

Item No: R5 Recommendation to Council

Subject: **ADVICE OF THE WOOLLAHRA LOCAL PLANNING PANEL - AMENDED PLANNING PROPOSAL TO INTRODUCE FSR STANDARDS FOR LOW DENSITY RESIDENTIAL DEVELOPMENT AND URBAN GREENING PROVISIONS**

Author: Deeksha Nathani, Strategic Planner

Approvers: Kelly McKellar, Acting Team Leader Strategic Planner
Anne White, Manager - Strategic Planning
Nick Economou, Acting Director Planning & Development

File No: 20/185981

Reason for Report: To report on the advice made to Council by the Woollahra Local Planning Panel.
To obtain Council's approval to proceed with a planning proposal to amend the Woollahra Local Environmental Plan 2014 to introduce FSR standards for low density residential development and urban greening provisions.
To obtain Council's approval to prepare and exhibit a draft development control plan to amend Chapter B3 and Chapter E3 of the Woollahra Development Control Plan 2015.

Recommendation:

- A. THAT Council note the advice provided by the Woollahra Local Planning Panel on 15 October 2020.
- B. THAT the amended planning proposal, consistent with the advice of the Woollahra Local Planning Panel on 15 October 2020, and attached at **Annexure 1** of the report to the Environmental Planning Committee on 2 November 2020, be forwarded to the Department of Planning, Industry and Environment requesting a gateway determination to allow public exhibition.
- C. THAT Council note the planning proposal referred to in **B** introduces the following provisions:
- i. A maximum floor space ratio (FSR) standard of 0.5:1 for low density residential development in the R2 Low Density Residential and R3 Medium Density Residential zones.
 - ii. A maximum FSR standard of 0.75:1 for low density residential development in the Wolseley Road, Point Piper area.
 - iii. A range of maximum FSR standards for low density residential development on small sites in the R2 Low Density Residential and R3 Medium Density Residential zones.
 - iv. New LEP aims, zone objectives and a new local provision to conserve and enhance urban greening.
- D. THAT Council request the Minister for Planning and Public Spaces authorise Council as the local plan-making authority in relation to the planning proposal, to allow it to make the local environmental plan under section 3.36 of the *Environmental Planning and Assessment Act 1979*.

- E. THAT a draft development control plan be prepared and exhibited to amend *Chapter B3: General Development Controls* and *Chapter E3: Tree Management* of the *Woollahra Development Control Plan 2015* (attached as **Annexures 2 and 3** of the report to the Environmental Planning Committee on 2 November 2020) to include, among other provisions, a tree canopy area control of at least 35% of site area for low density residential development.
- F. THAT Council prepare an Urban Forest Strategy setting out its long term vision and tree canopy targets for land owned or administered by Council.
- G. THAT a report be prepared to the Environmental Planning Committee following the commencement of the controls (in 12 months' time) with a view to moving towards including a minimum tree canopy area of at least 40% of site area for low density residential development being dwelling houses, dual occupancies, semi-detached dwellings and attached dwellings.

1. Summary

Council staff have been researching an appropriate suite of controls to apply to low density residential development since 2015. The focus of the study was the introduction of floor space ratio (FSR) standards and, in November 2019, this was combined with proposed urban greening provisions. A chronology of the key dates on this matter is included in **Annexure 4** of this report.

Based on research and site testing undertaken in collaboration with Lyndal Plant: Urban Forester, Council staff have identified that a minimum deep soil area of 35% of site area is necessary to achieve a tree canopy area of between 35% and 40% of site area. Our research identifies that it will be difficult to achieve this deep soil landscaped area of 35% of the site area when an FSR standard above 0.5:1 is applied (see **Figure 1**).

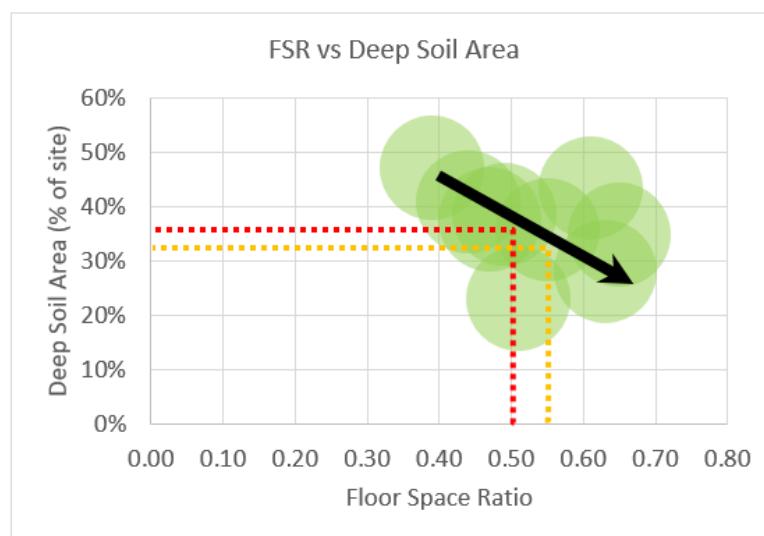


Figure 1: Relationship between FSR and deep soil landscaped area for detached dwellings as established during site testing by Council staff

Consequently, to facilitate an FSR of 0.5:1, Council staff propose a suite of controls for low density residential development, including a minimum deep soil landscaped area of 35% of the site, and a minimum tree canopy area of 35% of the site.

Council resolved on 29 September 2020 to seek the advice of the Woollahra Local Planning Panel (LPP). The Woollahra LPP were requested to give advice on a planning proposal to amend *Woollahra Local Environmental Plan (LEP) 2014* and proposed amendments to the *Woollahra Development Control Plan (DCP) 2015* to facilitate the above package of controls. This report provides the advice of the Woollahra LPP.

2. Background

In July 2019, Council resolved to proceed with FSR standards for low density residential development. A planning proposal was submitted to the *Department of Planning, Industry and Environment* (DPIE) on 30 July 2019. It was accompanied by a consequential package of changes to the Woollahra DCP 2015. Since this time, and as summarised in **Annexure 4**, the following has occurred:

- 2 September 2019** DPIE requested further information and research to support an FSR standard of 0.5:1 for low density residential development on sites of 400m² or greater (see **Annexure 5**).
- 11 November 2019** Council resolved to prepare the additional information and combine this with proposed tree canopy controls as a priority matter.
- 6 July 2020** Lyndal Plant's report *Woollahra: Greening our LGA* (**Annexure 6**) and a package of urban greening controls were reported to the *Environmental Planning Committee* (EPC) (**Annexure 7**).
- 27 July 2020** Council resolved, in part:
B. THAT staff organise another briefing of Councillors about the proposed tree canopy controls to allow further discussion and consideration of options to address Councillor concerns.
- 19 August 2020** Briefing was held with Councillors with an amended package of controls. This briefing was also attended by Steve Hartley: Executive Director - Green and Resilient Places (DPIE) & Barbara Schaffer: Principal Landscape Architect (NSW Government Architect Office (GA)).
- 7 September 2020** The amended package of controls was reported to EPC (**Annexure 8**).

Subsequently, on 29 September 2020, Council resolved:

- A. *THAT Council note that the planning proposal attached as Annexure 1 proposes that Woollahra LEP 2014 be amended by introducing the following provisions:*
- i. *A maximum floor space ratio (FSR) control of 0.5:1 for low density residential development in the R2 Low Density Residential and R3 Medium Density Residential zones.*
 - ii. *A maximum FSR control of 0.75:1 for low density residential development in the Wolseley Road, Point Piper area.*
 - iii. *A range of maximum FSR controls for low density residential development on small sites in the R2 Low Density Residential and R3 Medium Density Residential zones.*
 - iv. *New LEP objectives and local provisions to sustain and enhance urban greening.*

- B. *THAT the planning proposal attached as Annexure 1, and referred to in item A, be referred to the Woollahra Local Planning Panel for advice.*
- C. *THAT the proposed amendments to Chapter B3: General Development Controls and E3: Tree Management of the Woollahra DCP 2015, attached as Annexures 2 and 3 be amended to include a tree canopy area of at least 35% of site area for low density residential development being for dwelling houses, dual occupancies, semi-detached dwellings and attached dwellings, with the exception of Wolseley Road, and also be referred to the Woollahra Local Planning Panel for advice.*
- D. *THAT the advice of the Woollahra Local Planning Panel be reported to the Environmental Planning Committee.*
- E. *THAT following consideration of the expert advice from the Woollahra Local Planning Panel, Council determine whether or not, and in what form the planning proposal should be referred to the Department of Planning, Industry and Environment for a gateway determination.*
- F. *THAT Council prepare an Urban Forest Strategy setting out its long term vision and tree canopy targets for land owned or administered by Council.*
- G. *THAT a report be prepared to the Environmental Planning Committee following the commencement of the controls (in 12 months' time) with a view of moving towards including a tree canopy area of at least 40% of site area for low density residential development being for dwelling houses, dual occupancies, semi-detached dwellings and attached dwellings.*

3. Woollahra Local Planning Panel advice

Council is required to refer all planning proposals to the Panel by the Local Planning Panel Direction issued by the Minister for Planning on 27 September 2018, unless the General Manager determines that the planning proposal relates to a the correction of an obvious error in a local environmental plan or another matter of minor nature. Additionally, section 2.19(1)(c) of the Act specifies that the Panel may advise a Council on any other planning or development matter that is to be determined by the Council and is referred to the panel by the Council.

On 15 October 2020, the Woollahra LPP considered a report on the amended planning proposal and proposed amendments to the Woollahra DCP 2015 (see **Annexure 9**).

It is noted that Councillors Toni Zeltzer, Matthew Robertson, Anthony Marano and Megan McEwin, Bruce Stafford (member of the Woollahra DCP 2015 Working Party²) and Lyndal Plant (consultant for Council) addressed the Panel.

At this meeting, the Woollahra LPP provided the following advice:

- A. *THAT the Woollahra Local Planning Panel advises Council that it supports in principle the planning proposal (attached as Annexure 1) subject to the following amendments:*
 - i *Amend and combine Clause 1.2 Aims of Plan (n & o) to read as follows:
To encourage urban greening and minimise the urban heat island effect.*

² The Woollahra DCP 2015 Working Party was established in response to a Council resolution dated 27 April 2015, to review Chapter B3 General Development Controls in the Woollahra DCP 2015. The working party consisted of staff from the planning and development team, two Councillors: an independent advisor and four practitioners.

- ii *Amend the objectives of the Land Use Table at Clause 2.3 to read as follows for Zone R2 Low Density Residential & Zone R3 Medium Density Development:
To ensure that development conserves and enhances the tree canopy/area.*
- iii *Amend Clause 4.4(1) (iii) by inserting the words “tree canopy/area” after deep soil planting.*
- iv *Amend Clause 4.4(4) to read as follows:
Despite subclause (2), the maximum floor space ratio for a dwelling house, dual occupancy or semi-detached dwelling on land in Zone R2 Low Density Residential or Zone R3 Medium Density Residential for each site area shown in column 1 must not exceed the floor space ratio shown in column 2 or the maximum gross floor area shown in column 3, whichever is the lesser.*
- v *Amend Clause 6.8 Urban Greening (1) to read as follows:
The objective of this clause is to conserve and enhance tree canopy/area.*
- vi *Amend Clause 6.8 (3) so that the bullet points are alphabetical.*
- vii *Ensure that all references in the planning proposal to FSR is referred to as a standard, not a control.*

B. *THAT the Woollahra Local Planning Panel advises Council that it supports the exhibition of the proposed amendments to the Woollahra DCP 2015 (Chapter B3: General Development Controls & Chapter E3: Tree Management).*

Staff note that advice of the Woollahra LPP relates primarily to the wording of the proposed provisions in Woollahra LEP 2014, and there are no recommended changes to the draft DCP provisions.

The Woollahra LPP gave the following reasons for its decision:

Despite its earlier advice that an FSR standard of 0.55:1 for low density residential development was appropriate, the additional site testing that has been undertaken demonstrates the important relationships between FSR and deep soil landscaping and tree canopy/area. On this basis the panel supports, for the purpose of exhibition, the introduction of a maximum FSR standard of 0.5:1 and other amendments to the FSR standard. The importance of the relationship between FSR, deep soil landscaped area and tree canopy/area is strengthened by the introduction of the new clause 6.8: Urban Greening.

The panel also supports the removal of the floorplate controls from the Woollahra DCP 2015 and the strengthening of the controls in relation to deep soil landscaped area and tree canopy/area. The panel noted the degree of site testing relied upon to establish the tree canopy controls and the submissions requesting a 40% in lieu of 35% tree canopy control. Whilst it has concerns about the detail and complexity of how the proposed controls in section 3.6 will be understood, calculated, implemented and enforced/monitored; it considers it appropriate to exhibit the draft DCP amendments in its current form for the purpose of public comment.

4. Amended Planning Proposal

Attached at **Annexure 1** is the amended planning proposal that has been updated consistent with the advice of the Woollahra LPP.

The objectives of the amended planning proposal are:

- To introduce development standards to control the amount of floor space permitted for low density residential development.

- To introduce provisions for urban greening, urban heat, the mitigation of climate change and the protection and enhancement of tree canopy.

In summary, the planning proposal seeks to amend the Woollahra LEP 2014 to:

- introduce FSR standards for low density residential development, including:
 - 0.5:1 on sites of 400m² or greater,
 - 0.75:1 for the Wolseley Road Area (Area 1 in **Annexure 1**), and
 - a range of FSRs based on site area on sites under 400 m².
- introduce new and updated urban greening provisions, including:
 - new and updated Aims (Clause 1.2)
 - new Zone objectives (Clause 2.3)
 - a new local provision to conserve and enhance tree canopy in residential zones (proposed Clause 6.8).

5. Draft Development Control Plan

An updated *Chapter B3: General Development Controls* and (Chapter B3) *Chapter E3: Tree Management* (Chapter E3) are attached at **Annexure 2 and 3**. Notes in the right hand margin of each annexure identify the source of the proposed amendments. These proposed controls will work in conjunction with the amendments to Woollahra LEP 2014 described in Part 4 above. Certain elements of the urban greening provisions will apply generally across the LGA whilst certain controls will not apply to land in the Paddington, Watsons Bay and Woollahra Heritage Conservation Areas.

Whilst numerous changes are recommended, the key elements are the following:

- Delete the floorplate and site depth controls
- Insert a minimum deep soil landscaped area control of 35% of the site area³ for low and medium density residential development (R2 and R3 zones).
- Insert minimum tree canopy area controls, as follows:
 - 35% of the site area for low density residential development,
 - 30% of the site area for medium density residential development,
 - and 25% of the site area for the Wolseley Road Area
 - (Note: The tree canopy area includes all trees that are capable of achieving a height and crown diameter of 3 metres at maturity).
- Insert a requirement that at least half of the total tree canopy area on a site must consist of canopy trees. Noting that a canopy tree is a tree which attains a minimum height and crown diameter of 8 metres at maturity and is planted in a deep soil landscaped area with a minimum dimension of 4 metres.
- Insert provisions to permit variations to the tree canopy area control in cases of view impact (moderate, severe or devastating), overshadowing (of private open spaces or habitable rooms) or the inability of the site to achieve the required area of canopy trees due to site conditions.
- Insert new definitions for urban heat island effect, urban greening, tree crown, tree canopy area and canopy tree.

The amendments will create a set of controls which:

³ This element is critical in providing a justification to the DPIE for an FSR standard of 0.5:1 for low density residential development, as our site testing demonstrates it will be difficult to achieve a deep soil landscaped area of 35% of the site when combined with an FSR standard above 0.5:1.

- are consistent with the proposed FSR standards for low density residential development.
- enhance the deep soil area landscaping requirements and tree canopy area in residential zones.
- remove the complicated floorplate controls and make it easier for applicants to understand.
- provide an effective assessment framework for staff.

6. Next Steps

Should Council resolve to proceed, the next steps are to:

- Submit the amended planning proposal to the DPIE for a gateway determination. This will allow the amended planning proposal to be placed on public exhibition.
- Prepare and exhibit a draft DCP to amend Chapter B3: General Development Controls and Chapter 3: Tree Management of the Woollahra Development Control Plan 2015 consistent with **Annexures 2 and 3**.

7. Public exhibition

The public exhibition of the amended planning proposal and draft DCP will be undertaken concurrently and in accordance with the requirements of the *Environmental Planning and Assessment Act 1979* (the Act), the *Environmental Planning and Assessment Regulation 2000*, the *Woollahra Community Participation Plan*, and for the planning proposal, the gateway determination and relevant LEP guidelines.

Public notification of the exhibition will comprise:

- A weekly notice in the local newspaper (the Wentworth Courier) for the duration of the exhibition period.
- A notice on Council's website.
- Notifications to local community and business groups, adjoining councils, relevant state agencies, the Eastern Design and Planning Professional Alliance, and members of the Woollahra DCP 2015 working party.

To streamline the plan-making process, the Minister can delegate plan-making powers to Council for routine matters. In this case, Council may request authorisation to exercise the functions of the Minister to make an LEP under section 3.36 of the Act. Part C of the recommendation of this report deals with this request.

8. Conclusion

This project is the result of 5 years of research and testing by staff in collaboration with consultants, state agencies, the Woollahra LPP, working parties and Councillors.

This report provides the advice of the Woollahra LPP that was requested in relation to:

- an amended planning proposal to amend Woollahra LEP 2014 by inserting FSR standards for low density residential development and urban greening provisions.
- corresponding amendments to the Woollahra DCP 2015 including, deletion of the floorplate controls, new tree canopy controls and revised deep soil landscaped area controls.









On 15 October 2020, the Woollahra LPP provided advice to Council that it:

- supports in principle the amended planning proposal subject to minor amendments, and
- supports the exhibition of the proposed amendments to the Woollahra DCP 2015 (Chapter B3: General Development Controls & Chapter E3: Tree Management).

Subsequently, staff have amended the planning proposal to reflect the changes recommended by the Woollahra LPP.

Staff recommend that Council resolve to submit the amended planning proposal to the DPIE for a gateway determination which will allow public exhibition of the proposed package of amendments to the Woollahra LEP 2014 and Woollahra DCP 2015.

Annexures

1. Amended Planning Proposal - Introduction of FSR standards for low density residential development and urban greening provisions - Updated 21 October 2020 [↓](#) 
2. Proposed amendments to Chapter B3: General Development Controls of Woollahra DCP 2015 - Updated 30 September 2020 [↓](#) 
3. Proposed amendments to Chapter E3: Tree Management of Woollahra DCP 2015 [↓](#) 
4. FSR and urban greening provisions - Project chronology [↓](#) 
5. Letter from the Department of Planning, Industry & Environment 2 September 2019 [↓](#) 
6. Woollahra: Greening Our LGA , Lyndal Plant Urban Forester, 30 June 2020 [↓](#) 
7. Report to the EPC 6 July 2020 (Annexures removed) [↓](#) 
8. Report to the EPC 7 September 2020 (Annexures removed) [↓](#) 
9. Report to the WLPP 15 October 2020 (Annexures removed) [↓](#) 