



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 7 MAY 2024

Emily Scott
General Manager

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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

Apologies were received from Cr Tony Kay.

2. Declarations of Pecuniary and Non-Pecuniary Interests

3. Addresses by Members of the Public

4. Confirmation of Minutes

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5. Reports

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6. Urgent Business

7. Meeting Closure

CONFIRMATION OF MINUTES PD/4.1/24.05



Subject: Confirmation of Minutes - Strategic Planning and Development Committee Meeting - 5 March 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 5 March 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 - 5 March 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, 5 MARCH 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 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 7.49 pm, those present were as listed above.

Crs Kay and Wy Kanak attended the meeting by audio-visual link.

At 7.52 pm, during item 3, Cr Murray left the meeting and did not return.

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 Elaine Keenan and 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

- 3.1 A Richards – PD/5.3/24.03 – Waverley Development Control Plan 2022 (Amendment No. 2) – Flood Planning – Adoption.

ITEMS BY EXCEPTION**MOTION / UNANIMOUS DECISION**

Mover: Cr Lewis
Seconder: Cr Masselos

That the recommendations for the following items be adopted as recommended in the business paper:

- PD/4.1/24.03 Confirmation of Minutes – Strategic Planning and Development Committee Meeting – 6 February 2024.
- PD/5.5/24.03 Clause 4.6 Variations to Development Standards – Quarterly Report – October-December 2023.
- PD/5.7/24.03 Draft South Head General Cemetery Plan of Management – Exhibition

Cr Murray was not present for the vote on this item.

4. Confirmation of Minutes

PD/4.1/24.03 Confirmation of Minutes - Strategic Planning and Development Committee Meeting - 6 February 2024 (A23/0763)

MOTION / UNANIMOUS DECISION

Mover: Cr Lewis
Seconder: Cr Masselos

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.

Cr Murray was not present for the vote on this item.

5. Reports

PD/5.1/24.03 Planning Proposal - Dwelling Density - Exhibition (PP-3/2023)

MOTION

Mover: Cr Masselos
Seconder: Cr Fabiano

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*.

THE MOVER OF THE MOTION ACCEPTED AN AMENDMENT TO CLAUSE 1.

THE MOTION AS AMENDED WAS THEN PUT AND DECLARED CARRIED.

DECISION

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, subject to the following amendment:
 - (a) Page 20 of the agenda, 'Executive Summary', fourth paragraph – Add a third dot point as follows: 'Keep dwelling houses and attached dwelling as permissible uses.'
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*.

Division:

For the Motion: Crs Betts, Fabiano, Goltsman, Gray, Lewis, Masselos and Wy Kanak.

Against the Motion: Crs Burrill and Kay.

Cr Murray was not present for the vote on this item.

PD/5.2/24.03 Planning Proposal - Affordable Housing Contribution Scheme - Post-Exhibition (A04/0302)

MOTION

Mover: Cr Masselos

Seconder: Cr Fabiano

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 exhibited contribution square metre rates on Council's website, with adjustments on an annual basis.
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.

THE MOVER OF THE MOTION ACCEPTED AMENDMENTS TO CLAUSE 2 AND THE ADDITION OF A NEW CLAUSE.

THE MOTION AS AMENDED WAS THEN PUT AND DECLARED CARRIED.

DECISION

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), subject to the following amendments:
 - (a) Page 34 of the attachments under separate cover, section 2.2.1, 'Dedication of dwellings' –

Amend to read as follows: ‘Council’s preference is for whole units to be dedicated to Council in perpetuity, rather than monetary contributions. However, where a whole unit of at least 50 sqm cannot be dedicated to Council, then a monetary contribution would be appropriate.’

- (b) Page 36 of the attachments under separate cover, section 3.4, ‘How tenants are assessed and allocated homes’ – Amend so that three years is replaced by five years as the maximum period available to any tenant in the WAHP.
3. Officers update the Planning Agreement Policy without delay to prevent ‘double dipping’ of funds for affordable housing, where a contribution is levied under the Affordable Housing Contribution Scheme and a planning agreement is offered at the same time.
 4. Publishes the applicable contribution square metre rates on Council’s website, as required by the DPHI Gateway Determination attached to the report (Attachment 3).
 5. 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.

Division:

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

Against the Motion: Nil.

Cr Murray was not present for the vote on this item.

PD/5.3/24.03 Waverley Development Control Plan 2022 (Amendment No. 2) - Flood Planning - Adoption (SF21/4935)

A notice of motion to rescind this resolution has been submitted with the General Manager. The rescission motion will be considered at the Council meeting on 19 March 2024.

MOTION

Mover: Cr Lewis

Seconder: Cr Masselos

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.

THE MOVER OF THE MOTION ACCEPTED AN AMENDMENT TO CLAUSE 3 SUCH THAT IT NOW READS AS FOLLOWS:

‘Notes that the draft budget 2024–25 will propose a reduction in fees for Council’s TUFLOW Flood Model for smaller developments, with officers seeking to reduce the fee below \$2,500, which is the figure stated in the report.’

FORESHADOWED MOTION

Mover: Cr Kay

Seconder: Cr Betts

That Council defers this item to the Council meeting on 16 April 2024 meeting to permit:

1. Officers to contact all those who made submissions advising them of the 5 March 2024 Strategic Planning and Development Committee report on the Waverley Development Control Plan (Amendment No. 2) on flood planning and that officers will be available to receive further submissions until Monday, 25 March.
2. Councillors extra time to peruse the complex report and its attachments, discuss concerns with Council officers and receive responses from officers to any further questions.
3. The new Floodplain Management Committee to consider the report and its recommendation and make comment.
4. Officers to consider updates to the February report prior to it being included in the 16 April Council meeting agenda.

THE MOTION WAS PUT AND DECLARED LOST.

Division:

For the Motion: Crs Fabiano, Gray, Lewis and Masselos.

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

THE FORESHADOWED MOTION THEN BECAME THE MOTION.

THE MOTION WAS THEN PUT AND DECLARED CARRIED.

DECISION

That Council defers this item to the Council meeting on 16 April 2024 meeting to permit:

1. Officers to contact all those who made submissions advising them of the 5 March 2024 Strategic Planning and Development Committee report on the Waverley Development Control Plan (Amendment No. 2) on flood planning and that officers will be available to receive further submissions until Monday, 25 March.
2. Councillors extra time to peruse the complex report and its attachments, discuss concerns with Council officers and receive responses from officers to any further questions.
3. The new Floodplain Management Committee to consider the report and its recommendation and make comment.
4. Officers to consider updates to the February report prior to it being included in the 16 April Council meeting agenda.

Division:

For the Motion: Crs Betts, Burrill, Goltsman, Kay and Wy Kanak.

Against the Motion: Crs Fabiano, Gray, Lewis and Masselos.

Cr Murray was not present for the votes on this item.

A Richards addressed the meeting.

PD/5.4/24.03 Waverley Development Control Plan 2022 (Amendment No. 3) - Excavation - Exhibition (A24/0031)**MOTION / DECISION**

Mover: Cr Gray
Seconded: Cr Masselos

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.

Division:

For the Motion: Crs Betts, Burrill, Fabiano, Goltsman, Gray, Kay, Lewis and Masselos.

Against the Motion: Cr Wy Kanak.

Cr Murray was not present for the vote on this item.

PD/5.5/24.03 Clause 4.6 Variations to Development Standards - Quarterly Report - October-December 2023 (A23/0244)**MOTION / UNANIMOUS DECISION**

Mover: Cr Lewis
Seconded: Cr Masselos

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.

PD/5.6/24.03 Council Emissions, Energy Use and Water Savings - Annual Report (A20/0266)**MOTION**

Mover: Cr Masselos
Seconded: Cr Lewis

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.

THE MOVER OF THE MOTION ACCEPTED THE ADDITION OF A NEW CLAUSE 3.

THE MOTION AS AMENDED WAS THEN PUT AND DECLARED CARRIED UNANIMOUSLY.

UNANIMOUS DECISION

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.
3. Notes that to offset residual (scope 1, 2 and estimated scope 3) emissions, credits will be purchased to be 'carbon neutral' for 2022-2023. Council has budgeted \$15,000 in the 2023–24 budget to purchase credits to offset Council's remaining emissions.

Division:

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

Against the Motion: Nil.

Cr Murray was not present for the vote on this item.

**PD/5.7/24.03 Draft South Head General Cemetery Plan of Management - Exhibition
(A23/0599)**

MOTION / UNANIMOUS DECISION

Mover: Cr Lewis

Seconder: Cr Masselos

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.

Cr Murray was not present for the vote on this item.

6. Urgent Business

There was no urgent business.

7. Meeting Closure

THE MEETING CLOSED AT 9.20 PM.

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SIGNED AND CONFIRMED
CHAIR
7 MAY 2024

REPORT
PD/5.1/24.05

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

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 adopts the Waverley Development Control Plan 2022 (Amendment No. 3) on excavation controls attached to the report.

1. Executive Summary

The excavation-related controls *Waverley Development Control Plan 2022* (WDCP) were amended in December 2022 in response to concerns surrounding excessive amounts of basement and site excavation in recent development applications (DAs).

Since adoption over 12 months ago, the amended controls have been found to be unworkable for larger scale developments and prevent good planning outcomes including compliance with our DCP. 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, amendments to part B13 of the WDCP (see Attachment 1) have been exhibited proposing 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.

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.

The proposed changes were placed on public exhibition throughout March and April 2024. Mixed feedback was received from the community.

This report seeks approval of the proposed amendments. No changes to the proposed amendments have been made since Council endorsed public exhibition in March 2024.

2. Introduction/Background

In response to applicants of DAs 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 permitted 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.

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 excavation 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 5 March 2024	PD/5.3/24.03	That Council: <ol style="list-style-type: none"> 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.
Strategic Planning and Development Committee 6 December 2022	PD/5.1/22.12	That Council: <ol style="list-style-type: none"> 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"> (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"> • Loss of low-rental dwellings (see State Environmental Planning Policy Housing 2021 for definition). • Strata subdivision of 4 or more lots. • \$10,000,000 or greater construction cost. • Gross floor Area of 3,000 sqm or

		<p>greater (see Waverley Local Environmental Plan for definition.</p> <ul style="list-style-type: none"> • Reduction in dwelling numbers on site. <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>
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		<ol style="list-style-type: none"> 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
Council 16 March 2021	CM/8.3/21.30	<p>That Council:</p> <ol style="list-style-type: none"> 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. 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. 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. 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.

4. Discussion

Issues related to current excavation volume provision

Over the 12 months since implementing the maximum excavation volume control, it was 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 other words, a basement for a residential flat building or shop top housing development that would be compliant with all other DCP controls could not be constructed using the volumetric controls. For example, for a 1,000 sqm site with a single level, 3.5 m deep excavation only leaves 285 sqm of footprint for excavation to comply with the volumetric controls. This meant that such a site would be unable to fit 2 cars in after the ramp with no bins, plant, lift, etc. In Bondi Junction or local centres where full width basement is the norm, basements could only be 1 metre deep under the volumetric controls. For these reasons, the volumetric controls are now proposed to be removed.

For lower density dwelling house, attached dwelling, dual occupancy development or semi-detached dwelling development, the prescribed volumes were difficult to implement on sloped sites 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 at a Councillor briefing on 13 February 2024. Feedback related to 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.

Timeframe

If supported by Council to be adopted, the proposed changes can become effective within seven days of adoption.

Consultation

The proposed amendment was placed on public exhibition between 14 March and 12 April 2024. Consultation included a survey on Council's Have Your Say website, a notice in e-newsletters and email notification to the Precincts.

Fifteen submissions were received, three in support of the proposed amendments and 12 not in favour. Table 1 highlights some key comments from those not in support of the proposed amendments, with a response comment. Feedback not in support related to concerns with excavation generally, rather than specifics of the proposed amendments. A full copy of all community submissions can be provided upon request.

Table 1. Overview of community feedback received not in support of the proposed amendments.

Community comment	Response
The council is pandering to developers in making these changes. The changes seek to restrict small household developments further while giving greater latitude to developers.	The proposed changes are a result of feedback from the Development Application team, rather than larger developers unhappy with limits on excavation.
The controls as they stand afford residents some protection against excessive site excavation into sand and underground water flows, which make up most of the Bondi Basin.	The proposed changes will still seek to protect the local government area from excessive site excavation associated with all forms of development, by requiring the involvement of a suitably qualified Stormwater and Geotechnical Engineer where necessary.
The proposed amendments will wind back the 'strengthened' controls that only came into force in 2022 and which were drafted in response to residents' and Precincts' concerns (as reported extensively in the media) relating to excessive site excavation resulting in collapsed buildings and damage to neighbouring properties. Bondi Precinct is deeply concerned that excessive site excavation and disturbance destabilises land, changes ground water flows, sees the removal of	The events described were not a result of the associated DA/complying development certificate (CDC) approved, but rather issues relating to post-DA/CDC approval compliance. The negative impacts associated with excessive excavation are understood, and part B13 of the WDCP as proposed are still expected to mitigate such impacts.

canopy cover, compromises the structural integrity of the development site and surrounding properties and potentially puts lives at risk.	
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An additional comment received during the exhibition process related to the space required for car parking and requested that ‘the general increase in vehicle dimensions should not automatically flow on to the allowable amount of excavation in the Waverley DCP.’ Assessment of car parking within developments is based on the relevant Australian Standards for vehicle parking dimensions, rather than any request from an applicant to allow for larger parking due to their household having large vehicles.

Under the proposed excavation controls, space in the basement which is not required for vehicle manoeuvring and car parking in accordance with Australian Standards is counted as gross floor area. This means that the additional space will contribute to the floor space ratio calculation of a development, reducing the amount of above-ground bulk which is permissible under the *Waverley Local Environmental Plan 2012* and discouraging large basements.

The concerns raised by the community are considered to be addressed by the retention of existing controls (see comments regarding the Councillor briefing earlier in this report) and the requirement to involve a structural engineer or geotechnical engineer where the location and design of development necessitates it. As such, no post-exhibition changes to the amendments are proposed and the version that Council supported for public exhibition in March 2024 is now recommended for adoption.

6. Conclusion

This report recommends that Council adopts the excavation-related amendments proposed in Attachment 1 to part B13 of the WDCP 2022.

The proposed 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,

REPORT
PD/5.2/24.05

Subject: Waverley Development Control Plan 2022 (Amendment No. 4) - Oxford Street Mall Standard Trading Hours Extension - Exhibition

TRIM No: A16/0262

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. 4) attached to this report on the extension of standard trading hours in Oxford Street Mall 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.
3. Evaluates the performance of the extended trading hours within two years, with a report to be prepared to Council on the outcome.

1. Executive Summary

Council officers have prepared a draft amendment to the Waverley Development Control Plan 2022 (DCP) to change the general base trading hours within the Oxford Street Mall precinct to 'Sunday to Saturday: 6.00 am to 3.00 am' as per Council's resolution of 27 February 2024.

The proposed amendment would require a 28-day public exhibition in accordance with section 3.43 and clause 5 of schedule 1 of the *Environmental Planning and Assessment Act 1979*. A review evaluating the performance of the base trading hours extension is recommended within two years after implementation.

Preliminary urban analysis shows that the high level of pedestrian amenity in and around Oxford Street Mall, the proximity to public transport and the relative distance from conflicting residential land uses, lends the precinct well to supporting diverse and vibrant night-time vendors and venues.

The amendment will support the night-time economy in Bondi Junction by allowing existing and potential new business operators to trade into the early morning hours, enabling more diverse and vibrant business uses to flourish.

A response to clause 2 of Council's resolution was still being compiled at the time of preparing this report and will be addressed in the further report to Council following the exhibition period.

2. Introduction/Background

On 27 February 2024, Council passed resolution CM/4.4/24.02 – Bondi Junction Commercial Centre – Late Night Trading Hours, resolving to:

Prepare a draft amendment to part D (Commercial and Retail Development), section 1.3 (Hours of Operation) of the Waverley Development Control Plan 2022 (DCP) to amend the Bondi Junction E2 Commercial Centre zone (formerly B3 Commercial Core) to change the general base trading hours within the Oxford Street Mall precinct to ‘Sunday to Saturday: 6.00 am to 3.00 am.’

In consideration of the draft amendment, the resolution also requests an analysis of the Bondi Junction E2 Commercial Centre with a particular focus on Oxford Street Mall. The resolution references recent community feedback suggesting the current approach to late-night and extended trading hours is limiting potential new operators from investing in Bondi Junction.

3. Relevant Council Resolutions

Meeting and date	Item No.	Resolution
Extraordinary Council 27 February 2024	CM/4.4/24.02E	<p>That Council:</p> <ol style="list-style-type: none"> 1. Prepares a draft amendment to part D (Commercial and Retail Development), section 1.3 (Hours of Operation) of the Waverley Development Control Plan 2022 (DCP) to amend the Bondi Junction E2 Commercial Centre zone (formerly B3 Commercial Core) to change the general base trading hours within the Oxford Street Mall precinct to ‘Sunday to Saturday: 6.00 am to 3.00 am.’ 2. Considers the following items in the draft amendment: <ol style="list-style-type: none"> (a) An analysis of the Bondi Junction E2 Commercial Centre zone with particular focus on Oxford Street Mall, including: <ol style="list-style-type: none"> (i) The existing business mix. (ii) Approved trading hours. (iii) Number of liquor licences. (iv) Outdoor dining licences. (v) Number of any complaints relating to adverse impacts of late-night trading on residents. (vi) Anti-social behaviour. (vii) Any other relevant information including venue sound management. (b) Recommended boundary adjustments to limit impacts as identified above within Oxford Street Mall.

		<p>(c) A proposed consultation strategy to seek input from local businesses, visitors, and residents.</p> <p>3. Officers prepare a report and a draft amendment to the DCP no later than April 2024 for Council to consider whether to proceed to public exhibition.</p>
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4. Discussion

The proposed DCP amendment is detailed in Attachment 1 and summarised below.

Hours of operation are defined in Part D, section 1.3 of the Waverley DCP 2022. This includes base trading hours for specific town centres, such as Bronte Road and Charing Cross. The boundaries of these centres are defined in Part E 'Site Specific Development'. Part E, section 1.21.2 contains an existing defined boundary for 'Oxford Street Mall' which is consistent with the boundary defined in the 27 February 2024 Council resolution. This same boundary can be utilised in Part D to define new base hours of operation for Oxford Street Mall. No changes to part E are required.

Table 1. Excerpt from DCP Part D section 1.2 (d) – Table 1 'Prescribed Trading Hours' with amendment shaded.

ZONE	Trading Hours
All residential zones	<p>(a) General base trading hours: (i) 7.00am to 10.00pm, 7 days a week</p> <p>(b) Extended trading hours on a 1 year trial basis will be considered up to 6.00am to 11.00pm, Fridays and Saturdays only.</p>
CENTRE NAME - see Part E for maps	Trading Hours
Bondi Junction (MU1 Zone portions)	<p>(a) General base trading hours: (i) Monday to Saturday: 7.00am to 11.00pm; and (ii) Sunday: 7.00am to 10.00pm.</p> <p>(b) Extended trading hours on a 1 year trial basis will be considered up to: (i) Monday – Sunday: 6.00am to midnight.</p>
Bronte Road, Bondi Junction	
Oxford Street Mall	<p>(a) General base trading hours: (i) Monday to Sunday: 6.00am to 3.00am.</p>
Bondi Junction (E2 Zone portions)	<p>(a) General base trading hours: (i) Monday to Saturday: 7.00am to 11.00pm; and (ii) Sunday: 7.00am to 10.00pm.</p>

	<p>(b) Extended trading hours on a 1 year trial basis will be considered up to:</p> <p>(i) Sunday to Wednesday: 6.00am to midnight; and</p> <p>(ii) Thursday, Friday and Saturday: 6.00am to 1.00am.</p>
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It should be noted that this proposed amendment is a change to the general base trading hours and not the trial based extended trading hours. The extended trading hours mentioned in the prescribed trading hours table are requested and granted through a development application (DA) and apply to individual businesses on a trial basis within the prescribed centre.

The amendment requires a 28-day public exhibition in accordance with section 3.43 and clause 5 of schedule 1 of the *Environmental Planning and Assessment Act 1979*. A review evaluating the performance of the base trading hours is recommended within two years after implementation.

As per the Waverley DCP, pre-works and clean-up of the premises (operational hours) can exceed the maximum approved trading hours up to a maximum of one hour before and one hour after trading hours, provided trading does not occur within this time. Deliveries and the operation of loading docks shall be limited to the approved trading hours depending on the use and nearest residential properties.

Businesses within the Oxford Street Mall boundary currently trading beyond 6 am-3 am can continue to do so as per any existing approvals on the site (e.g. Fitness First Spring Street which is approved to operate 24 hours). Business within the Oxford Street Mall boundary who wish to trade beyond 3 am may request to do so where a variation to the development control can be justified via a DA.

A response to clause 2 of Council's resolution was still being compiled at the time of preparing this report and will be addressed in the further post exhibition report to Council.

Justification

Over the past decade there has been a gradual decline in the diversity, vibrancy, and economic activity in the night-time economy across Sydney. Whilst the night-time venue offerings in the Bondi Beach commercial centre have seen consistent and steady growth, Bondi Junction has experienced the impacts of this decline, with the closure of several night-time venues in the centre.

Preliminary urban analysis shows that the high level of pedestrian amenity in and around Oxford Street Mall, the proximity to public transport, and the relative distance from sensitive residential land uses, lends the precinct well to supporting diverse and vibrant night-time vendors and venues.

The amendment will support the night-time economy in Bondi Junction by allowing existing and potential new business operators to trade into the early morning hours, enabling more diverse and vibrant business uses to flourish. This DCP amendment is consistent with Council's aspiration to become a more innovative and economically resilient community moving into the future (draft Waverley Innovation Roadmap 2025). Additionally, the amendment will support the Waverley Arts and Culture Plan 2021-2026 objective to encourage diverse arts and cultural offering and experience, including day and night and out-of-season activities (Objective 3.2).

5. Financial impact statement/Time frame/Consultation

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

If supported by Council, the DCP amendment would be placed on public exhibition for 28 days between May and June 2024. Consultation will include, at minimum, a survey on Council's Have Your Say website, a notice in e-newsletters, and a notification letter sent to all addresses within the area defined as Oxford Street Mall under the DCP.

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 D1 of the WDCP 2022. The changes will support the night-time economy in Bondi Junction by allowing existing and potential new business operators to trade into the early morning hours, enabling more diverse and vibrant business uses to flourish.

7. Attachments

1. DCP 2022 Amendment No. 4 - Part D Sec 1.3 [↓](#) .

REPORT
PD/5.3/24.05

Subject: Waverley Local Planning Panel Decisions and Appeals - July-December 2023

TRIM No: A13/0229

Manager: Bridget McNamara, Acting Executive Manager, Development Assessment

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

RECOMMENDATION:

That Council notes the development applications determined by the Waverley Local Planning Panel and the Land and Environment Court appeals against the Panel's decisions for the period 1 July 2023 to 31 December 2023, as set out in the attachment to the report.

1. Executive Summary

The Waverley Local Planning Panel (WLPP) is a panel of independent experts that determines development applications (DAs) on behalf of Council, as directed by the Minister for Planning and Public Spaces, and provides advice on other planning matters, including planning proposals. The Minister has set out the criteria for applications that must be determined by the Panel.

During the period 1 July to 31 December 2023 there were 52 development application (including applications to modification development consents) determined by the WLPP. Each meeting considered between six and 10 applications for determination. Lawson Ward had the most of applications considered at 16 and Bondi Ward had the least with six applications.

The reason for referral of the DAs to the Panel for determination was either due to a departure from a development standard of more than 10%, the number of submissions received were more than 10 (unique submissions) or because it was a residential flat building. Applications were also referred that were seeking amendments to a condition previously imposed by the Panel.

The Panel agreed with the majority of the staff recommendations but decided to amend conditions of consent for 21 of those applications. The Panel refused one application against the staff recommendation of approval. There were six Land and Environment Court (LEC) appeals lodged against the panel decisions in that period, with five currently still pending an outcome.

The agenda for each WLPP meeting is available on Council's website prior to the meeting and contains the assessment report with staff recommendation and plans. The minutes of the meeting are published on Council's website after the meeting. The Panel's decisions are also provided to the Department of Planning Housing and Infrastructure on a quarterly basis to comply with reporting requirements.

2. Introduction/Background

At its meeting on 20 July 2021, Councillors resolved that staff prepare a report to Council on a quarterly basis detailing decisions made by the WLPP and NSW Land and Environment Court (LEC) appeals lodged against a Panel decision.

The WLPP is a panel of independent experts that determines development applications on behalf of Council and provides advice on other planning matters, including planning proposals.

Under the *Environmental Planning and Assessment Act 1979 (the EPA Act)*, local planning panels (LPPs) are mandatory for all Sydney councils. LPPs consist of a chair and two independent experts appointed by a council, plus a community representative. The independent experts come from a pool of independent, qualified people who have been endorsed by the Minister.

The LPP determines significant DAs (as defined by the criteria set by the Minister) in the Waverley local government area. According to the direction from the Minister dated 6 March 2024, under section 9.1 of the EPA Act, the following development applications and applications to modify development consents are to be determined by a local planning panel:

1. Where there is a conflict of interest for which the applicant or the land owner is:
 - (a) The council.
 - (b) A councillor.
 - (c) A member of staff who is principally involved in the exercise of Council's functions under the *Environmental Planning and Assessment Act 1979*.
 - (d) A member of parliament.
 - (e) A relative of (ii to iv) above.but not development for the following purposes:
 - (a) Internal alterations and additions to any building that is not a heritage item.
 - (b) Advertising signage.
 - (c) Maintenance and restoration of a heritage item.
 - (d) Minor building structures projecting from the building façade over public land (such as awnings, verandas, bay windows, flagpoles, pipes and services, and sun shading devices)
2. Contentious development – Having 10 or more unique submissions by way of objection. A 'unique submission' means a submission which is in substance unique, distinctive or unlike any other submission. It does not mean a petition or any submission that contains the same or substantially the same text. Separate unique submissions may be made in relation to the same issue. One individual, or one household, could potentially submit multiple unique submissions.
3. Departure from development standards – Applications that contravene a development standard imposed by an environmental planning instrument (ie. the *Waverley Local Environmental Plan* or State Environmental Planning Policies - SEPPs) by more than 10% or non-numerical standards.
4. Sensitive development:
 - (a) Designated development (as declared by the EPA Regulation 2021).
 - (b) Development to which State Environmental Planning Policy (Housing) 2021 Chapter 4 (Design of residential apartment) applies and is more than 4 storeys in height.
 - (c) Development involving the demolition of a heritage item.
 - (d) Development for the purpose of a new licenced premises, that will require one of the following;
 - A club licence under the *Registered Clubs Act 1979*.
 - Hotel (general bar) licence under the *Liquor Act 2007*.
 - An on-premises licence for public entertainment venues under the *Liquor Act 2007*.
 - (e) Development for the purposes of sex service premises and restricted premises
 - (f) Development applications for which the development has offered to enter into a planning agreement.
5. Applications under section 4.55(2) of the Act for the modification of development consents granted by the panel that:

- (a) Propose amendments to a condition of development consent recommended in the council assessment report but was amended by the panel, or
- (b) Propose amendments to a condition of development consent that was not included in the assessment report, but was added by the panel, or
- (c) Meet the criteria for development application set out above relating to conflict of interest, contentions development or departure from development standards.

3. Relevant Council Resolutions

Meeting and date	Item No.	Resolution
Council 20 July 2021	CM/8.2/21.07	That Council: <ol style="list-style-type: none"> 1. Prepares a report on the decisions made by the Waverley Local Planning Panel, including: <ol style="list-style-type: none"> (a) The number of development applications considered per ward. (b) Reason(s) for referral to the WLPP. (c) Staff recommendation versus WLPP decision. (d) The final WLPP decision. (e) Appeals. 2. Officers prepare the report to Council every six months.

4. Discussion

WLPP meetings are held on the fourth Wednesday of each month and the agenda for consideration by the Panel is available on Council's website and includes the assessment report with a staff recommendation and relevant plans. The applicant, and all persons who made a written submission to a development application are invited to address the Panel on the day of the meeting. The meeting is recorded, live streamed on Council's website and the minutes are published online.

Each quarter, Council is required to report all matters referred to the WLPP to the Department of Planning, Housing and Infrastructure via the online reporting database, including the Panel members, conflicts of interest, reasons for referral to the panel, decision of the panel (including whether this was different to the recommendation) and assessment timeframe.

During the period 1 July to 31 December 2023 there were 52 development applications (including applications to modification development consents) determined by the WLPP. Each meeting had a range of between six and 10 matters for determination. The number of applications considered per ward include:

- Hunter: 9.
- Lawson: 16.
- Waverley: 11.
- Bondi: 16.

Attachment 1 outlines all the determinations made from 1 July 2023 to 31 December 2023 and includes the application reference number, address, ward, proposal, reason why it was referred to the Panel for determination, staff recommendation and the Panel decision.

The applications for this period were referred to the panel for having a departure from development standard by more than 10%, having more than 10 unique submissions ('contentious development') or for being a residential flat building of more than four storeys ('sensitive development'). Two applications were referred to the Panel as they proposed amendments to a condition of development consent that was previously added by the Panel at a previous meeting.

Out of the 52 matters, the Panel agreed with 51 of the recommendations, but modified the conditions of consent in 21 of the applications recommended for approval. One application was recommended by approval by the assessing officers and refused by the Panel.

There were six LEC appeals lodged against WLPP decisions during the period, with one appeal lodged against two development applications for 241 Bondi Road, Bondi, seeking a jurisdictional review of the imposition of a condition seeking payment for an affordable housing contribution under SEPP (Affordable Rental Housing) 2009 and SEPP (Housing) 2021.

Four of the appeals are contesting the WLPP refusal of the applications and one is appealing certain conditions of consent. One of the appeals has been resolved and the remaining six are pending an outcome.

5. Financial impact statement/Time frame/Consultation

There are no financial implications relating to this report.

6. Conclusion

The data in this report are provided to the Department of Planning Housing and Infrastructure on a quarterly basis to comply with reporting requirements.

This report satisfies the requirements of Council's resolution to report the decisions of the WLPP and LEC appeals lodged against a Panel decision between the period of 1 July and 31 December 2023. The next report to Council will cover the period 1 January 2024 to 30 June 2024.

It is recommended that Council notes the report.

7. Attachments

1. Determinations by WLPP and LEC appeals - July 2023-December 2023 [↓](#) .

REPORT

PD/5.4/24.05



Subject: Clause 4.6 Variations to Development Standards - January-March 2024

TRIM No: A23/0244

Manager: Bridget McNamara, Acting 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 January 2024 to 31 March 2024 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 29 development applications approved with a clause 4.6 variation in the last reporting quarter, for the period 1 January 2024 to 31 March 2024. 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. A development standard in a State Environmental Planning Policy (SEPP) can also be sought to be varied using Clause 4.6. 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 (or a SEPP) 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 5 March 2024	PD/5.5/24.03	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.
Strategic Planning and Development Committee 5 December 2023	PD/5.5/23.12	That Council: <ol style="list-style-type: none"> 1. Notes: <ol style="list-style-type: none"> (a) The clause 4.6 variations to development standards for the period 1 July 2023 to 31 October 2023 attached to the report. (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. 2. Officers continue to report on clause 4.6 variations to development standards to Council on a quarterly basis.

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 January 2024 to 31 March 2024 (the first quarter of 2024) 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 - January-March 2024 [↓](#) .

REPORT

PD/5.5/24.05



Subject: Sustainability Expert Advisory Panel Meeting - 28 March 2024 - Minutes

TRIM No: A22/0310

Manager: Sam McGuinness, Executive Manager, Environmental Sustainability

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

RECOMMENDATION:

That Council notes the minutes of the Sustainability Expert Advisory Panel meeting held on 28 March 2024 attached to the report.

1. Executive Summary

The purpose of this report is to note the minutes of the Sustainability Expert Advisory Panel (SEAP) meeting held on 28 March 2024.

2. Introduction/Background

Council refreshed the Sustainable Expert Advisory Panel in 2022 and endorsed the current terms of reference.

The Sustainability Expert Advisory Panel (SEAP) aims to:

- Work with Council to promote sustainable practices, focusing on the Community Strategic Plan and Environmental Action Plan.
- Assist Council and the community to implement and achieve the environmental targets of the EAP.
- Assist Council to integrate environmental sustainability into Council policy, plans and operations.

Members of the SEAP listed in the attached minutes were appointed by Council in August 2022.

3. Relevant Council Resolutions

Meeting and date	Item No.	Resolution
Strategic Planning and Development Committee 2 August 2022	PD/5.2/22.08	That Council appoints the following community members to the Sustainability Expert Advisory Panel (SEAP) until the end of the Council term in September 2024: <ol style="list-style-type: none"> 1. Danny Cameron. 2. Stephanie Carrick. 3. Anthea Fawcett. 4. Corinne Mullet.

		5. Robin Mellon. 6. Charles Scarf.
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4. Discussion

The attached minutes have been confirmed by Panel members via email.

5. Financial impact statement/Time frame/Consultation

The operations and administration of the SEAP requires the commitment of Councillor, volunteer and staff resources and any relevant costs are included in Council's operational budget.

6. Conclusion

This report tables the minutes of the Sustainability Expert Advisory Panel that occurred on 28 March 2024.

7. Attachments

1. SEAP - 24 March 2024 - Minutes [↓](#) .

