparison is provided in the context of total private land area. The percentages and figures shown in green highlight a positive change or reduction of impacted private land.

Table 3. Pre and post exhibition comparison of land area affected by FRPs.

Flood Risk Precinct	Lot-based map (exhibited) - % private land	Total m <sup>2</sup>	Line-based map (proposed) - % private land	Total m <sup>2</sup>
Low	12.6%	1,075,101	9.9% (-2.7%)	843,789 (-231,312)
Medium	6.3%	537,332	3.5% (-2.8%)	294,225 (-243,107)
High	0.6%	50,052	0.4% (-0.2%)	31,611 (-18,441)
Combined FRP	19.5%	1,662,485	13.7% (-5.8%)	1,169,624 (-492,860)
Nil	79.5%	6,849,825	86.3% (+6.8)	7,342,686 (+492,860)
	100%	8,512,310	100%	8,512,310

The proposed line-based map will result in a substantial reduction in land area affected by a single FRP and an overall reduction in land as a percentage affected across the LGA. Overall, the percentage of the LGA affected by FRPs has reduced by almost 6% to 13.7%, a reduction of nearly 500,000 square metres. Under the proposed scenario, the medium and high FRPs only make up 3.9% of the LGA (previously exhibited amounted to 6.9%). This is a substantial reduction and helps to address many of the issues residents raised in their submissions relating to their property being given a single FRP classification.

An example of these changes can be seen in Figure 3 showing the changes in land area previously entirely covered by a single low FRP classification significantly reduced.

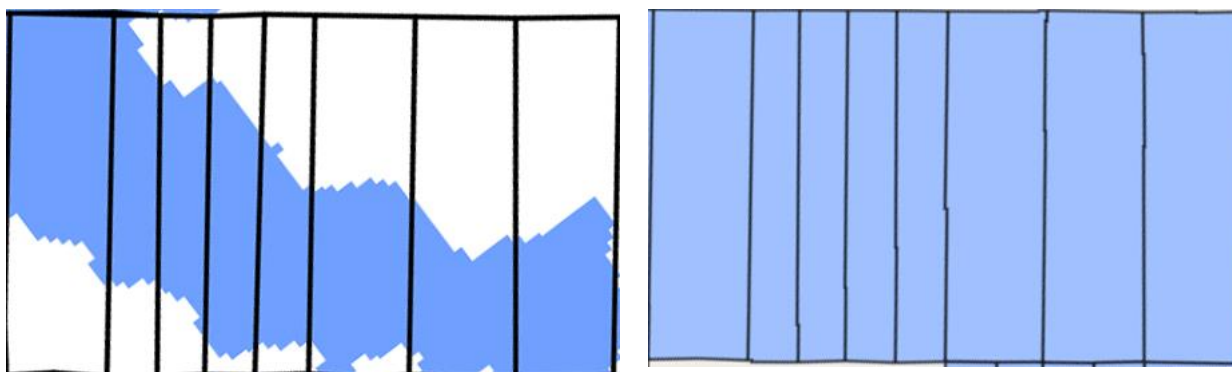


Figure 3. Lot and line-based map comparison.

#### Performance criteria for merit-based approach.

It is proposed to include performance criteria to provide flexibility and merit assessment of the proposed controls. An applicant will have the option to demonstrate they meet the performance criteria when prescriptive controls cannot be met in certain circumstances.

#### Changes to 'concessional development' category for alterations and additions

The criteria for 'concessional development' (alterations and additions) have also been broadened to allow ground floor additions up to 50 square metres. The concessional development category provides more flexibility in relation to floor level controls. Under concessional development, Council is able to consider a proposed floor level that may be lower than the relevant flood planning level, based on justification relating to existing floor levels in those parts of the property to be retained, as well as other factors such as accessibility requirements.

The previous criteria specified a maximum 10% of gross ground floor area, however following a review of other council's DCP controls and discussions with the consultants who undertook the peer review, 50 square metres was deemed more appropriate, to provide greater flexibility to applicants.

#### *Other minor amendments*

Minor amendments such as simplification to controls, tables, headings and categories from the initial draft version of the proposed amendment have also been made.

#### **Comparison with previous LEP map approach**

As a legislative instrument, the WLEP has more weight in the development assessment process and any relevant appeal which an applicant may make to the Land and Environment Court. Previously, Council defined its FPA through maps in the WLEP and utilised the relevant flood planning clauses in the WLEP, with minimal controls outlined in the WDCP. The clauses in the WLEP and the limited nature of controls in the WDCP, were therefore less prescriptive about the types of considerations applicants would need to meet in order to satisfy the WLEP Controls. In addition, the previous maps took a lot based approach to identifying areas affected by flooding.

Under the proposed draft DCP, satisfaction of the relevant DCP controls also means that any flood planning clauses within the WLEP will be deemed to be satisfied. Given the WDCP is not a legislative instrument and is a guide, more flexibility will be provided for the application of controls to suit different types of developments and circumstances. In addition, since the FPA is proposed to be represented as a line map, rather than lot-based, this has the associated benefits discussed earlier in the report. Whilst the number of affected properties has increased against the original FPA maps in the WLEP, the Waverley LGA Flood Study 2021 is much more sophisticated than the model from which the old WLEP FPA was derived from.

#### **Complying development**

The properties identified in the proposed FPA also identifies properties which will be subject to flood planning controls for the purposes complying development. Currently, as Council does not have a FPA, complying development in Waverley inconsistently considers flooding. Whilst Council's proposed DCP controls would not apply to complying development, alternative controls identified in the *Exempt and Complying Development Codes State Environmental Planning Policy (SEPP) 2008* apply which will ensure any complying development adequately addresses risk to the subject property, life, and surrounding properties.

#### **Further communications and engagement if adopted**

Should Councillors adopt the amendment, it is recommended that Council notify all those who provided a submission.

In addition, a consolidated flood planning web page will be created on Council's website, which will provide relevant information to residents to help gain an understanding of what the changes mean for any new development, as well as where to access information such as; the relevant flood maps, links to the DCP, how to order a flood information certificate and other frequently asked questions.

#### **6. Financial impact statement/Time frame**

All work has been completed within existing budgets with no additional financial impact. It is recommended that Council adopts the post-exhibition amendments, as this provides Council with the best protection from any liability which may have unplanned financial repercussions and consequences.

In addition, the upcoming draft budget for 2024-25 will propose a reduction in Council's TUFLOW flood model for smaller developments up to dual occupancy scale with a proposed fee of \$2,500 as against \$6,085 for larger scale developments.

**Time frame**

If adopted, the DCP amendment will become effective when notified on Council's website.

**7. Conclusion**

Adopting the draft DCP amendment will ensure that future development adequately considers the risk of potential inundation for the subject and surrounding properties and protects Council from liability, should any individuals wish to take legal action against Council in the future.

The DCP is an iterative document and the FPA will continue to be refined over time, as appropriate, in such circumstances as for example, following the completion of the Flood Risk Management Study and Plan.

**8. Attachments**

1. Waverley Development Control Plan 2022 - Amendment 2 - Flood Planning (under separate cover)
2. Annexure B5-4 Flood Planning Area (under separate cover)
3. Community consultation report (under separate cover) .

**REPORT**  
**PD/5.4/24.03**

**Subject:** Waverley Development Control Plan 2022 (Amendment No. 3) - Excavation - Exhibition

**TRIM No:** A24/0031

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

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

---

**RECOMMENDATION:**

That Council:

1. Publicly exhibits the draft Waverley Development Control Plan 2022 (Amendment No. 3) attached to the report on excavation controls for a minimum of 28 days, in accordance with section 3.43 and clause 5 of schedule 1 of the *Environmental Planning and Assessment Act 1979*.
2. Officers prepare a report to Council following the exhibition period.

**1. Executive Summary**

The excavation-related controls within the *Waverley Development Control Plan 2022* (WDCP) were strengthened in December 2022 in response to concerns surrounding excessive amounts of basement and site excavation in recent Development Applications.

Since adoption over 12 months ago, the strengthened controls have been found to be unreasonably onerous for larger scale developments. There have been DAs submitted that propose a greater volume of excavation than permitted under the current strengthened controls which are still able to successfully meet the relevant DCP objectives, and provide an improved planning outcome compared to a scheme that would comply with the maximum excavation volume control.

In response to the recently identified issues surrounding the strengthened controls, amendments to part B13 of the WDCP 2022 (see Attachment 1) are now proposed to:

- Remove maximum excavation volumes for lower density development. Instead introduce controls that only support basements for lower density development (dwelling house, attached dwelling, dual occupancy development or semi-detached dwelling development) where there is no alternative location on the site to accommodate parking and storage, the development satisfies the associated DCP objectives, and the basement is limited to the minimum size required for compliant parking, waste and storage.
- Remove maximum excavation volumes for larger developments (such as residential flat buildings, commercial uses, multi-storey mixed use, and shop top housing developments). Excessive excavation is not typically proposed for such developments, and existing controls B13 (c) to (r) will continue to apply to larger developments to ensure that excavation is reasonable.

It is also proposed to include an additional control that encourages the reuse of removed sandstone or rock elsewhere on site, such as front fencing or landscaping.

This report seeks Council's permission to place the amendments proposed in Attachment 1 to part B13 of the WDCP 2022 on public exhibition in accordance with section 3.43 and clause 5 of schedule 1 of the *Environmental Planning and Assessment Act 1979*.

## 2. Introduction/Background

In response to development applicants proposing excessive amounts of basement and site excavation, part B13 of the WDCP was strengthened through the amendment of objectives and the addition of a control stipulating a maximum numerical volume for excavation on a development site. Part B13 of the WDCP relates to excavation and applies to all properties and development types.

Excessive site excavation and disturbance can pose a negative impact on land stabilisation, ground water flows, vegetation quality and structural integrity on the development site and surrounding lots.

Woollahra Council established a precedent for such a DCP volume control, with an identical control being long-established in their DCP. Due to positive feedback received from Woollahra, who have a similar urban character as Waverley, the same volumetric formula was adopted. However, upon adoption and implementation it was found that both applicants and development assessment planners had trouble calculating excavation volumes, particularly where sites are sloped in various directions. It was also found that the maximum volumes prescribed were unreasonable for larger scale developments (such as residential flat buildings, commercial, multi-storey mixed use, and shop top housing developments) where parking, waste, storage and plant equipment controls require an extent of excavation above the figures prescribed in the adopted control in order to provide a positive planning outcome in terms of resident amenity and streetscape/public domain quality.

In response to the recent feedback received, a review of the numerical controls has been undertaken and an alternative approach is now recommended which will still prevent unreasonable exaction on smaller sites but provide flexibility and improved planning outcomes for larger developments.

## 3. Relevant Council Resolutions

Meeting and date	Item No.	Resolution
Strategic Planning and Development Committee 6 December 2022	PD/5.1/22.12	<p>That Council:</p> <ol style="list-style-type: none"> <li>1. Adopts the Waverley Development Control Plan 2022 attached to the report (Attachment 1), subject to the following amendments: <ol style="list-style-type: none"> <li>(a) Page 152 of the attachments under separate cover, part B17, Social Impact Assessment – Amend control (a) to read as follows: <p>‘A Social Impact Statement (SIS) should be prepared if the proposed development is one of the following:</p> <ul style="list-style-type: none"> <li>• Loss of low-rental dwellings (see State Environmental Planning Policy Housing 2021 for definition).</li> <li>• Strata subdivision of 4 or more lots.</li> <li>• \$10,000,000 or greater construction cost.</li> <li>• Gross floor Area of 3,000 sqm or greater (see Waverley Local Environmental Plan</li> </ul> </li> </ol> </li> </ol>



		<p style="text-align: right;">for definition.</p> <ul style="list-style-type: none"> <li>• Reduction in dwelling numbers on site.</li> </ul> <p>Council officers may request a SIS for development not included within the Guidelines at their discretion.'</p> <p>(b) Page 46 of the attachments under separate cover, part B3, Landscaping, Biodiversity and Vegetation Preservation – Amend the section on tree replacement to read as follows:</p> <p>'To maintain urban tree canopy cover, when a Vegetation Clearing Permit is granted to clear vegetation, the applicant may be required to replace the vegetation with an advanced approved species which is to be established on their property and maintained to maturity. Where there is insufficient space for replanting advanced vegetation the applicant may provide offset planting on public land. This may be undertaken by entering into a deed of agreement with Council. Generally, for every tree removed, the replacement of three (3) off-site trees will be required with pot size dependent on the canopy spread of the tree(s) to be removed as assessed by Council. Audit checks of replacement planting will be carried out by Council. Refer to Part 3.2.4.'</p> <p>(c) Page 44 of the attachments under separate cover, section 3.1.1, Exempt Vegetation – Amend clause (i) to read as follows:</p> <p>'Despite any other provisions in this DCP, clearing of vegetation is exempt from the requirement to obtain a Vegetation Clearing Permit in the following circumstances:</p> <p>(i) Pruning of a hedge (hedge being defined as a group of two or more trees whether planted in the ground or otherwise, so as to form a hedge and rise to a height of at least 2.5 metres above existing ground level) by no more than 20 per cent of its height and width in any 12-month period.'</p> <p>2. Adopts the Inter-War Building Design Guidelines attached to the report (Attachment 4).</p> <p>3. Investigates mitigation strategies for the reduction of heat island effects of residential and commercial buildings within a future update to Council's LEP and DCP</p>
--	--	---

Council 16 March 2021	CM/8.3/21.30	<p>That Council:</p> <ol style="list-style-type: none"> <li>1. Notes the repeated problems of building collapses in the Waverley local government area following excavation on adjacent sites and includes enhanced provisions in the next Local Environmental Plan (LEP) that consider the structural integrity of adjoining buildings.</li> <li>2. Notes the inappropriate shoring practices that featured in the recent 21 Curlewis Street, Bondi, sand slide related to the building collapse at 19 Curlewis Street, Bondi.</li> <li>3. Reviews section 6.2(3) of the LEP to strengthen the development consent for earthworks relating to excavation that prohibit Bondi-Rose Bay sand body excavation deeper than the currently allowed state complying development certificate 3 m depth.</li> <li>4. Reviews the WLEP and DCP to produce standard conditions of consent that are consistent with the introduction of the Design and Building Practitioners Regulation from July 1, 2021.</li> </ol>
--------------------------	--------------	---

#### 4. Discussion

##### Issues related to current excavation volume

Since implementing the maximum excavation volume control, assessment officers have advised that the maximum volumes prescribed were unreasonable for larger scale developments (such as residential flat buildings, commercial, multi-storey mixed use, and shop top housing developments) where parking, waste, storage and plant equipment controls require an extent of excavation above the figures prescribed in the adopted control in order to provide a positive planning outcome in terms of resident amenity and streetscape/public domain quality.

The control was less problematic for lower density dwelling houses, attached dwellings, dual occupancy development or semi-detached dwelling development. However, the prescribed volumes were difficult to implement on sloped sites proposing these types of housing.

The calculation of excavation volumes on sites as required by the strengthened controls has also been challenging for applicants and the Development Assessment team due to limitations with modelling software and online tools available.

##### Proposed amendment

Amendments to part B13 of the WDCP 2022 are now proposed, as shown tracked in Attachment 1. The changes:

- Remove maximum excavation volumes for lower density development. Instead introduce controls that only support basements for lower density development (dwelling house, attached dwelling, dual occupancy development or semi-detached dwelling development) where there is no alternative location on the site to accommodate parking and storage, the development satisfies the

associated DCP objectives, and the basement is limited to the minimum size required for compliant parking, waste and storage.

- Remove maximum excavation volumes for larger developments (such as residential flat buildings, commercial uses, multi-storey mixed use, and shop top housing developments). Excessive excavation is not typically proposed for such developments, and controls B13 (c) to (r) will continue to apply to larger developments to ensure that excavation is reasonable.

For reference, the underlying objectives of part B13 of the WDCP 2022 are:

*(a) To set maximum acceptable volumes of excavation which achieve the following objectives.*

*(b) To minimise the impact of excavation on the natural environment, neighbouring properties, and streetscape.*

*(c) To ensure the physical environment is preserved and enhanced through minimal site disturbance and the geotechnical stability of landfill and excavations.*

*(d) To minimise cut and fill on sloping sites.*

*(e) To encourage good quality internal environments including natural light and ventilation.*

*(f) To prevent use of subterranean spaces as habitable rooms.*

*(g) To prevent development exceeding the maximum car parking controls.*

*(h) To ensure excavation does not adversely impact land stabilisation, ground water flows and vegetation.*

*(i) To minimise structural risks to adjoining structures.*

An additional change which does not arise from recent issues is the addition of a control that encourages the reuse of removed sandstone or rock elsewhere on site, such as front fencing or landscaping.

### **Councillor briefing**

This matter was presented for discussion at a Councillor briefing on 13 February 2024. Key discussion surrounded whether provisions can be worded to ensure that components of basement floors do not extend outside of the ground floor building footprint, and whether controls can be improved to address stormwater impacts associated with excavation.

The following controls are currently adopted in part B13 of the WDCP 2022 and are being retained under this proposed update:

- *B13(o) – Excavation is not permitted within 900mm of side boundaries and shall only occur within the building footprint, except where access to a basement car park is required.*
- *B13(q) – Where excavation is proposed for development which is subject to Part C2 of this DCP, it is not to occur within a 1.5m setback from side boundaries and shall only occur within the building footprint except where access to a basement car park is required. Excavation will need to be setback greater where required to comply with Part C2, 2.3.2 Side and Rear Setbacks control (d).*

Further, the proposed new control introduced under part B13 of the WDCP 2022 does not allow basement development for low-density residential building types unless the associated objectives of part B13 are met.

An existing objective under part B13 being retained addresses stormwater management and reads: 'To ensure excavation does not adversely impact land stabilisation, ground water flows and vegetation.' A basement associated with a dwelling house or similar scale development will therefore not be supported unless the application can demonstrate consistency with this and the other objectives, typically requiring the assistance of a suitably qualified stormwater and geotechnical engineer.

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

### **Financial impact statement**

There are no direct financial impacts to Council as a result of the proposed changes.

### **Time frame and consultation**

If supported by Council, the DCP amendment would be placed on public exhibition for 28 days between March and April 2024. Consultation will include, at minimum, a survey on Council's Have Your Say website and a notice in e-newsletters.

The results of the public exhibition (with any post-exhibition changes, if necessary) would be reported back to Council for adoption in mid-2024.

## **6. Conclusion**

This report recommends that Council publicly exhibits the changes proposed in Attachment 1 to part B13 of the WDCP 2022. The changes will provide greater flexibility for excavation within larger developments whilst continuing to limit excessive excavation in low-density proposals. The proposed changes will also provide clarity for applicants and Council regarding the calculation methods for excavation.

## **7. Attachments**

1. WDCP 2022 - Part B13 - Excavation [↓](#) .

## Excavation B13

## B13 EXCAVATION

**Objectives**

- (a) To set maximum acceptable ~~volumes of excavation~~ extents of excavation which achieve the following objectives.
- (b) To minimise the impact of excavation on the natural environment, neighbouring properties, and streetscape.
- (c) To ensure the physical environment is preserved and enhanced through minimal site disturbance and the geotechnical stability of landfill and excavations.
- (d) To minimise cut and fill on sloping sites.
- (e) To encourage good quality internal environments including natural light and ventilation.
- (f) To prevent use of subterranean spaces as habitable rooms.
- (g) To prevent development exceeding the maximum car parking controls.
- (h) To ensure excavation does not adversely impact land stabilisation, ground water flows and vegetation.
- (i) To minimise structural risks to adjoining structures.

**Controls**

- ~~(a) The total volume of excavation permitted is to be no greater than the volume shown in Figures 26 and 27.~~
- (a) Excavation for basements will not be supported for dwelling house, attached dwelling, dual occupancy or semi-detached dwelling development, unless Council is satisfied that there is no alternative location on the site to accommodate parking and storage, the development satisfies the objectives of Part B13, and the basement:
  - (i) Has a maximum floor to ceiling height of 2.1m, except where the entry requires higher to meet Australian Standards,
  - (ii) Does not exceed one floor,
  - (iii) Will not contain any habitable rooms unless the room is at grade with external natural ground level along at least one side (refer to Figure 24), and
  - (iv) Has an area no greater than the area required to accommodate:
    - A maximum of 1 car parking space for dwellings with 1-2 bedrooms, or a maximum of 2 car parking spaces for dwellings with 3 or more bedrooms;
    - Waste storage for 3 x 140L bins per dwelling;
    - A plant room complying with control (b) of this part;
    - ~~• A maximum of 8 cubic metres of storage per dwelling; and~~
    - Minimum access requirements to the car parking and storage areas.
- ~~(b) The maximum volume of excavation permitted for basement storage is 8 cubic metres per dwelling.~~
- ~~(c)~~(b) The maximum ~~volume of excavation~~ area permitted for a plant room in any development is the minimum required to meet Australian Standards,

## Excavation B13

- accommodate typical dimensions of equipment required and the associated circulation space to access the equipment for maintenance. DA plans should show the approximate location and size of equipment within the plant room.
- ~~(d)~~(c) Excavation should not add to the visual bulk and scale of the building.
  - ~~(e)~~(d) Excavation should not result in the loss of naturally occurring sandstone. Where sandstone or natural rock are to be removed, opportunities for reuse on site should be considered (such as for front fencing or landscaping).
  - ~~(f)~~(e) Avoid cutting into the natural stone wall of a street.
  - ~~(g)~~(f) Avoid and minimise excavation where possible.
  - ~~(h)~~(g) Minimise the inclination of any resulting sloping landscaping.
  - ~~(i)~~(h) Existing natural features including trees and sandstone walls should be retained and incorporated as landscape features on the site in order to maintain the natural character of the landscape.
  - ~~(j)~~(i) Step retaining walls in response to the natural landform to avoid creating monolithic structures, particularly where visible from the neighbouring dwellings and the public domain.
  - ~~(k)~~(j) For sites with significant slopes a split-level building design is to be used to minimise excavation and backfilling.
  - ~~(l)~~(k) Fill is not to be used to raise the ground level.
  - ~~(m)~~(l) Excavation for garaging within sandstone walls facing the street must be minimised to preserve as much of the original wall as possible.
  - ~~(n)~~(m) Development should accommodate stormwater detention tanks and storage systems within the excavated area.
  - ~~(o)~~(n) Excavation is not permitted within 900mm of side boundaries and shall only occur within the building footprint, except where access to a basement car park is required.
  - ~~(p)~~(o) Basement car parking is to be located fully below natural ground level. Where this cannot be achieved due to topographic constraints, a maximum protrusion above ground of 1.2m is permissible (refer to Figure 25).
  - ~~(q)~~(p) Where excavation is proposed for development which is subject to Part C2 of this DCP, it is not to occur within a 1.5m setback from side boundaries and shall only occur within the building footprint except where access to a basement car park is required. Excavation will need to be setback greater where required to comply with Part C2, 2.3.2 Side and Rear Setbacks control (d).
  - ~~(r)~~(q) All below-ground structures that are located below the groundwater table are to be fully tanked. These types of structures must not collect and dispose of subsoil/seepage to kerb and gutter.

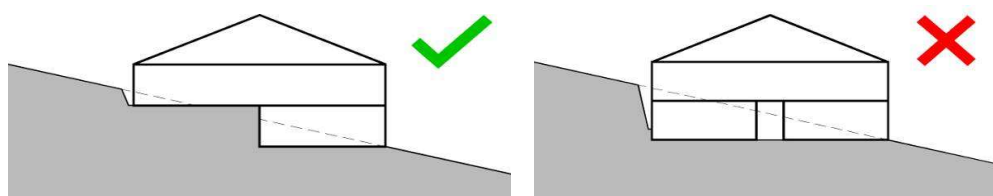
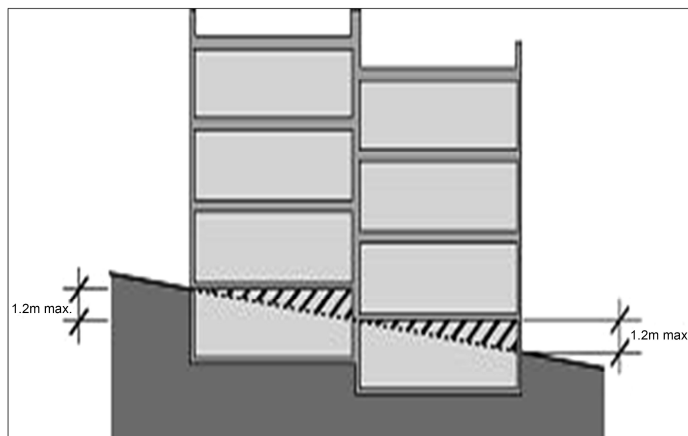
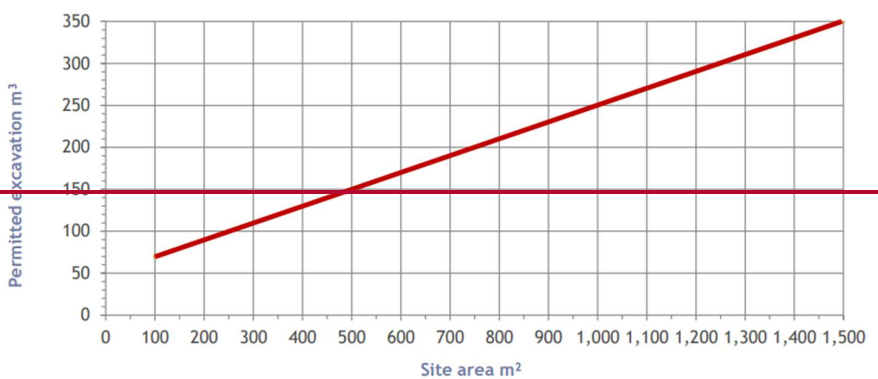


Figure 24 Habitable rooms are to have ample openings to an external wall for air and light.

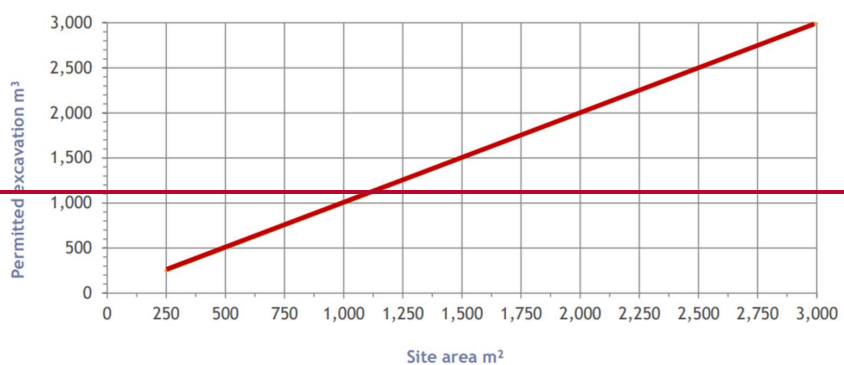
## Excavation B13



**Figure 25** Basement parking level on sloping sites



**Figure 26** Maximum volume of excavation for a dwelling house, attached dwelling, dual occupancy development or semi detached dwelling



**Figure 27** Maximum volume of excavation for any building type not mentioned in figure 26

**REPORT**  
**PD/5.5/24.03**

**Subject:** Clause 4.6 Variations to Development Standards - Quarterly Report - October-December 2023

**TRIM No:** A23/0244

**Manager:** Angela Rossi, Executive Manager, Development Assessment

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

---

**RECOMMENDATION:**

That Council notes the clause 4.6 variations to development standards for the period 1 October 2023 to 31 December 2023 attached to the report.

**1. Executive Summary**

On 1 November 2023, Planning Circular PS 20-002—which required a quarterly report to be tabled at a Council meeting for information only, outlining development applications where there was a variation to a development standard approved pursuant to clause 4.6 of *Waverley Local Environmental Plan 2012* (WLEP 2012)—was repealed. Instead, this data is captured in the NSW Planning Portal.

The Department of Planning, Housing and Infrastructure (DPHI) has made a publicly accessible register on the NSW Planning Portal that displays all clause 4.6 variation requests across NSW on the Variations Register web page available here: <https://pp.planningportal.nsw.gov.au/development-and-assessment/variations-register>

This Variations Register displays the most up-to-date information from the NSW Planning Portal. Since 1 November 2023, users have been able to see all variation requests under assessment and/or determined across the state for each Council.

Notwithstanding this, at the Strategic Planning and Development Committee Meeting on 5 December 2023 Council resolved that officers continue to report on clause 4.6 variations to Council on a quarterly basis.

There were 24 development applications approved with a clause 4.6 variation in the last reporting quarter, for the period 1 October 2023 to 31 December 2023. The determinations have been made by either the Sydney Eastern City Planning Panel, the Waverley Local Planning Panel or by planning officers under delegated authority.

**2. Introduction/Background**

The NSW planning system provides flexibility in planning controls by providing the ability for a consent authority to vary development standards in certain circumstances. Development standards are contained in the LEP (a statutory planning instrument) and are a means to achieving an environmental planning objective and can be numerical or performance based. Common development standards sought to be varied in the Waverley local government area include height of building, minimum lot size (for subdivision) and floor space ratio. The Development Control Plan (DCP) is a non-statutory planning instrument and does not contain development standards.



Some developments may achieve the objectives of development standards, despite non-compliance with the numerical development standard. The planning system provides flexibility to allow these objectives to be met by varying development standards in certain cases.

Clause 4.6 is common to all standard instrument LEPs across all NSW Councils. The objectives of the clause are:

- *To provide an appropriate degree of flexibility in applying certain Development Standards to particular development, and*
- *To achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

If an applicant wishes to vary a development standard contained within an environmental planning instrument, such as the WLEP 2012, their development application needs to be supported by a written request for variation pursuant to clause 4.6 of WLEP 2012 outlining why compliance with the relevant development standard is unreasonable or unnecessary in the circumstances of the case.

There are a number of procedural and reporting requirements for councils to ensure transparency and integrity in the planning framework. This report details development applications which approved clause 4.6 variations during the reporting period.

### 3. Relevant Council Resolutions

Meeting and date	Item No.	Resolution
Strategic Planning and Development Committee Meeting 5 December 2023	PD/5.5/23.12	<p>That Council:</p> <ol style="list-style-type: none"> <li>1. Notes:               <ol style="list-style-type: none"> <li>(a) The clause 4.6 variations to development standards for the period 1 July 2023 to 31 October 2023 attached to the report.</li> <li>(b) That from 1 November 2023, the Department of Planning and Environment (DPE) no longer requires councils to report clause 4.6 variations to development standards or submit quarterly reports, as this information will be extracted directly from the NSW Planning Portal and published by the DPE for all NSW councils.</li> </ol> </li> <li>2. Officers continue to report on clause 4.6 variations to development standards to Council on a quarterly basis.</li> </ol>

### 4. Discussion

Council is required to report its (or the Local or Regional Panels') use of clause 4.6 to the DPPI through the NSW Planning Portal. The NSW Planning Portal has been updated to reflect the clause 4.6 reforms and to provide more transparency on the use of this mechanism across the state. This includes a public register that displays all variations requests in NSW – both under assessment and determined. The information obtained from the NSW Planning Portal will update the variations register and provide the public with up-to-date information about clause 4.6 requests.

The Clause 4.6 Variations Register for the quarter between 1 October 2023 to 31 December 2023 (the fourth quarter of 2023) is attached to this report.

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

There are no financial implications relating to this report.

## **6. Conclusion**

This report satisfies the requirement Council's resolution to continue to report quarterly on clause 4.6 variations to development standards, despite it not being a legislative requirement. The DPPI has made a publicly accessible register on the NSW Planning Portal that displays all clause 4.6 variation requests across NSW, both undetermined and determined. It will display the most up-to-date information from the NSW Planning Portal. Interested persons have been able to access all variation requests under assessment and/or determined since 1 November 2023 across the state and for each Council.

## **7. Attachments**

1. Clause 4.6 Variations Register - Q4 - October-December 2023 [📄](#) .

Register of Development Standard Variations Approved October 2023 to December 2023											
DA number	Street No	Street name	Suburb	Category of development	Environmental planning instrument	Zoning of land	Development standard to be varied	Justification of variation	Extent of variation	Consent authority	Date
DA-53/2023	11	Jacques Avenue	Bondi Beach	2: Residential - Single new dwelling	WLEP 2012	R3	Clause 4.1: Minimum subdivision lot size	<ul style="list-style-type: none"> <li>The subdivision provides two allotments that can accommodate the pair of semi-detached dwellings</li> <li>No unreasonable impacts on the amenity of adjoining properties or locality</li> <li>Sufficient environmental planning grounds</li> <li>Consistent with the objectives of the standard</li> </ul>	Variation: 3.9% Control: 232sqm Proposal: 223.4sqm and 222.6sqm	Council	05/10/2023
DA-187/2023	32	St James Road	Bondi Junction	1: Residential - Alterations & additions	WLEP 2012	R3	Clause 4.4: Floor Space Ratio	<ul style="list-style-type: none"> <li>No unreasonable impacts on the amenity of adjoining properties or locality</li> <li>Sufficient environmental planning grounds</li> <li>Consistent with the objectives of the standard</li> </ul>	Variation: 15.6% Control: 0.99:1 Proposal: 1.155:1	WLPP	25/10/2023
DA-181/2023	34	St James Road	Bondi Junction	1: Residential - Alterations & additions	WLEP 2012	R3	Clause 4.4: Floor Space Ratio	<ul style="list-style-type: none"> <li>No unreasonable impacts on the amenity of adjoining properties or locality</li> <li>Sufficient environmental planning grounds</li> <li>Consistent with the objectives of the standard</li> </ul>	Variation: 16% Control: 0.99:1 Proposal: 1.148:1	WLPP	25/10/2023
DA-185/2023	17	High Street	Waverley	2: Residential - Single new dwelling	WLEP 2012	R2	Clause 4.1: Minimum subdivision lot size	<ul style="list-style-type: none"> <li>Existing non-compliance, proposal relates to rearrangement of lot boundaries</li> <li>No unreasonable impacts on the amenity of adjoining properties or locality</li> <li>Sufficient environmental planning grounds</li> <li>Consistent with the objectives of the standard</li> </ul>	Variation Lot A: 31% Variation Lot B: 29% Control: 325sqm Proposal: 223sqm and 229.9sqm	WLPP	25/10/2023
DA-113/2023	55	Gould Street	Bondi Beach	1: Residential - Alterations & additions	WLEP 2012	R2	Clause 4.3: Height of Buildings	<ul style="list-style-type: none"> <li>Existing non-compliance</li> <li>No unreasonable impacts on the amenity of adjoining properties or locality.</li> <li>Sufficient environmental planning grounds</li> <li>Consistent with the objectives of the standard</li> </ul>	Variation: 76.7% Control: 8.5m Proposal: 15.02m	WLPP	25/10/2023
DA-113/2023	55	Gould Street	Bondi Beach	1: Residential - Alterations & additions	WLEP 2012	R2	Clause 4.4: Floor Space Ratio	<ul style="list-style-type: none"> <li>Existing non-compliance and proposal results in a reduction in overall floor space</li> <li>No unreasonable impacts on the amenity of adjoining properties or locality</li> <li>Sufficient environmental planning grounds</li> <li>Consistent with the objectives of the standard</li> </ul>	Variation: 299% Control: 0.5:1 Proposal: 1.99:1	WLPP	25/10/2023
DA-133/2023	154	Brighton Boulevard	North Bondi	4: Residential - New multi unit	WLEP 2012	R3	Clause 4.3: Height of Buildings	<ul style="list-style-type: none"> <li>Existing non-compliance and no change to overall building height and envelope</li> <li>No unreasonable impacts on the amenity of adjoining properties or locality</li> <li>Sufficient environmental planning grounds</li> <li>Consistent with the objectives of the standard</li> </ul>	Variation: 33.7% Control: 9.5m Proposal: 12.7m	WLPP	25/10/2023
DA-133/2023	154	Brighton Boulevard	North Bondi	4: Residential - New multi unit	WLEP 2012	R3	Clause 4.4: Floor Space Ratio	<ul style="list-style-type: none"> <li>Existing non-compliance and no change to overall building envelope</li> <li>No unreasonable impacts on the amenity of adjoining properties or locality</li> <li>Sufficient environmental planning grounds</li> <li>Consistent with the objectives of the standard</li> </ul>	Variation: 82.8% Control: 0.6:1 Proposal: 1.1:1	WLPP	25/10/2023
DA-118/2023	304	Military Road	Dover Heights	2: Residential - Single new dwelling	WLEP 2012	R2	Clause 4.4: Floor Space Ratio	<ul style="list-style-type: none"> <li>No unreasonable impacts on the amenity of adjoining properties or locality</li> <li>Sufficient environmental planning grounds</li> <li>Consistent with the objectives of the standard</li> </ul>	Variation: 14.2% Control: 0.523:1 Proposal: 0.6:1	WLPP	25/10/2023
DA-245/2023	126	Ramsgate Ave	North Bondi	1: Residential - Alterations & additions	WLEP 2012	R3	Clause 4.3: Height of Buildings	<ul style="list-style-type: none"> <li>Pre-existing non-compliance</li> <li>No change to overall building height</li> <li>No change to overall building envelope</li> <li>No unreasonable impacts on the amenity of adjoining properties or streetscape</li> <li>Sufficient environmental planning grounds</li> <li>Consistent with the objectives of the standard</li> </ul>	Variation: 7% Control: 9.5m Proposal: 10.19m	Council	10/11/2023
DA-158/2023	3	Mirimar Ave	Bronte Beach	2: Residential - Single new dwelling	WLEP 2012	R2	Clause 4.4: Floor Space Ratio	<ul style="list-style-type: none"> <li>No unreasonable impacts on the amenity of adjoining properties or streetscape</li> <li>Sufficient environmental planning grounds</li> <li>Consistent with the objectives of the standard</li> </ul>	Variation: 16.4% Control: 0.62:1 Proposal: 0.73:1	WLPP	22/11/2023
DA-215/2023	42	Varna Street	Bronte	1: Residential - Alterations & additions	WLEP 2012	R2	Clause 4.4: Floor Space Ratio	<ul style="list-style-type: none"> <li>Pre-existing non-compliance</li> <li>No change to overall building height</li> <li>No change to overall building envelope</li> <li>No unreasonable impacts on the amenity of adjoining properties or streetscape</li> <li>Sufficient environmental planning grounds</li> <li>Consistent with the objectives of the standard</li> </ul>	Variation: 48.7% Control: 0.9:1 Proposal: 1.38:1	WLPP	22/11/2023
DA-233/2023	160	Ebley Street	Bondi Junction	1: Residential - Alterations & additions	WLEP 2012	R3	Clause 4.4: Floor Space Ratio	<ul style="list-style-type: none"> <li>No change to overall building height</li> <li>No change to overall building envelope</li> <li>No unreasonable impacts on the amenity of adjoining properties or streetscape</li> <li>Sufficient environmental planning grounds</li> <li>Consistent with the objectives of the standard</li> </ul>	Variation: 11.9% Control: 0.98:1 Proposal: 1.1:1	WLPP	22/11/2023

Register of Development Standard Variations Approved October 2023 to December 2023											
DA number	Street No	Street name	Suburb	Category of development	Environmental planning instrument	Zoning of land	Development standard to be varied	Justification of variation	Extent of variation	Consent authority	Date
DA-234/2023	13	Northcote Street	Rose Bay	1: Residential - Alterations & additions	WLEP 2012	R2	Clause 4.4: Floor Space Ratio	<ul style="list-style-type: none"> <li>Pre-existing non-compliance</li> <li>No unreasonable impacts on the amenity of adjoining properties or streetscape</li> <li>Sufficient environmental planning grounds</li> <li>Consistent with the objectives of the standard</li> </ul>	Variation: 27.7% Control: 0.5:1 Proposal: 0.65:1	WLPP	22/11/2023
DA-249/2023	6	MacKenzie Street	Bondi Junction	13: Subdivision	WLEP 2012	R3	Clause 4.1 Minimum Subdivision lot size	<ul style="list-style-type: none"> <li>Boundary adjustment of existing unusable 'dunny' lane</li> <li>Pre-existing non-compliance</li> <li>No unreasonable impacts on the amenity of adjoining properties or streetscape</li> <li>Sufficient environmental planning grounds</li> <li>Consistent with the objectives of the standard</li> </ul>	Variation:35% - 89% Control: 232m <sup>2</sup> Proposal: 151m <sup>2</sup> , 26.12m <sup>2</sup> , 48.13m <sup>2</sup>	WLPP	22/11/2023
DA-257/2023		Belgrave Street	Bronte	13: Subdivision	WLEP 2012	R2	Clause 4.1 Minimum Subdivision lot size	<ul style="list-style-type: none"> <li>Subdivision of land for drainage and access purposes</li> <li>Orderly use of land</li> <li>No unreasonable impacts on the amenity of adjoining properties or streetscape</li> <li>Sufficient environmental planning grounds</li> <li>Consistent with the objectives of the standard</li> </ul>	Variation:86%- 98% Control: 325m <sup>2</sup> Proposal: 5.4m <sup>2</sup> -44.6m <sup>2</sup>	WLPP	22/11/2023
DA-125/2023	393	Bronte Road	Bronte	1: Residential - Alterations & additions	WLEP 2012	R2	Clause 4.3: Height of Buildings	<ul style="list-style-type: none"> <li>No change to the overall building height</li> <li>No unreasonable impacts on the amenity of adjoining properties or streetscape</li> <li>Sufficient environmental planning grounds</li> <li>Consistent with the objectives of the standard</li> </ul>	Variation: 8% Control: 8.5m Proposal: 9.15m	Council	20/11/2023
DA-148/2023	181	Bronte Road	Queens Park	1: Residential - Alterations & additions	WLEP 2012	R2	Clause 4.4: Floor Space Ratio	<ul style="list-style-type: none"> <li>Pre-existing non-compliance</li> <li>No change to the overall building height</li> <li>No unreasonable impacts on the amenity of adjoining properties or streetscape</li> <li>Sufficient environmental planning grounds</li> <li>Consistent with the objectives of the standard</li> </ul>	Variation: 5% Control: 0.92:1 Proposal: 0.97:1	Council	27/11/2023
DA-175/2023	68	Alt Street	Queens Park	1: Residential - Alterations & additions	WLEP 2012	R2	SEPP (Housing) 2001 Clause 53 Minimum allotment size	<ul style="list-style-type: none"> <li>The size of the land will not result in unreasonable impacts on the amenity of adjoining properties or streetscape</li> <li>Sufficient environmental planning grounds</li> <li>Consistent with the objectives of the standard</li> </ul>	Variation: 7% Control: 450m <sup>2</sup> Proposal: 419.45m <sup>2</sup>	Council	16/11/2023
DA-279/2023	28	Francis Street	Bondi	1: Residential - Alterations & additions	WLEP 2012	R3	FSR	<ul style="list-style-type: none"> <li>Pre-existing non-compliance</li> <li>No change to overall building height</li> <li>No change to overall building envelope</li> <li>No unreasonable impacts on the amenity of adjoining properties or streetscape</li> <li>Sufficient environmental planning grounds</li> <li>Consistent with the objectives of the standard</li> </ul>	FSR Variation: 41% Control: 0.9:1 Proposal: 1.2:1	WLPP	13/12/2023
DA-279/2023	28	Francis Street	Bondi	1: Residential - Alterations & additions	WLEP 2012	R3	Height	<ul style="list-style-type: none"> <li>Pre-existing non-compliance</li> <li>No change to overall building height</li> <li>No change to overall building envelope</li> <li>No unreasonable impacts on the amenity of adjoining properties or streetscape</li> <li>Sufficient environmental planning grounds</li> <li>Consistent with the objectives of the standard</li> </ul>	Height Variation: 19% Control: 12.5 Proposal: 14.9	WLPP	13/12/2023
DA-217/2023	88	Francis Street	Bondi	1: Residential - Alterations & additions	WLEP 2012	R2	FSR	<ul style="list-style-type: none"> <li>Pre-existing non-compliance</li> <li>No unreasonable impacts on the amenity of adjoining properties or streetscape</li> <li>Sufficient environmental planning grounds</li> <li>Consistent with the objectives of the standard</li> </ul>	FSR Variation: 153% Control: 0.5:1 Proposal: 1.17:1	WLPP	13/12/2023
DA-217/2023	88	Francis Street	Bondi	1: Residential - Alterations & additions	WLEP 2012	R2	Height	<ul style="list-style-type: none"> <li>Pre-existing non-compliance</li> <li>No unreasonable impacts on the amenity of adjoining properties or streetscape, Sufficient environmental planning grounds</li> <li>Consistent with the objectives of the standard</li> </ul>	Height Variation: 39% Control: 8.5m Proposal: 9.4m	WLPP	13/12/2023
DA-271/2023	8	Forest Knoll Avenue	Bondi Beach	1: Residential - Alterations & additions	WLEP 2012	R2	FSR	<ul style="list-style-type: none"> <li>No change to overall building height</li> <li>No change to overall building envelope</li> <li>No unreasonable impacts on the amenity of adjoining properties or streetscape</li> <li>Sufficient environmental planning grounds</li> <li>Consistent with the objectives of the standard</li> </ul>	Variation: 9% Control: 0.5:1 Proposal: 0.54:1	Council	20/12/2023

**REPORT**  
**PD/5.6/24.03**

**Subject:** Council Emissions, Energy Use and Water Savings - Annual Report

**TRIM No:** A20/0266

**Manager:** Executive Manager, Environmental Sustainability

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

---

**RECOMMENDATION:**

That Council:

1. Notes the achievement of Council's emission reduction and water conservation targets for the 2022-2023 financial year, as set out in the report.
2. Notes that reducing fleet emissions and the measuring and reporting of scope 3 emissions will become increasingly important going forward.

**1. Executive Summary**

As part of its overall environmental strategy, Council has committed to reduce greenhouse gas emissions from its operations.

Council has adopted the following environmental targets, as outlined in the Community Strategic Plan and Environmental Action Plan (2022 -2032):

- Net zero by 2030 (based on 2003-04 levels).
- No increase in annual mains water consumption (based on 2005-06 levels).

This report outlines the following progress against energy and water targets, with analysis of data up to June 2023:

- Annual emission reductions in 2022-23 of 51% were achieved, largely due to Council's purchase of 100% renewable electricity through the purchase and surrender of equivalent Large Scale Generation Certificates (LGCs).
- To offset residual (scope 1, 2 and estimated scope 3) emissions, credits will be purchased to be 'carbon neutral' for 2022-23.
- Electricity consumption increased by 6% reflecting the opening of the Pavilion and gradual return to pre-COVID working arrangements.
- Gas consumption is down 10% on previous years, reflecting the gradual removal of gas from Council operations, in line with Council commitments.
- Fleet emissions now represent the largest contributor to greenhouse gas emissions, with a 7% increase in fuel use for the reporting period, following lower fuel usage in 2021-22 due to COVID impacts on fleet use.

- Council's mains water target was achieved, despite an estimated 5% increase which is a continued correction to unusually low usage over recent years due to closure of key buildings, COVID-19 working arrangements and significant rainfall.

## 2. Introduction/Background

Council has advocated strongly for action on climate change, including through the climate and biodiversity emergency declaration (April and December 2019). In 2022, Council actions and targets to rapidly progress to zero emissions and reduce reliance on fossil fuels, were incorporated into the Community Strategic Plan and Environmental Action plan, including:

- 100% renewable electricity.
- Removal of gas appliances from Council operations by 2030.

A Sustainable Resource Management Committee, established in 2020, regularly reviews data, discusses projects and coordinates efforts across multiple assets and teams to optimise energy, fleet and water management, in order to track and meet Council's Environmental commitments. This report has been prepared following the annual meeting on 2 November 2023.

To achieve net zero emissions by 2030 means reducing greenhouse gas emissions as much as possible and offsetting any hard-to-abate, residual emissions. This requires rigorous measurement, monitoring, and evaluation of emissions sources. During the year, Council renegotiated its environmental data monitoring services contract, with Azility Pty Ltd achieving a 20% cost reduction. This external contractor undertakes the external measurement of our carbon emissions.

Emissions are categorised into 3 scopes as shown in the table below. Council has been measuring, reducing and reporting on our scope 1 and scope 2 emissions since 2009. Council is now starting to better report and reduce scope 3 emissions, which are difficult to measure but can account for up to 70% of organisational emissions. For the purposes of this report, scope 3 emissions are a calculated factor of scope 1 and 2 emissions.

*Table 1. Types of emissions.*

Scope 1	Scope 2	Scope 3
Direct emissions that occur from sources owned or controlled by Council.	Indirect emissions from generation of purchased electricity consumed by Council.	Indirect emissions from Council authorised activities, but not owned or controlled by Council.
e.g.: Fuel for vehicles, plant or equipment powered by fossil gas, petrol or diesel.	e.g. Council activities powered by electricity: HVAC and lighting, pumping stations and asset operations.	e.g. Staff travel to and from work, emissions from waste, events emissions in Waverley, leased assets, and embodied emissions in materials we purchase and use.

**3. Relevant Council Resolutions**

Meeting and Date	Item no	Resolution
Council 15 February 2022	CM/7.14/22.02	That Council adopts the Electric Vehicle Transportation Policy attached to the report.
Council 25 May 2021	CM/6.4/21.05	<p>That Council:</p> <ol style="list-style-type: none"> <li>1. Notes that Council: <ol style="list-style-type: none"> <li>(a) Has declared a climate and biodiversity emergency.</li> <li>(b) Is a signatory to the National Climate Emergency, which was launched at the National Climate Emergency Summit in 2020.</li> <li>(c) Has substantial programs to help mitigate carbon emissions and address climate change which focus on the community.</li> <li>(d) Has resolved to receive a report on joining the United Nations Race to Zero campaign.</li> </ol> </li> <li>2. Recognises that: <ol style="list-style-type: none"> <li>(a) There is a need to advance and accelerate mobilisations to address the climate emergency and support the restoration of a safe climate.</li> <li>(b) In the wake of an unprecedented year of bush fires, floods and pestilence, Council has a leadership role in developing and implementing locally based solutions to mitigate and reduce carbon.</li> </ol> </li> <li>3. Investigates: <ol style="list-style-type: none"> <li>(a) Declaring new targets for the reduction of carbon emissions by becoming net zero by 2030 so that Council will have a 100% reduction on scope 1 and 2 greenhouse gas emissions based on 2003/2004 levels.</li> <li>(b) This target becoming a key priority of Council's activities and incorporated into the draft 2021-22 Operational Plan that is currently on exhibition, and that the next Environmental Action Plan and the Long Term Financial Plan budgets are updated accordingly to achieve this.</li> </ol> </li> </ol>

<p>Council 16 March 2021</p>	<p>CM/8.2/21.03</p>	<p>That Council:</p> <ol style="list-style-type: none"> <li>1. Notes that corporate and government fleets have the potential to drive the electric vehicle revolution in Australia, making up 52% of annual new vehicle sales.</li> <li>2. Notes that commitments to fleet electrification are important as they can demonstrate vehicle demand to car makers, are an important source of supply to the second-hand market and provide impetus for the roll-out of charging infrastructure.</li> <li>3. Notes the benefits of electric fleets: <ol style="list-style-type: none"> <li>(a) Environmental: fleet decarbonisation shows a commitment to sustainable practices and dedication to action on climate change. It is also a way to meet sustainability commitments such as the 2015 Paris Agreement on Climate Change.</li> <li>(b) Economical: total cost of ownership calculations improve the business case for electric vehicles due to their lower operating costs.</li> <li>(c) Social and health: electric vehicles can lead to improved driver experiences and reduced driver fatigue as a result of less noise, fumes and vibrations.</li> <li>(d) Reputational: fleet electrification demonstrates an ethical and forward-thinking organisation that is on top of emerging technologies.</li> </ol> </li> <li>4. Sets a target of 100% of pool cars in Council's passenger fleet be transitioned to electric vehicles (not hybrid) by 2025 and this target be included as part of Council's new Environmental Action Plan.</li> <li>5. Develops an electric vehicle policy by December 2021 that considers: <ol style="list-style-type: none"> <li>(a) Increasing the number of charging stations and placing them in highly visible areas to alert residents to their availability for community use.</li> <li>(b) Placing charging stations at car share parking spaces.</li> <li>(c) EV-only parking bays.</li> <li>(d) Ensuring all of Council's EV passenger fleet is highly branded identifying it as an EV, as this</li> </ol> </li> </ol>
----------------------------------	---------------------	---



		<p>will show leadership in our commitment to reduce carbon emissions in our local government area.</p> <ol style="list-style-type: none"> <li>7. Develops fact sheets and other materials to promote EV use to the community.</li> <li>8. Investigates amending the Waverley Local Environmental Plan and/or Waverley Development Control Plan to include the requirement to provide charging stations in new strata buildings (80% of current charging is done at home).</li> <li>9. Investigates reducing the staff vehicle selection list from 22 options by at least 50% (with electric/hybrid vehicles being given priority within the new list) and incentivising electric/hybrid vehicles as the preferred staff option, and undertakes consultation with senior staff to determine how this might be achieved without negative impacts to Council.</li> <li>10. Officers report every six months, as per current practice, on the overall fuel efficiency of the passenger fleet as measured in average CO<sub>2</sub> (g/km) per vehicle as defined by the Australian Government green vehicle guide.</li> </ol>
Strategic Planning and Development Committee 1 December 2020	PD/5.3/20.12	<p>That Council:</p> <ol style="list-style-type: none"> <li>1. Adopts a 100% renewable energy target for Council by 2030 for Council's utility energy purchases.</li> <li>2. Does not install any new gas appliances or fittings on Council assets beyond those already designed and approved and that, where possible, current gas appliances and fittings be phased out when requiring replacement in favour of efficient electrical appliances leading up to 2030.</li> <li>3. Amends the current Waverley Environmental Action Plan (EAP) to include this target, with relevant actions detailed in the 2022 EAP revision.</li> </ol>

#### 4. Discussion

Council's continued and consistent emission reductions have occurred due to reduced energy usage at our buildings, street lighting and through our new Power Purchase Agreement with ZEN Energy which began in July 2022, for 100% renewable electricity for up to nine years. Contracting a fixed price for this contract assists to maintain emissions and cost savings.

Emissions savings achieved through our renewable energy contract helped deliver a 51% reduction in emissions for the year, effectively eliminating scope 2 emissions for Council operations. The gradual

removal of gas appliances from the cemetery, and several early childhood centres is also contributing to the drop in emissions. Emissions for fleet (diesel and petrol purchases) are Council’s largest source of scope 1 direct emissions.

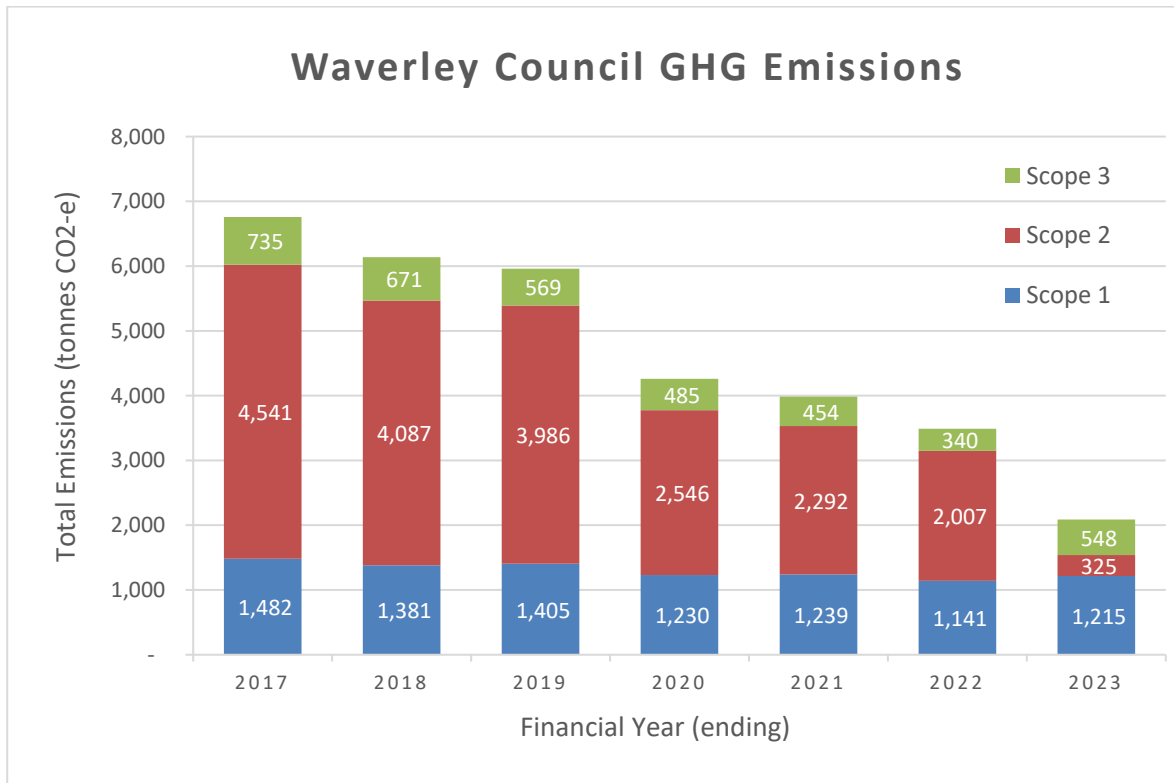


Figure 1. Annual emissions by scope.

While emissions reduced, energy use increased by 6%, which is partially accounted for by the opening of the Bondi Pavilion and the opening of Whitton Lane offices. Energy costs rose by 25% reflecting the new electricity network tariffs and a new contract with tariffs now likely to be stable for three years.

Embedding sustainability in the management of Council assets and operations, and the continued prioritising of efficiency upgrades, including street lighting and optimising opportunities for renewable energy (solar) installations at our energy intensive sites, will help drive cost savings.

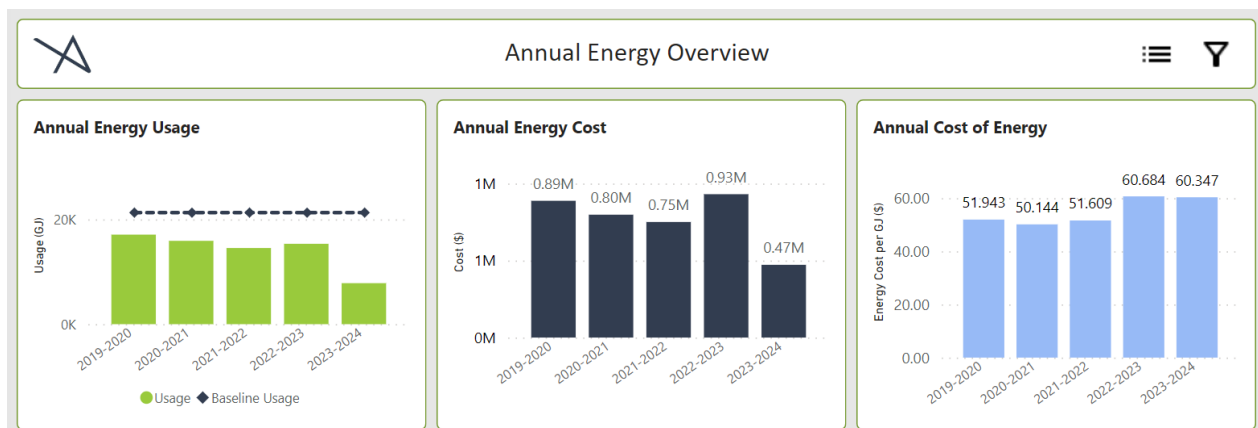


Figure 2. Annual Energy consumption and costs.

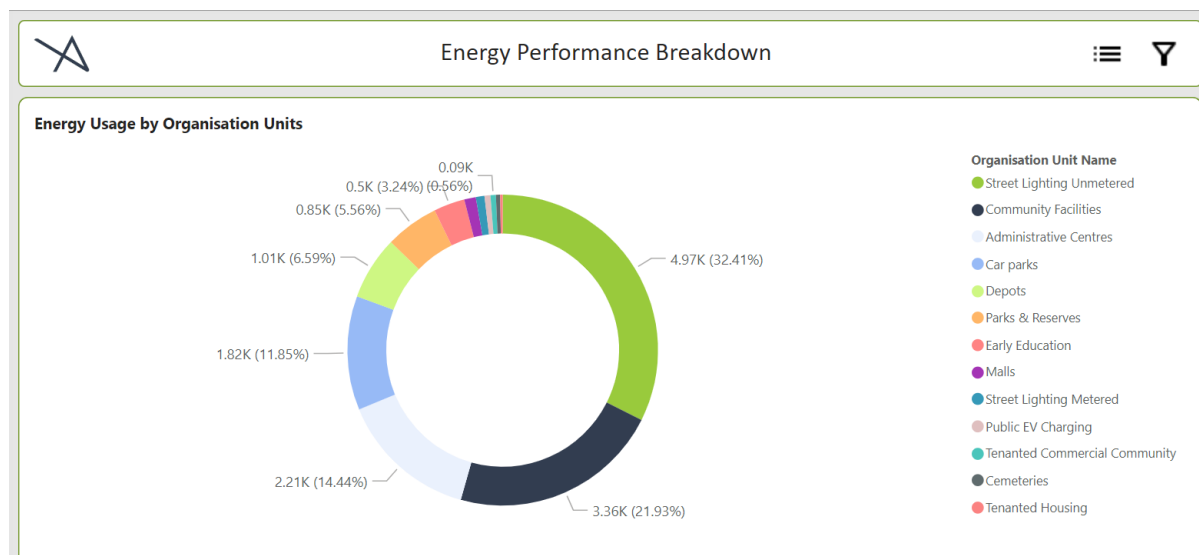


Figure 3. Energy use by organisational units.

A Zero Emissions and Efficiency Action Plan (ZEEAP) is now being developed to prioritise energy and water efficiency upgrades across all council facilities, and to prioritise required funding and resourcing and provide an implementation pathway.

It is expected that to offset Council’s remaining emissions will cost approximately \$15,000. This is budgeted for in Council’s operational budget.

**Fleet results**

Council’s fleet now generates 79% of Council’s greenhouse gas (GHG) emissions at approximately 1,215 tonnes. The 2022-23 fleet emissions were marginally higher than 2021-22 emissions, which can be attributed to COVID-related working adjustments, including fewer passenger fleet cars and less usage, and heavy vehicle fuel use up 3%. There has been 5.7% increase in year-on-year fuel costs.

Supporting the implementation of Council’s Electric Vehicle and Transportation Policy, new fast electric vehicle (EV) chargers have been installed in Eastgate Parking; AC chargers at Grafton Street; the Spring Street EV charger will be reinstated; and there are new plans to provide charging at Council sites, such as the Alexandria Integrated Facility and the Compliance Office, are progressing. The addition of eight new pool EVs this financial year will further assist the continued transition of our fleet towards net zero.

**Sustainable water results**

Council’s water conservation target is to keep potable (mains) water use under 2005-06 levels and this target was achieved in 2022-23. Although water use increased 5.5% compared to the previous year, this was a correction on unusually low usage in 21-22. Council also met our water quality target by maintaining a consistent rating of ‘good’ under the NSW Government’s Beach watch program.

Mains water consumption is managed and monitored across open space and parks through the smart irrigation control system, which enables staff, managers and contractors to proactively manage irrigation remotely. These cloud- based controllers save drinking water using predictive watering, which adjusts watering frequency and volume based on forecast and actual rainfall. Council’s real time leak detection system, which allows for rapid identification of uncontrolled water losses, has enabled fast location and repair of leaks on council assets and facilities.

To reduce mains water consumption, Council maintains an extensive recycled water network that harvests, treats and supplies water for non-potable purposes. During the reporting period, recycled water use was 53 megalitres. This is a 62% increase on the previous year. This increase was expected given two consecutive years of decline.

In addition, control panel issues at Waverley Park and Barracluff Park affected recycled water supply to these sports fields, temporarily decreasing supply of recycled water at these sites. In this period, our recycled water system delivered a cost saving of \$78,000 for the year (cost of potable water equivalent minus scheduled recycled water system maintenance costs).

Council has also participated in the development of the Sydney Water Regional Plan and proposed opportunities for collaboratively improving water quality and efficiency outcomes across Waverley. This included at Hugh Bamford Reserve and Bondi Golf Course the potential provision of recycled water for irrigation.

## **5. Financial impact statement**

Council's emissions are calculated by an independent third party. Once quantified, Council then procures offsets in accordance with Council's Procurement Policy. Council has budgeted for the annual purchase of carbon offsets in the operational budget.

## **6. Conclusion**

Council has transitioned to 100% renewable electricity and thus eliminating greenhouse gas emissions from this source. Council continues to reduce gas consumption and is on target to eliminate gas consumption by the year 2030. The Council fleet is now the largest contributor to greenhouse gas emissions and there is a focus to minimise this through electrification.

## **7. Attachments**

Nil.

**REPORT**  
**PD/5.7/24.03**

**Subject:** Draft South Head General Cemetery Plan of Management  
- Exhibition

**TRIM No:** A23/0599

**Manager:** Andrew Best, Executive Manager, Property and Facilities

**Director:** Sharon Cassidy, Director, Assets and Operations

---

**RECOMMENDATION:**

That Council:

1. Publicly exhibits the draft South Head General Cemetery Plan of Management attached to the report for 42 days.
2. Officers prepare a report to Council following the exhibition period.

**1. Executive Summary**

The draft South Head General Cemetery Park Plan of Management has been endorsed for public exhibition by the delegate of the Minister for Lands and Property in accordance with Council's responsibilities under the *Crown Land Management Act 2016* (the Act).

This report presents the draft South Head General Cemetery Plan of Management to Council and seeks to publicly exhibit it for 42 days in accordance with the *Local Government Act 1993*.

**2. Introduction/Background**

South Head General Cemetery is Crown land managed by Council, and as such is required to have a Plan of Management (PoM) under the *Crown Lands Management Act (2016)*. A review of the Cemeteries' compliance with legislation identified this requirement in 2019.

In October 2020, a Council report presented a list of coastal Crown reserves that were identified as a priority for new PoMs to be developed. Given the ongoing use of the South Head Cemetery as a cemetery it was not identified as a priority at this time.

The Cemeteries team commenced work on the PoM in early 2023 and have sought advice from both Cemeteries and Crematoria NSW and Crown Lands on the process to develop the PoM.

**3. Relevant Council Resolutions**

Nil.

#### 4. Discussion

In 2017, South Head General Cemetery was listed on the State Heritage Register. As part of that listing a range of cemetery related operational activities, burials, maintenance, new and existing memorialisation etc. were identified as allowable activities and exempt from specific Heritage Office approval. The PoM has been drafted based on the Heritage Order and existing cemetery operations.

No new or additional uses are or have been proposed in the PoM. The only non-cemetery-related use authorised in the PoM is the authority to enter a licence over one of the toilets in the amenities building in the cemetery. This is a historic arrangement whereby bus drivers utilise the facility. It is the intention of Council's property team that these arrangements be formalised with Transdev and a licence agreement be entered into. This arrangement is included as an express authorisation in the draft PoM.

#### 5. Financial impact statement/Time frame/Consultation

Advice has been sought from Crown Lands as to the process to be undertaken towards the finalisation of the PoM. Given the ongoing use as a cemetery, the approved process towards seeking approval for the PoM is not as complex as that of a coastal PoM.

The proposed steps to be followed along with the status and actions taken are summarised in the table below.

Table 1. PoM process.

Crown Lands Procedure	Proposed Action	Current Status
<b>Step 1 – Drafting the Plan</b>		
The POM should meet the Minimum requirements of section 36(3) of the <i>Local Government Act</i>	Check undertaken draft PoM complies	Completed
The POM should identify the landowner	Draft PoM identifies the Crown	Completed
Activities to be undertaken must be expressly authorised in the PoM	Completed	Completed
Council must obtain written advice from a Native Title Manager that the POM and the activities to be undertaken comply with the <i>Native Title Act</i>	Advice obtained and approved by General Manager	Completed
<b>Step 2 – Notify the Owner / Obtain consent for Public Exhibition</b>		
The Department as landowner is to be notified of the draft PoM prior to public exhibition.	Letter to Department enclosing draft PoM for their review. Via email.	Completed
Draft Plan is forwarded to Cemeteries and Crematoria NSW for their review.	To be issued by Crown Lands. No Council action required.	Completed

Crown Lands approve draft Plan for Exhibition	To be issued by Crown Lands. No Council action required.	Approval received on 30 October 2023; see Attachment 2
<b>Step 3 – Community Consultation</b>		
Internal approvals sought	Report to Council seeking approval to put PoM on exhibition	This report
Council must exhibit the draft PoM in accordance with section 38 of the <i>Local Government Act</i> : 28 days on exhibition (42 days for comment)	<ul style="list-style-type: none"> <li>• Communications team to set up on Have Your Say page on Council’s website.</li> <li>• Notice to be posted on site.</li> <li>• Notice to be posted to local residents.</li> <li>• Friends of Waverley Cemeteries to be contacted directly and directed to Have Your Say page.</li> </ul>	To be undertaken
<b>Step 4 – Adopting the PoM</b>		
If there are any submissions through the exhibition period	<p>Update to Draft and report to Council to deal with Feedback.</p> <p>If the PoM is amended after public exhibition (except for minor editorial and formatting changes), Council must resubmit the draft PoM for Minister’s consent to adopt.</p>	To be determined after consultation
If there are no submissions through the exhibition period	<p>Report to Council to adopt PoM.</p> <p>Council resolution should note that the PoM is adopted pursuant to section 40 of the <i>Local Government Act</i> and in accordance with 3.23(6) of the <i>Crown Land Management Act 2016</i></p> <p>When Draft PoM is adopted a copy is to be sent to Crown Lands</p>	<p>To be determined after consultation.</p> <p>Note: Crown Lands have already advised ‘Subject to no changes following public exhibition, as a delegate for the Minister for Lands and Property, I consent to council to adopt the PoM under clause 70B of the Crown Land Management Regulation 2018.</p>

There are no financial impacts directly related to the adoption of this PoM. The consultation and timeline is as identified in the above table.

## 6. Conclusion

The draft South Head General Cemetery PoM has been developed in accordance with the requirements of Crown Lands and in accordance with the State Heritage Order allowable activities. No change to existing or allowable new Cemetery related activities are proposed.

It is recommended that Council publicly exhibits the PoM for 42 days in accordance with the *Crown Land Management Act 2016* and the *Local Government Act 1993*.

## 7. Attachments

1. Draft South Head General Cemetery Plan of Management [↓](#)
2. Crown Lands letter [↓](#) .





## South Head General Cemetery

### Plan of Management (DRAFT) January 2024



## Acknowledgement

Waverley Council acknowledges the *Bidjigal*, *Birrabirragal* and *Gadigal* people, who traditionally occupied the Sydney Coast, and we also acknowledge Aboriginal Elders both past and present.

Our vision for reconciliation is for Waverley to be a vibrant, resilient, caring, and inclusive community where Aboriginal and Torres Strait Islander peoples:

- Practice and celebrate their culture and heritage proudly
- Are honoured for their survival and resilience, and supported to continue to overcome adversity
- Are respected and acknowledged as First Nations peoples with the right to determine their own futures Waverley Council will continue to value and protect our environment with respect to Aboriginal and Torres Strait Islander peoples' intrinsic relationship with the land and waters.

Waverley Council also acknowledges that the History of the South Head Cemetery section of this plan is sourced principally from the information published by the NSW Heritage Office as part of its consideration of the nomination of South Head General Cemetery for listing on the State Heritage Register.

## Disclaimer

This plan is prepared without prejudice to any negotiated or litigated outcome of any native title determination applications covering land within the plan's area. It is acknowledged that any future outcomes of native title determination applications may necessitate amendment of this plan; and the implementation of this plan may require further notifications under the procedures in Division 3 of Part 2 of the *Native Title Act 1993* (Cwlth).

The plan is also prepared without prejudice to any future negotiated outcomes between the State or Federal Governments and NSW Aboriginal communities. It is acknowledged that such negotiated outcomes may necessitate amendment of this plan. Waverley Council's legal advice on Native Title of South Head General Cemetery is detailed below.

Every effort has been made to ensure that the information in this plan is accurate. Waverley Council does not guarantee that the publication is without flaw of any kind and therefore disclaims all liability for any error, loss or other consequence that may arise from you relying on any information in the publication.

## 1.0 Introduction and History of the South Head General Cemetery

The South Head General Cemetery Plan of Management describes the current condition of South Head General Cemetery and addresses the intent of future management. It articulates management directions for the Cemetery. A Plan of Management (PoM) is a document providing a framework to guide the sustainable use, improvement, maintenance, and management of public land. The plan provides directions and identifies important actions to achieve what is envisioned for the land. Plans of management also serve to consolidate information about a site and its users.

PoMs are developed in accordance with the NSW Crown Land Management Act 2016, which states in Division 3.6 Plans of management and other plans “(1) The Minister may direct an applicable Crown land manager to prepare a draft plan of management for dedicated or reserved Crown land under the manager’s management.”. Local Government Authorities (LGA) are also directed to produce management plans for land that they are responsible for through the Local Government Act 1993, which states in Division 2 Use and management of community land “(1) A council must prepare a draft plan of management for community land.”

This Plan of Management has 3 parts:

Part 1 – Introduction and History of South Head General Cemetery -

Part 2 – Existing Situation - provides an overview of the site context, site conditions, opportunities and constraints, as well as the legislative context.

Part 3 - Basis for management - sets out how our vision for the Cemetery can be achieved in light of the existing situation, in the form of an Implementation action plan which will guide our activities over the coming years.

### 1.1 History

#### 1.1.1 Aboriginal Significance

Before 1788 the South Head peninsular and sandstone headland that marks the entrance to Port Jackson (Sydney Harbour), around Watsons Bay, was intensively used by Aboriginal people as a base for settlement, fishing, shellfish collection, art and associated activities. The natural vegetation of this area was mixed Eucalypt Forest – ranging from tall forest with denser undergrowth on the slopes and gullies leading into the harbour, and more open, lower, sparse woodland on the exposed cliff and ridge tops. The most exposed cliff tops carried only a heath flora.

This varied range of flora provided edible plant foods and fauna for Aboriginal people. But the main settlement use of the South Head before Europeans was the use of the resources of Port Jackson and the sea, for both fishing and shellfish collection.

Well studied though mostly now invisible are the rock engravings at South Head in Watsons Bay, the site of the earliest reports by Europeans of Aboriginal art in Australia. They stretch along the cliff top, and along the areas accessible to Sydney Harbour, with a significant number at Inner South Head itself, which was a major Aboriginal fishing site. Subjects include humans, bandicoot, kangaroos and wallabies, and marine fauna – fish, whales, sharks – as well as geometric shapes.

### 1.1.2 Native Title Declaration

In accordance with its requirements under the Native Title Act 1993, Council sought legal advice to determine if Native Title existed on South Head General Cemetery. Council's Native Title Manager then provided that advice to Council.

To formalise the requirements under the Native Title Act 1993 the report to Council's delegate represented Council's Native Title Manager's direction, which is required under the Act. The Native Title Assessment report was completed by Council's solicitors Norton Rose Fulbright. The report describes the Future Act process that can be considered under subdivision J and K of the Native Title Act 1993.

Based on the evidence noted in the report and its attachments, it is likely that there is evidence that Native Title has been extinguished within the reserve in Table 1 of the report and known as South Head General Cemetery. The Future Act process in leasing, licensing and operating or developing the Reserve is likely to continue and can be considered under subdivision J and K of the Native Title Act 1993.

Council's native title manager has been and will continue to be consulted in all relevant aspects of native title pertaining to the land that is covered by this Plan of Management.

### 1.1.3 History of the Cemetery

European exploration into the coastal region of eastern Sydney commenced in 1790 with the establishment of a signal station at South Head. A road from Sydney to South Head was built in 1811, and in 1816 a lighthouse was constructed at the signal station. This road became known as Old South Head Road when New South Head Road was built in the 1830s. Old South Head Road runs along the western side of the cemetery and meets New South Head Road near the entrance gates.

In 1841 the Reverend Lancelot Threlkeld became the congregationalist minister at South Head, and requested the Governor make a land grant for a cemetery. The parish at that time consisted mainly of the fishing village of Watsons Bay. A land grant was reportedly made to Threlkeld by Governor Gipps in 1845. The 'Sydney Morning Herald' noted on 9 September 1845: 'His Excellency the Governor has been pleased, in answer to a memorial from the inhabitants of South Head, to grant one acre of land for the purpose of a general cemetery for the interment of the dead, without any restrictions as to the religious persuasion of the deceased.'

However, there is no evidence in newspapers or other records of any burials in the cemetery before 1868 when the burial occurred on 27 February 1868 of Major Lee, a resident of Vaucluse. Some earlier deaths were commemorated on later monuments, such as James Green, captain of the 'Dunbar' which was wrecked off South Head in 1857. He is named on the gravestone of his brother Malcolm who died in 1904. In addition, a small number of earlier graves were moved to South Head Cemetery from the Devonshire Street Cemetery in 1901 at the time of the construction of Central Railway Station.

The first trustees were appointed in 1870 by the Minister for Lands, Sir John Robertson. They were Thomas John Fisher (1813-1875, barrister and son-in-law of William Charles Wentworth of Vaucluse House), Joseph Scaife Willis (1808-1897, resident of 'Greycliffe', Vaucluse), George Thorne (1810-1891, resident of 'Claremont', now part of Rose Bay convent) and Edward Mason Hunt (1842-1899, barrister and resident of 'The Hermitage', Vaucluse).

The original land grant of 1 acre was formalised in 1872. This area was the south-eastern part of the present cemetery site, on the corner of Burge and Young Streets (land title 501/752011). A further area of 3 roods and 36 perches was granted in 1890, west of the original grant and on the corner of Burge Street

and Old South Head Road (land title 113/752011). The final area added to the cemetery was 2 acres, 2 roods and 7 perches granted in 1902 which is to the north of the other two grants and on the corner of Old South Head Road and Young Street (land title 7006/1023201).

The first funeral held at South Head for a public figure was that of Margaret, wife of Sir John Robertson, on 8 August 1889. Sir John was the Premier of New South Wales in 1860-1861, 1868-1870, 1875-1877 and 1885-1886, and his parliamentary career covered over 30 years from 1856 to 1886. Also, in 1889 Sir John's 82-year-old Māori servant known as John Blanket was buried within the Robertson family vault. The inscription 'Sir John's Blanket' on the kerbing has been misunderstood by some writers as referring metaphorically to Sir John's grave as a 'stone blanket', rather than to a named person buried within it. Sir John was buried with his wife on 10 May 1891, and the 'Singleton Argus' of 13 May 1891 commented: 'The cemetery itself, bleak and unornamented, is a dreary enough looking place, but its appearance on Sunday afternoon, with people walking about it, was almost weird.' Sir John's body was conveyed by boat from Watsons Bay to Circular Quay from where the funeral procession proceeded back to South Head by road to allow the public to pay their respects along the route.

In 1895 the Trust appointed a Secretary, Edwin Stanhope Sautelle, who was also the Clerk and Engineer of Vaucluse Borough Council which was established in that year. By then the original Trustees had been replaced by others including Harold Francis Norrie (mayor of Vaucluse and local doctor) and J A Murray. A sexton's cottage had been built by 1895, when a newspaper report ('Freeman's Journal', 11 May 1895) mentioned the sexton's wife assisting a visitor seeking Sir John Robertson's grave.



Figure 1: Main Entrance gates

The tram line extension from Edgecliff to Watsons Bay opened in 1909 along New South Head Road, passing close by the cemetery. This line continued operating until 1960 when it was replaced by the 324 bus route. The tram made it easier for the public to travel to the cemetery from Sydney either to attend funerals or to visit graves.

After the death in office of New South Wales Governor Sir Walter Davidson he was buried in South Head Cemetery on 18 September 1923. Two years later in 1925 the Governor's remains were moved to the central avenue and a large Celtic cross monument was erected by public subscription. This event seems to have spurred the Trustees to undertake improvements, including the perimeter wall and gates. The main gates made from brass and bronze were designed by Edwin Sautelle and installed in 1924. ['Sun',

25 June 1924] An article in 'The Watchman' newspaper on 13 August 1925 stated: 'In the last two or three years the trustees have spent over (Pounds)8000, principally in substantial stone fences, cemented paths, etc.'

In 1926 the trustees had ambitious plans, with a proposal to expand the cemetery by acquiring around 17 acres extending south-eastwards to the coast. The Local Land Board approved the resumption of the area, but Waverley Municipal Council successfully appealed against the decision to the Land and Valuation Court. The move was opposed by Sir John Sulman, president of the Town Planning Association, who stated that the extension would block the proposed cliff walk and drive from The Gap (Watsons Bay) to Ben Buckler (North Bondi) and condemned the practice of having cemeteries in the middle of residential areas. ['Sydney Morning Herald', 9 September 1926]

South Head General Cemetery was the scene of a dramatic series of funerals in 1927, including 12 on one day, following the sinking of the ferry 'Greycliffe' on Sydney Harbour with the loss of 40 lives. On Thursday 3 November the ferry was travelling from Circular Quay and Garden Island heading for Nielsen Park and Watsons Bay when it collided at 4.15 pm with the steamer 'Tahiti' and sank. The 22 'Greycliffe' victims buried in South Head Cemetery are in individual graves.

In late 1937 Edwin Sautelle was discharged as Secretary of the Trust after 42 years' service. Along with this role he ran his own engineering firm and served on Vacluse Council from 1912 to 1934 including three terms as Mayor. A subsequent audit revealed that up to (Pounds)40,000 was missing and in April 1938 Sautelle was charged with forging time sheets and stealing. He was convicted on six charges and sentenced to three years' imprisonment. This case signaled the end for the Trustees, and in 1939 the New South Wales parliament passed the South Head Cemetery Act which removed the trustees and authorised the Minister for Lands to appoint a single trustee in their place. The new trustee was Bruce Carlyle Hughes, the Inspector of Local Government Accounts. After two years a new group of trustees was appointed in 1941, including aldermen of Waverley and Vacluse Councils. However less than six months later the trustees were removed and on 17 October 1941 Waverley Municipal Council was appointed sole trustee.

Waverley Council has continued to operate South Head Cemetery since 1941. The sexton's cottage was demolished after 1941 to create more space for burials and was replaced with a smaller liver-brick amenities block in the 1950s. The addition of lawn graves from the late 1960s utilised the central avenue and other paths to increase the burial space within the cemetery.

#### **1.1.4 Heritage significance**

The Heritage Council of NSW considers nominations for a listing on the State Heritage Register based on an assessment of its heritage significance and taking into account any submissions received from the public. South Head Cemetery was nominated for consideration in March 2017. A summary of that nomination is as follows.

South Head South Head General Cemetery is the first general public cemetery in the eastern suburbs. It is on land originally granted in 1845 and eventually founded in 1868 as part of the attempt to cope with the growing demand for new burial grounds following the closure of Devonshire Street Cemetery in Surry Hills. South Head General Cemetery has particular historical significance for the decision to exclude religious sections or portions unlike most other general cemeteries.

It is associated with a number of high-achieving, famous and notable people from across NSW, Australia and the world including people from the fields of architecture, business and others of religious, political and sporting backgrounds. These include notable people from architecture, business, religious, political and sporting backgrounds, such as: Australia's first Prime Minister, Edmund Barton (1920); NSW Governors Sir Walter

Davidson (1923) and Sir Roden Cutler (2002); NSW Premiers Sir John Robertson (1891), Sir William Lyne (1913), Sir Charles Wade (1922) and Sir Joseph Carruthers (1932); Queensland Premier and Federal Treasurer "Red Ted" Theodore (1950); Sydney Lord Mayors Sir Richard Richards (1920), Sir Allen Taylor (1940), Sir

Archibald Howie (1943), Sir Samuel Walder (1946), and Sir Emmet McDermott (2002); members of the Packer, Fairfax and Norton newspaper dynasties; members of the Street family legal dynasty including two Chief Justices, Sir Philip Whistler Street (1938) and Sir Kenneth Whistler Street (1972); Anglican Archbishop of Sydney John Charles Wright (1933); the Foy retailing family (including a monument to the disappeared Foy heiress Juanita Nielsen); architects Mortimer Lewis (1879), John Horbury Hunt (1904), Robin Dods (1920), Howard Joseland (1930), John Burcham Clamp (1931) and Neville Gruzman (2005); artist George Washington Lambert (1930); writers Jack Moses (1945) and Frank Clune (1971); entertainer Gladys Moncrieff (1976).

It has aesthetic and landmark values availed by its position overlooking Diamond Bay and the Pacific Ocean. The cemetery contains a collection of highly intact funerary monuments and grave furniture with a predominance of granite and trachyte, along with some sandstone and marble. There are a few statues of religious figures such as angels, but the more predominant designs are Celtic and other crosses and obelisks. Smaller monuments such as stone desks often include carved decorations using art deco style.

Its eclectic collection of intact funerary monuments of various eras contributes to its landmark and aesthetic values. It has educational and research potential as an outdoor archive of genealogical, biographical, historical, architectural, artistic and demographic information which demonstrates the historic and contemporary social character of Sydney and New South Wales.

It is a representative example of a burial ground that can demonstrate the principal characteristics of a general public cemetery from the Victorian period in NSW including funerary monuments which have evolved over time and reflect the social values and attitudes of the Australian community towards death and commemoration from the late 19th century to the present day. The absence of denominational or religious sections within the cemetery is rare.

After consideration, the site was listed on the State Heritage Register on 21 August 2017.



## 2.0 Existing situation

This Part outlines the Cemetery's site, context, conditions and opportunities and constraints for ongoing cemetery use. This Part also provides a brief overview of the legislation relating to the use and management of the site. The following table provides an overview of South Head General Cemetery.

Address	Old South Head Road, Vaucluse NSW 2030
Area	1.76 hectares
Property description and location	Lot 113 DP 752011, Lot 501 DP 752011 and lot 7006 DP 1023201 Bounded by Old South Head Road (west), Young Street (east and Burge Street (south). Whole Reserve
Landowner	Crown (Crown Reserve)
Reserve Identifier	97612
Reserve Purpose	Cemetery Purposes
Crown Land Manager	Waverley Council. Date of Gazettal 14 December 1984 Folio 6204
Zoning	The site is listed in Schedule 5 of Waverley Local Environment Plan 2012 as a Landscape Conservation Area
Interment options provided	Burials (double depth plots) in non-sectarian sections
Number of Interments	To November 2022 the Cemetery had 8,723 burials and 982 cremation interments. In 2020/21 there were 5 burials and 11 ash interments In 2021/22 there were 4 burials and 1 ash interment

## 2.1 Location context

South Head General Cemetery is located in the suburb of Vaucluse in Sydney's Eastern Suburbs some 10 kilometres from the Sydney CBD. It is located in the Diamond Bay / Vaucluse precinct of Waverley Council and adjoins on the western side Woollahra Council.

The Cemetery, as shown at Figure 2, is currently adjoined by:

- Old South Head Road to the West
- Young Street to the East
- Burge Street to the South.

The Cemetery is zoned SP 2 Infrastructure in the Waverley Local Environment Plan (2012) and the surrounded by residential housing zoned R3 medium Density residential. To the West the land is zoned in the Woollahra Local environment Plan (2014) as R3 Medium Density Residential and a large Aged Care Facility, located directly to the west of the southern end of the Cemetery, is Zoned SP2 Seniors Housing.

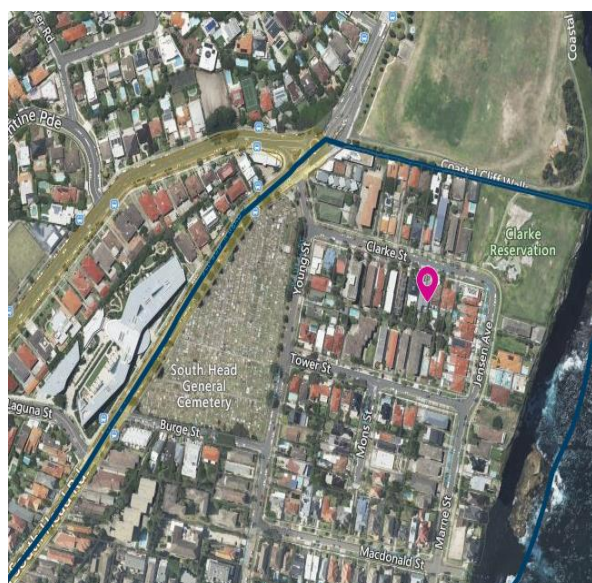


Figure 2: South Head General Cemetery site location context



Other Cemeteries in the Eastern Suburbs include:

- Waverley Cemetery Bronte also managed by Waverley Council and operational
- St Peters Anglican Church, Watsons Bay (Ash Memorial Wall only)
- Coast Hospital Cemetery, Little Bay, managed by the NSW National Parks & Wildlife Service. No longer active
- Eastern Suburbs Memorial Park, Matraville managed by Southern Metropolitan Cemeteries Land Manager and operational
- Randwick General Cemetery, South Coogee managed by Randwick City Council
- St John's Maroubra Anglican Columbarium Maroubra
- St Jude's Cemetery, Randwick.

## 2.2 Site conditions

### Site Character

The Cemetery falls approximately 10 meters across the 220 metres from the northern tip of the site to the south-eastern corner. The fall is negligible to the middle of the Cemetery and then falls more steeply to the Southern end, (Burge Street) boundary.

The site is relatively open and low scale devoid of any significant large-scale vegetation. The Western and Eastern boundaries are fringed with mature Norfolk Pine trees planted within the adjoining road and footpath reserve. A single mature Date Palm adjacent to the north-western boundary is the only tree on the site. Three similar date palms are in the road reserve at the entrance gates.



Figure 3: Predominant Site Usage - Graves and Memorialisation

Otherwise, the site is occupied by previous and current burial areas. Monumental grave sites are the key visual feature of the Cemetery, spanning the 153 years of use.

Views from the site are relatively limited due the limited change in elevation and principally reflect the surrounding residential areas. Glimpses of Diamond Bay can be seen from the southeast corner, while Sydney Harbour is noticeable when looking north from the main norther entry gates.

### Built Features and Assets

As previously mentioned, the principal built assets at the Cemetery consist of highly intact funerary monuments and grave furniture with a predominance of granite and trachyte, along with some sandstone and marble. There are a few statues of religious figures such as angels, but the more predominant designs are Celtic and other crosses and obelisks. Smaller monuments such as stone desks often include carved decorations using art deco style.

Dotted around the Cemetery are a number of larger Vaults and family mausolea with multiple interments of family members. These assets are privately owned / maintained by the individual rights holder and family descendants of those interred in the sites.



Figure 4: Family Vault

Table 1 - Other built features and assets within the Cemetery.

Built Feature /Asset	Description
Sandstone Block Perimeter Wall	Encircles the whole Cemetery. Mostly in good condition, although eastern section adjacent to amenities block in disrepair.
Main Gates and Entrance Pillars	Constructed in 1924 and in good condition.
Pedestrian Entry Gates, Southern and Western boundaries	Construction date unknown. Southern Entrance in poor condition and needs assessment.
Toilet Block	Adjacent to the Amenities Building. Only female toilet open to the general public. Male toilet locked and keys maintained by Transport NSW.
Ash Memorial Wall – Western Boundary	Construction 1972 – A basic interment older style brick wall area embedded into the western sandstone boundary wall of the site in a location that has poor access and visual setting.
Internal Pedestrian Paths	Concrete paths in average condition. In some cases, maintenance required.
Amenities Block	Used for storage of Cemetery equipment and by Open Spaces Council teams working in the vicinity. Constructed circa 1950.

### 2.3 Principal Site Uses

**Provision Of Burial Rights** - Since its establishment in 1868 the Cemetery’s predominant interment offering has been monumental grave sites, with 24 sections all being non-aligned with any particular religious or cultural group. The absence of denominational or religious sections within a cemetery is rare.

Approximately 9,700 interments have occurred within the Cemetery since opening. A key concern for the long-term future of the cemetery is the availability of burial space. Given the history and location of the cemetery (which is the only operational cemetery in the area), some level of continued demand for burial space within the cemetery can be reasonably expected.

On average 5 coffin and 10 Ash Interments occur each year and these numbers will continue into at least the next 20 years. This is because the Interment Rights to 175 sites have yet to be exercised and future interments can be expected for these sites. In addition, while there is no additional land available to create new interment sites, the legislative process of reclaiming unused old gravesites is currently being undertaken. This will release a further 150 sites for future sale.

The layout of the Cemetery, highlighting existing sections, is shown at Figure 5.

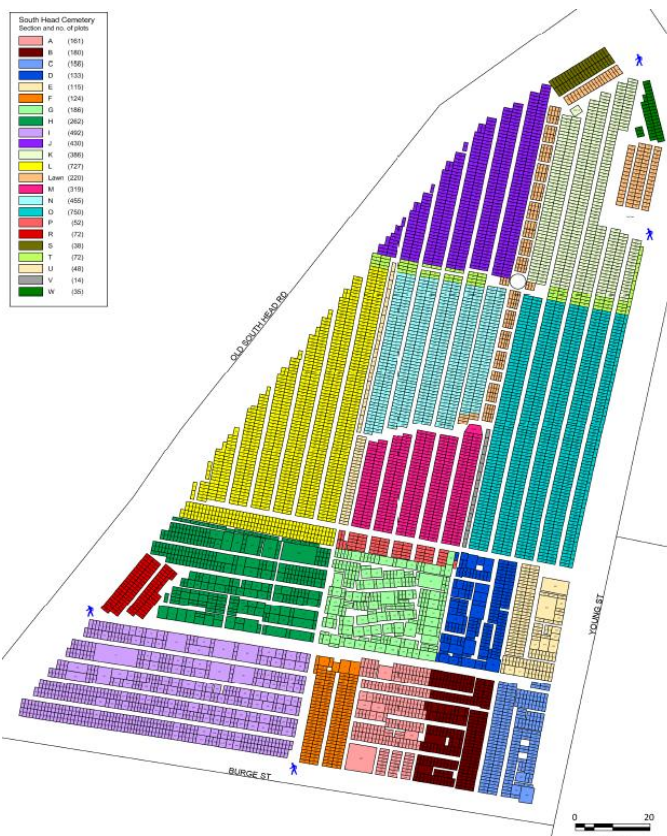


Figure 5: Section Layout South Head General Cemetery

**Interment Services** - For both Coffin burial and Ash Interment the site preparation and interment services are carried out by Council staff. These services include site preparation, hand or mechanical digging, site security graveside concierge services, such as transport of mourners to the site, and then closure of the grave post service.

**Site Maintenance** - The Cemetery grounds are maintained by Council staff. The grass is mowed and trimmed every 8 weeks throughout the year.

Growth Regulator is applied twice a year to slow down grass and weed growth and the grave tops are also sprayed for weed control purposes twice a year.

**Public Recreation** - While a relatively minor use the Cemetery is used by the surrounding public as a place for passive recreation and reflection. In addition, the Cemetery is a place where the public come to find notable graves and research family history and genealogy.

## 2.4 Permissible uses and Future Uses of South Head General Cemetery

The permissible uses and future uses and development of South Head General Cemetery are set out in the following Table 2.4.1. As a general principle it is noted that any or all uses of the Cemetery are also set out and specified in the State Heritage Order as also indicated in this table and detailed at Appendix One.

Table 2 - Current and Future Permissible Uses and Development of South Head General Cemetery

Current Use	Future Use	Development to Achieve Future Use (if applicable)
Provision of burial and interment services to existing Interment Rights holders	Provision of burial and interment services to existing Interment Rights holders	Nil
Provision of new cremation interment spaces	Ash interments	Construction of Niche Wall in the area adjoining the Amenities Building Landscaping grass area adjacent to the lawn section for ash memorial gardens
Provision of Maintenance to the internal paths, aisles and landscaped areas of the Cemetery	Provision of Maintenance to the internal paths, aisles and landscaped areas of the Cemetery	Nil
Provision of an Amenities block for the storage of equipment and for Council staff to utilise whilst on duty.	Provision of an Amenities block for the storage of equipment and for Council staff to utilise whilst on duty.	Nil
Provision of Public Toilets	Provision of Public Toilets	Nil
Open Public Access for the purposes of passive recreation and / or historical or genealogical research / inquiry	Open Public Access for the purposes of passive recreation and / or historical or genealogical research / inquiry	Nil

## 2.5 Legislative context

There are 6 key pieces of legislation that apply to the use and management of South Head General Cemetery:

- Crown Land Management Act 2016
- Local Government Act 1993
- Cemeteries and Crematoria Act 2013
- Environmental Planning & Assessment Act 1979
- Heritage Act 1977
- Public Health Regulation 2012

**Crown Land Management Act 2016** - The Cemetery is located entirely on Crown land. The Crown Land Management Act identifies provisions for the management of Crown owned land that has been dedicated or reserved. The land in the case of the South Head General Cemetery has been reserved for the purpose of a 'Cemetery Purposes'. Waverley Council has been appointed as the Crown Land Manager. Accordingly, Council manages South Head General Cemetery as "public land" under Part 2 of the Local Government Act.

**Local Government Act 1993** - As Council is the appointed Crown Land Manager for the South Head General Cemetery it is required to manage the 'public land' in accordance with Part 2 of the *Local Government Act 1993*. This includes:

- classifying Council owned land as 'operational' or 'community'
- categorising 'community' land
- preparing plans of management for 'community land'

South Head General Cemetery is classified as community land and categorised as 'General Community Use'. It has been categorised as general community use as it is consistent with the guidelines for categorisation of community land as outlined in Section 106 the *Local Government (General) Regulation 2021*, as follows

#### **106 Guidelines for categorisation of land as general community use**

Land should be categorised as general community use under section 36(4) of the Act if the land—

(a) may be made available for use for any purpose for which community land may be used, whether by the public at large or by specific sections of the public, and

(b) is not required to be categorised as a natural area under section 36A, 36B or 36C of the Act and does not satisfy the guidelines under sections 102–105 of this Regulation for categorisation as a natural area, a sportsground, a park or an area of cultural significance.

The preparation of this Plan of Management needs to be consistent with the Core Objectives of the *Local Government Act 1993*, which are set out in Section 36I of the Act as

#### **36I Core objectives for management of community land categorised as general community use**

The core objectives for management of community land categorised as general community use are to promote, encourage and provide for the use of the land, and to provide facilities on the land, to meet the current and future needs of the local community and of the wider public—

(a) in relation to public recreation and the physical, cultural, social and intellectual welfare or development of individual members of the public, and

(b) in relation to purposes for which a lease, licence or other estate may be granted in respect of the land (other than the provision of public utilities and works associated with or ancillary to public utilities).

**Cemeteries and Crematoria Act 2013** - The Cemeteries and Crematoria Act provides a regulatory basis for the management of all cemeteries in NSW, including Crown, local government and private facilities.

The Cemeteries and Crematoria Act was primarily introduced in response to a growing shortage of burial space, particularly in the greater Sydney metropolitan area. It established Cemeteries and Crematoria NSW (CCNSW) as a regulatory agency for the interment industry and provides requirements that must be followed by operators (e.g., administration, reporting, procedures).

CCNSW is in the process of introducing a Cemetery Licensing Scheme which will require operators of all Cemeteries to apply for a license to operate. The *Cemeteries and Crematoria Regulation 2022* provides that the Cemeteries Agency can impose licence conditions related to the following:

- Consumer Contracts
- Cemetery maintenance
- Pricing transparency
- Customer service
- Religious and cultural principles

- Aboriginal cultural and spiritual principles

It is not considered any of the proposed license obligations will conflict with the objectives and activities outlined in this plan of management.

**Environmental Planning and Assessment Act 1979** - The Environmental Planning and Assessment Act is the primary law regulating land use and development in NSW. It allows plans to be made to guide development processes and regulate land use. Such plans are known as environmental planning instruments and include local environmental plans (LEPs) and state environmental planning policies (SEPPs).

The most notable environmental planning instrument relevant to South Head General Cemetery, at the time this plan was written, is the Waverley Local Environmental Plan 2012 where the site is zoned SP2 – Infrastructure Cemetery.

**Heritage Act 1977** - On 24<sup>th</sup> August 2017 South Head General Cemetery was listed on the State heritage Register under Section 37(1)(b) of the Heritage Act. This listing also included a number of exempt activities that can be undertaken by the Cemetery. These exemptions form the basis of the management actions proposed in this plan.

**NSW Public Health Regulation 2012** - The Public Health Regulation controls all aspects of how bodies are disposed of, including the handling of bodies and exhumations.

## 2.6 Opportunities and Constraints

Key opportunities and constraints of the 'Existing situation' have been identified below. How these are addressed is set out in Part 3 of this Plan of Management.

Opportunity/ Constraint	Key issues and options
1. Burial capacity	<p>There is extremely limited capacity within the existing burial sections of the Cemetery to develop any more burial sites. There is no opportunity for expansion of the site within the surrounding area. The only opportunity to increase burial capacity is to revoke unexercised interment rights. There is extremely limited potential for unused land within the Cemetery to be used for new coffin interment sites</p> <p>Increasing burial capacity will provide a longer period of use by the Eastern Suburbs community and create greater opportunities to ensure that perpetual maintenance funds can be raised to meet long-term costs after burial capacity has been exhausted.</p>
2. Ash interment options	<p>With limited land space available within the Cemetery, but with unique attributes and long-term localised relationships with surrounding communities, there are opportunities to offer memorialisation products, i.e., ash interment spaces.</p>



3. Ongoing site maintenance	<p>There are ongoing costs associated with the provision of an operating cemetery and the upkeep of the site given its age and heritage status.</p> <p>Pests and weeds can have significant impact on structural integrity of monuments, public safety and environmental values. Ongoing management including occasional intensive targeted efforts are required to ensure that impacts are minimised.</p> <p>The nature of grave monuments and the accessibility of cemeteries means that safety concerns can exist where monuments are not appropriately installed. In many cases the unavailability of Interment rights holders is a constraint particularly if monumental integrity and public safety are potential considerations.</p> <p>Existing paths in the Cemetery are generally well maintained but issues of access and aged mobility need to be considered.</p>
4. Statutory needs	<p>The need to meet legislative and regulatory requirements is also becoming increasingly important, with a range of new reporting and operational requirements to be considered.</p> <p>The newly emerging Cemetery licensing scheme will impose significant administrative, reporting and customer service obligations onto the cemetery.</p>
5. Respect and promote the heritage values of the Cemetery	<p>Respecting and promoting the heritage of the site is important to engaging with the broader community.</p> <p>All works and cemetery related operations should be undertaken within the context of the existing site-specific State Heritage Order and Exemptions and broader best practice. (See Appendix One)</p>

### 3.0 Basis for Future Management

This Part provides a basis for future management in the form of an Implementation action plan to achieve our vision and objectives for the Cemetery as set out in the Introduction to this Plan.

#### 3.1 Our vision

To ensure that South Head General Cemetery in accordance with its listing on the State Heritage Register provides an attractive and dignified place for the interment and remembrance of the deceased, now and into the future.

#### 3.2 Our objectives

To achieve our vision, we will:

- Offer a range of burial and ashes interment and memorialisation options at the Cemetery.
- Identify new opportunities for memorialisation and interment sites.

Support maintenance practices that are operationally and cost effective to:

- ensure the Cemetery is well presented, safe and functional.
- support the management and use of the Cemetery now and into the future (when burial options have been exhausted) in the context of relevant legislative and regulatory requirements.
- be financially sustainable into perpetuity.
- respect the character and heritage values of the site.

### 3.3 Implementation action plan

We have developed an 'Implementation action plan' (overleaf) to facilitate this Plan of management. The format of the Implementation action plan table includes the following columns:

- *Management issue* - addresses each of the 6 opportunities and constraints presented in Section 2.5
- *Objectives* - identifies the relationship to the objectives outlined above and on page 13 of the Plan of Management.
- *Desired outcomes* - identifies the long-term expected outcomes from the application of management strategies and actions
- *Management strategies* - identifies the high-level directions associated with each management issue
- *Actions* - identifies more detailed steps required to facilitate the implementation of strategies
- *Priority* - identifies the comparative timing of implementation (subject to funding) as short-term (within 5 years), medium term (5 to 10 years) or long-term (10+ years) or as 'Ongoing' or 'As required' where a dedicated timeframe is not applicable
- *Performance measure* - identifies the ways that performance or success will be measured.



### 3.4 Administration and management

Whilst efforts will be made to implement all aspects of this Plan of Management, the timing and extent of implementation will be subject to competing priorities for our limited resources.

### 3.5 Leases Licenses and other estates

Under section 46(1)(b) of the LG Act, leases, licences and other estates formalise the use of community land. A lease, licence or other estate may be granted to organisations and persons, community groups, sports clubs and associations, non-government organisations, charities, community welfare services, non-profit organisations and government authorities.

The lease or licence must be for uses consistent with the reserve purpose(s), the assigned categorisation and zoning of the land, be in the best interests of the community as a whole, and enable, wherever possible, shared use of community land.

Any lease or licence proposal will be individually assessed and considered, including the community benefit, compatibility with this PoM and the capacity of the community land itself and the local area to support the activity. A lease is normally issued where exclusive control of all or part of an area by a user is proposed. In all other instances a licence or short-term licence or hire agreement will be issued.

#### 3.5.1 Leases and Licenses authorised by this Plan of Management

This plan of management **expressly authorises** the issue of leases, licences and other estates over the land covered by the plan of management, provided that:

- the purpose is consistent with the purpose for which it was dedicated or reserved
- the purpose is consistent with the core objectives for the category of the land
- the lease, licence or other estate is for a permitted purpose listed in the *Local Government Act 1993* or the Local Government (General) Regulation 2021
- the issue of the lease, licence or other estate and the provisions of the lease, licence or other estate can be validated by the provisions of the *Native Title Act 1993* (Cth)
- where the land is subject to a claim under the *Aboriginal Land Rights Act 1983* the issue of any lease, licence or other estate will not prevent the land from being transferred in the event the claim is granted
- the lease, licence or other estate is granted and notified in accordance with the provisions of the *Local Government Act 1993* or the Local Government (General) Regulation 2021
- the issue of the lease, licence or other estate will not materially harm the use of the land for any of the purposes for which it was dedicated or reserved.

#### 3.5.2 Leases and Licenses Expressly authorised by this Plan of Management

This plan of management **expressly authorises** the issue of leases, licences and other estates as listed in the following Table.

Type of tenure arrangement	Maximum term	Purpose for which tenure may be granted
Licence	<ul style="list-style-type: none"> <li>• 10 years</li> </ul>	<ul style="list-style-type: none"> <li>• Access to toilet / amenities building</li> </ul>
Short-term licence	<ul style="list-style-type: none"> <li>• 3 days</li> </ul>	<ul style="list-style-type: none"> <li>• filming</li> </ul>

Type of tenure arrangement	Maximum term	Purpose for which tenure may be granted
Other estates		This PoM allows the council to grant 'an estate' over community land for the provision of public utilities and works associated with or ancillary to public utilities and provision of services, or connections for premises adjoining the community land to a facility of the council or public utility provider on the community land in accordance with the LG Act.

### 3.6 Compliance Restrictions

Compliance and regulation in open spaces such as parks, reserves, urban centres and beaches are an important part of keeping the community safe and our environmental assets clean and sustainable.

The following activities are prohibited in South Head General Cemetery

- portable barbecues or open fires
- camping
- dogs off-leash

### 3.7 Review


It is intended that this Plan of Management will be reviewed within 10 years of the date of endorsement by Council.

**Appendix 1:**

**IMPLEMENTATION ACTION PLAN**

Management issue	Objectives	Desired outcomes	Strategy	Actions	Priority	Performance measure
1 Burial capacity	a, b, e, f, g	New burial capacity is available for the local community within the context of limited development potential	1.1 Revoke Unexercised Burial Rights	1.1.1 Identify unexercised perpetual burial rights and undertake revocation process in accordance with Section 52 of the <i>Cemeteries and Crematoria Act (2013)</i> .	Short-term	Burial Sites revoked
				1.1.2 Identify unexercised renewable interment rights and undertake the process to enable re-issue of the interment right in accordance with Section 55 of the <i>Cemeteries and Crematoria Act (2013)</i> .	Ongoing	Burial Sites made available as required
			1.2 Use of existing burial areas is maximised	1.2.1 Identify unused land in the Cemetery that may be able to be used as interment sites.	Short-term	Options for use of all interment rights explored
2 Ash interment options	a, b, e, f, g	New ash interment options are available to meet community needs	2.1 Identify Ash Memorial options in the Northeast section of the Cemetery	2.1.1 Prepare design options for potential niche walls adjoining the Amenities building.	Ongoing	Ash memorial options available for sale



Management issue	Objectives	Desired outcomes	Strategy	Actions	Priority	Performance measure
				2.1.2 Prepare design options for memorial gardens adjacent to the lawn section at the Northeast top of the Cemetery 	Ongoing	Ash memorial options available for sale
3. Ongoing Site Maintenance	c,d,f,	A Cemetery that is well presented, safe and functional	3.1 Undertake regular maintenance	3.1.1 Develop an Annual Maintenance plan that includes ongoing and regular activities	Short Term	Plan Developed and adopted
			3.2 Actively control impacts of pests and weeds on the Cemetery	3.1.2 Ensure the Annual Maintenance Plan includes activities to control weeds and / or pests using appropriate herbicides avoiding any adverse impact to people or grave sites or monuments.	Ongoing	Weeds managed in line with the plan

Management issue	Objectives	Desired outcomes	Strategy	Actions	Priority	Performance measure
			3.3 A monument safety program is established	3.3.1 Establish a staged and recurring approach to auditing monument safety within realistic resourcing limitations which includes appropriate recording of required rectification works and contact with impacted Interment Rights Holders.	Ongoing	Process established and implementation commenced
4. Statutory needs	c,d,e,f	Appropriate policies and procedures are in place to meet legislative, operational and community needs	4.1 Reporting and record keeping requirements under the Cemeteries and Crematoria Act 2013 are met	4.1.1 Maintain a register of interment rights and interments in line with Section 63 of the Cemeteries and Crematoria Act 2013.	Ongoing	Register maintained
				4.1.2 Prepare and submit information to Cemeteries and Crematoria NSW as required.	As required	Reporting requirements undertaken and submitted
			4.2 Preparations are in place to meet Cemetery licensing scheme requirements as they are unveiled	4.2.1 Continue to liaise with CCNSW as the requirements of the licensing scheme are rolled out during 2023/34	Ongoing	Application for license successful

				10.2.1 Ensure managers (and operational staff as applicable) attend regular industry events, conferences and training to be aware of an understand industry best practice.	Ongoing	Management staff training and industry attendance opportunities identified
<b>Management issue</b>	<b>Objectives</b>	<b>Desired outcomes</b>	<b>Strategy</b>	<b>Actions</b>	<b>Priority</b>	<b>Performance measure</b>
5. Respect and promote the heritage values of the Cemetery	a,b,c,d,f	The Cemetery's heritage values are understood, recorded, and acknowledged	5.1 All works are undertaken consistent with the State heritage Order and this Plan of Management	5.1.2 Ensure any applications for monumental works are assessed using relevant criteria relating to the State Heritage Order.	Ongoing	New and restored memorialisation remains consistent with the heritage style of the Cemetery
			5.2 Engage and celebrate heritage and cultural values of the Cemetery	5.2.1 Introduce signage and website content to promote the history and heritage values of the site.	Short-term	Signage and material available and implemented
				5.2.2 Support the Friends of Waverley Cemeteries volunteer program (to photograph monuments and undertake tours of the Cemetery.	Ongoing	All monuments photographed and catalogued

## Appendix 2:

### HERITAGE ACT 1977 - ORDER UNDER SECTION 57(2) TO GRANT SITE SPECIFIC EXEMPTIONS FROM APPROVAL

South Head General Cemetery SHR No. 01991

I, the Minister for Heritage, on the recommendation of the Heritage Council of New South Wales, in pursuance of section 57(2) of the Heritage Act 1977, do, by this my order, grant an exemption from section 57(1) of that Act in respect of the engaging in or carrying out of any activities described in Schedule "C" by the owner described in Schedule "B" on the item described in Schedule "A".

The Hon Gabrielle Upton MP  
Minister for Heritage  
Sydney, 21st Day of August 2017

#### SCHEDULE "A"

The item known as South Head General Cemetery, situated on the land described in Schedule "B".

#### SCHEDULE "B"

All those pieces or parcels of land known as Lot 7006 of Deposited Plan 1023201, Lot 113 of Deposited Plan 752011, Lot 501 of Deposited Plan 752011, and through to the roadside kerb along Old South Head Road, Burge Street and Young Street as at date of gazettal, Parish of Alexandria, County of Cumberland, shown on the plan catalogued HC 3052 in the office of the Heritage Council of New South Wales.

#### SCHEDULE "C"

##### 1. Maintenance and Repair

- Manual clearing of paths and drains;
- Maintenance of any roads, paths, signs, fences, drains and buildings where maintenance means the continuous protective care of significant existing materials;
- Control of weeds within grave plots by manual methods;
- Mowing of lawns and paths;
- Control of weeds by application of herbicide not affecting ornamental or symbolic plantings or remnant native vegetation in accordance with Waverley Council Pesticide Use Notification Plan 2016 (as amended);
- Careful spraying of paths with herbicide;
- Remedial tree works carried out according to Australian Standard AS 4373-2007 (Pruning of amenity trees);
- Removal of dead, dying or dangerous trees or tree limbs in cases where there is a public safety risk in accordance with AS 4373-2007 (Pruning of amenity trees) and Waverley Council Tree Management Policy 2013;
- Sympathetic repair and maintenance of existing roads, paths, signs and drains where like-for-like replacement materials are used and consideration is given to the effect of cumulative replacement;
- Suppression of fires in cases of threat to human lives, property or cemetery monuments;
- Repair to fences where like-for-like replacement materials are used;
- Graffiti removal from significant or sensitive fabric by use of low-pressure water and neutral detergents and mild brushing and scrubbing with a soft bristle brush;
- Sympathetic repairs to buildings where like-for-like replacement materials are used and consideration is given to the effect of cumulative replacement; and

- Sympathetic maintenance and repairs to retaining walls using existing or like-for-like replacement materials and consideration is given to the effect of cumulative replacement.

## **2. Use of the Cemetery**

- Continued use of existing family vaults;
- Interments, including coffin burials/ ash interments in new and/ or existing family allotments. If new memorials are required, memorials are to be in keeping with and sympathetic to the original cemetery style (Victorian/ Edwardian);
- Erection of standard memorials in any areas used by the Armed Services;
- Erection of memorials in family plots remaining in use provided memorials are in keeping with those existing;
- Re-lettering/addition of inscriptions where this is undertaken in an equivalent and compatible letter type or attachment of panels of other compatible materials to existing monuments;
- Ceremonies, Funerals and gatherings that are consistent with Memorial Services; and
- Organised tours.

## **3. Minor Activities**

- The development of new memorialisation areas which may include the alteration of non-significant structures;
- Change of building use including the alteration of internal non-significant fabric;
- Work programmes as approved from time to time by the Heritage Council of NSW or its delegate; and
- All other activities provided for in a Conservation Management Plan or other Plan of Management (including amendments) endorsed by the Heritage Council in the future.





## Department of Planning and Environment

Our ref: LBN23/1385, DOC23/199539

Andrew Best  
Executive Manager Property and Facilities  
Waverley Council  
PO Box 9  
BONDI JUNCTION NSW 1355  
via email: ken.shelston@waverley.nsw.gov.au  
cc: info@waverley.nsw.gov.au

Attention: Ken Shelston

30 October 2023

---

**Subject: Waverley Council draft Plan of Management – Draft South Head General Cemetery Plan of Management August 2023**

Dear Mr Best

Thank you for submitting the draft Plan of Management (PoM) for South Head General Cemetery August 2023 on 14 Sep 2023.

I have reviewed the draft PoM and support it being placed on public exhibition, with the following amendments:

- Remove the row of information referring to 'Reserve Trust Name' from the table in Section 2.0 'Existing Situation'.

Council should conduct a final review of the document to ensure all legislation referenced is currently in force, departmental names are up to date, and spelling, grammar and formatting is correct and consistent.

Subject to no changes following public exhibition, as a delegate for the Minister for Lands and Property, I consent to council to adopt the PoM under clause 70B of the Crown Land Management Regulation 2018.

If the PoM is amended after public exhibition (except for minor editorial and formatting changes), council must resubmit the draft PoM for Minister's consent to adopt. With the amended PoM, please provide the following documents:

- a table of PoM amendments or tracked changes.
- summary report of submissions from public exhibition (if any)
- council reports on the proposed adoption (if any)

If there are no amendments to the PoM, please provide a copy of the adopted PoM. All documents must be sent to [council.clm@crowland.nsw.gov.au](mailto:council.clm@crowland.nsw.gov.au).

Please remember, an adopted PoM authorises the lawful use and occupation of Crown land. Council must ensure that any activities planned on the reserve are expressly authorised in the adopted PoM and native title obligations are met.

If you have any further questions or need assistance, please contact the Reserves Programs Team at [council.clm@crowland.nsw.gov.au](mailto:council.clm@crowland.nsw.gov.au).

## Department of Planning and Environment



Yours sincerely,

A handwritten signature in blue ink, appearing to be "D. Heather".

Daniel Heather  
Manager, Reserves Programs  
Department of Planning and Environment – Crown Lands and Public Spaces