Planning Proposal

43 Donnelly Road, Naremburn

Amendment to *Willoughby Local Environmental Plan 2012*

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Version ***February 2024***

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Background

On 9 November 2021, a development application was lodged with Willoughby City Council (**Council**) for the carrying out of a mixed use development including a multi dwelling housing development, single dwellings and other uses, on land located at 43 Donnelly Road, Naremburn (**Property**). This land contains, among other things, St Leonard's Catholic Church, which is listed as a heritage item under Schedule 5 of the *Willoughby Local Environmental Plan 2012* (**Willoughby LEP**). The Presbytery and the School Buildings on the land are not presently listed under Schedule 5 of the Willoughby LEP.

A component of the development application sought to convert the extant St Leonard's Presbytery (**Presbytery**) to a single dwelling and demolish a series of buildings associated with the former St Leonard's Catholic School (**School Buildings**). The development application was refused by Council on 26 July 2022. On 13 September 2022, Class 1 proceedings commenced in of the Land and Environment Court against Council's refusal to grant development consent.

The development application process is ongoing, pending the resolution of the related proceedings described below.

On 27 February 2023, Council resolved to include the Presbytery in the 2023/4 Council Heritage Review as an item of potential local significance. It also resolved that Council should be notified if staff become aware that the School Buildings have potential heritage value.

On 22 May 2023, after considering a Preliminary Heritage Assessment prepared by Vanessa Holtham, heritage consultant, and a report prepared by Council staff, Council resolved to make an interim heritage order (**IHO**) in respect of the Presbytery and School Buildings. The IHO was made pursuant to section 25 of the *Heritage Act 1977* and was published in the NSW Government Gazette No. 227 on 26 May 2023.

The owner of the Property, the Trustees of the Roman Catholic Church for the Diocese of Broken Bay, commenced Class 1 proceedings in the Land and Environment Court against the making of the IHO. Specifically, an appeal was lodged against the making of IHO over Lot A in DP 341795 and Lot 1 in DP 320984, being the location of school building and School Annex buildings. The appeal did not dispute the making of the IHO over Lot 1 in DP 115889, the location of the Presbytery.

The development application has subsequently been amended; the current development application proposes retention of the Presbytery however the demolition of the School Building and School Annex is still proposed.

The IHO proceedings were listed for hearing on 24 and 26 October 2023 (they were originally listed for hearing on 25 and 26 September 2023, with these dates being vacated at the request of the Diocese).

Council commissioned a full heritage assessment from Ms Holtham (**Holtham Report** — see **Appendix 1**).

On 10 October 2023, this Planning Proposal was referred to the Willoughby Local Planning Panel. The Panel resolved as follows:

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"The Panel advises it supports the planning proposal being forwarded to the DP&E for a Gateway consideration having considered the findings of the heritage expert Vanessa Holtham that the presbytery and school buildings have local historical significance as a complex and meets the threshold for listing as a local heritage item in the Willoughby Local Environmental Plan 2012 (WLEP 2012)."

The IHO proceedings were listed for judgement on 17 January 2024, and the appeal against the IHO was dismissed (a **copy of the judgement** is provided in **Appendix 2**).

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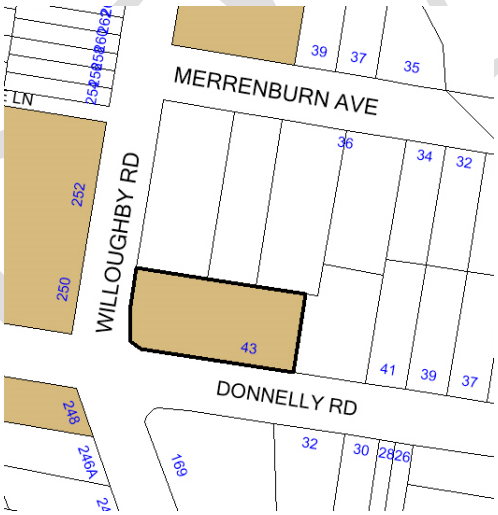
Part 1 — Objectives or intended outcomes

This Planning Proposal seeks to amend the Willoughby LEP so as to expand local heritage item No. 160, presently described in Schedule 5 of the Willoughby as 'St Leonards Church (including original interiors)' at 43 Donnelly Road, Naremburn (**Existing Item**).

The findings of the Holtham Report (see Appendix 1) identify that the Existing Item is part of a complex of buildings that have local heritage significance. The Holtham Report recommends that the listing of the Existing Item as a local heritage item be expanded so as to also include the Presbytery and School Buildings as local heritage items.

The Planning Proposal would expand the heritage listing of the Existing Item to the property boundaries of the allotments specified below, including as an item of local heritage significance all presently unlisted portions of the land, such as an extant presbytery, as well as grounds and buildings formerly associated with a Catholic primary school.

Table 1

	Existing	**Proposed**
Item Name	St Leonards Church (including original interiors)	St Leonards Church (including original interiors), Presbytery and School Buildings and grounds.
Property description	Part of Lot 1, DP 115889	Lot 1 DP 320984, Lot A DP 341975 and Lot 1 DP 115889
Zoning	R3 – Medium Density Residential	No change
Height of buildings	9m	No change
FSR	0.7:1	No change
Heritage		

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Part 2 — Explanation of Provisions

The Planning Proposal proposes to amend the Willoughby LEP by:

- Amending the Existing Item in Part 1 of Schedule 5 as follows:

Suburb	Item Name	Address	Property Description	Significance	Item No
Naremburn	St Leonards Church (including original interiors), Presbytery and School Buildings and grounds.	43 Donnelly Road	Lot 1 DP 320984, Lot A DP 341975 and Lot 1 DP 115889	Local	I160

- Amending the Willoughby LEP Heritage Map, as approved under clause 1.7 of the Willoughby LEP, to show the item as listed and described above.

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Part 3 — Justification

The heritage significance of the Presbytery and the School Buildings has been assessed and established by the Holtham Report, which is Appendix 1 to this Planning Proposal.

Listing as a local heritage item will provide ongoing protection and recognition of the heritage significance of the Presbytery and the School Buildings.

Section A – Need for the Planning Proposal

Q1 — Is the Planning Proposal a result of any strategic study or report?

Yes. The need to amend the Willoughby LEP has arisen from the recommendations of an independent heritage assessment — the Holtham Report (see Appendix 1).

The Holtham Report assessed the heritage significance of all the buildings contained within the Property against the seven criteria for establishing heritage significance identified by the Heritage Council of New South Wales (see *Assessing Heritage Significance: Guidelines for assessing places and objects against the Heritage Council of NSW Criteria*, published by the Environment and Heritage Group, Department of Planning and Environment, May 2023). The Holtham Report also considered relevant historical themes and the integrity and condition of the buildings.

Having regard to these matters and the built features of the Property, the Holtham Report identifies the complex of buildings on the Property to be a "key landmark within the local area and as individual entities, the Church, presbytery and main school building have landmark qualities within different streetscapes" (p 64).

The Holtham Report includes a comparative analysis of other places of worship within the eastern and northern Sydney districts, finding those places to be historically grouped as complexes of buildings. Typically, the significance of those complexes is recognised in their listing as items of local heritage significance pursuant to their respective local environmental plan (pp 44-57).

The Holtham Report ultimately finds that the complex of buildings on the Property are of sufficient heritage significance to warrant inclusion under Schedule 5 of the Willoughby LEP.

Q2 - Is the Planning Proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

Yes. The objective of the Planning Proposal is to list the Property in Schedule 5 of the Willoughby LEP. The best and only means of achieving this end is through the planning proposal process.

This Planning Proposal is the best means to provide long term protection to the heritage significance of the item. There are no viable alternatives. Other options, such as adding site-specific controls and objectives in the Willoughby Development Control Plan 2023 or including heritage conservation controls in any relevant development consent, would not provide the appropriate level of heritage recognition and protection, having regard to the findings of the Holtham Report.

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Section B – Relationship to strategic planning framework

Q3 - Is the Planning Proposal consistent with the objectives and actions of the applicable regional, sub-regional or district plans or strategy (including any exhibited draft plans or strategies)?

Greater Sydney Region Plan – A Metropolis of Three Cities 2018

Released in March 2018, A Metropolis of Three Cities (**Region Plan**) sets the planning framework for growth of Sydney to 2056. The vision seeks to transform Greater Sydney into a metropolis of three cities – the Western Parkland City, The Central River City and the Eastern Harbour City and sets targets of 725,000 new dwellings and 817,000 new jobs by 2036.

Objective 13 of the Region Plan is that "Environmental heritage is identified, conserved and enhanced." In addition, Strategy 13.1 provides as follows:

> *"Identify, conserve and enhance heritage by:*
> - *engaging with the community early in the planning process to understand heritage values and how they contribute to the significance of the place*
> - *applying adaptive re-use and interpreting heritage to foster distinctive local places*
> - *managing and monitoring the cumulative impact of development on the heritage values and character of places."*

The Planning Proposal is consistent with Objective 13 of the Region Plan in that it identifies in an area of particular heritage values that are suitable for preserving for future generations.

North District Plan 2018

The *North District Plan* (**NDP**) informs local strategic planning statements and local environmental plans, the assessment of planning proposals and community strategic plans and policies. The NDP provides planning priorities consistent with the Objectives from the Region Plan. The Region Plan requires that councils work collaboratively with the Greater Sydney Commission (now Greater Cities Commission) to establish agreed 6 -10 year housing targets.

Planning Priority N6 of the NDP provides as follows:

> *"Creating and renewing great places and local centres, and respecting the District's heritage."*

Additionally, Objective 13 of the Region Plan is replicated as Action 21 in the North District Plan.

The proposal to list the Property is consistent with Planning Priority N6 and Action 21 of the NDP, in that it identifies a place worthy of conserving and preserving for future generations.

Council has recently finalised a comprehensive review of the Willoughby LEP, culminating in substantial amendments which took force in June 2023. In particular, these amendments provided significant development potential uplift throughout identified 'Railway Precincts' and 'Local Centres' in order to meet the employment and housing targets set out in the NDP. These can still be comfortably achieved should this Planning Proposal proceed.

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Q4 - Is the Planning Proposal consistent with a council's local strategy or other local strategic plan?

Yes. The relevant local strategies are detailed below.

Our Future Willoughby 2032

Our Future Willoughby 2032 is the Council's community strategic plan, providing a long-term vision for the future of the City. Our Future Willoughby 2032 is used to inform Council's decision making and planning.

The main Priority within Our Future Willoughby 2032 relevant to this Planning Proposal is:

> *2.2 Respect and celebrate our indigenous and non-indigenous history and heritage.*

The Planning Proposal is consistent with this action as it provides for the protection of a heritage item worthy of conserving and celebrating.

Local Strategic Planning Statement 2020

Council prepared and adopted a Local Strategic Planning Statement on 10 February 2020 (**LSPS**), with assurance received from the Greater Sydney Commission on 20 March 2020.

The LSPS provides the basis for strategic planning in the Willoughby Local Government Area (**LGA**). It is required to have regard to economic, social and environmental matters and identify how the desired outcomes of the Region Plan and NDP will be achieved.

The LSPS is aligned with Council's former community strategic plan, the *Community Strategic Plan – Our Future Willoughby 2028*. That community strategic plan identified the priorities and aspirations of the community and the broader strategic direction of Council to align the delivery of policies, programs, projects and services. The LSPS specifies how its directions implement the actions identified in the community strategic plan.

The LSPS contains the following relevant priority:

> ***Priority 5:*** *Respecting and enhancing heritage and local suburban character.*

The Planning Proposal is consistent with this principle as it ensures that an item of local heritage significance is protected and respected.

Q5 - Is the Planning Proposal consistent with applicable State Environmental Planning Policies?

The table below details how the Planning Proposal is consistent with relevant State Environmental Planning Policies.

SEPP title	Consistency	Explanation
State Environmental Planning Policy (Exempt and Complying Development Codes) 2008	YES	The Planning Proposal is consistent with the SEPP as it does not affect the attainment of the SEPP's aims and objectives. The expansion of the Existing Item will have consequences for the ability for certain works to be carried out as

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		exempt and complying development under this SEPP.
State Environmental Planning Policy (Housing) 2021	YES	The Planning Proposal does not contain provisions that would affect the application of this SEPP.
State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004	YES	The Planning Proposal does not contain provisions that would affect the application of this SEPP.
SEPP (Transport & Infrastructure) 2021	YES	The Planning Proposal does not contain provisions that would affect the application of this SEPP.
SEPP (Sustainable Buildings) 2022	YES	The Planning Proposal does not contain provisions that would affect the application of this SEPP.

Q6 - Is the Planning Proposal consistent with the applicable Ministerial Directions (s.117 Directions)?

The table below details how the Planning Proposal is consistent with applicable directions by the Minister under section 9.1 of the *Environmental Planning and Assessment Act 1979*.

No	Title of Direction and objectives	Comment	Compliance
1.1	**Implementation of Regional Plans** The objective of this direction is to give legal effect to the vision, land-use strategy, goals, directions and actions contained in Regional Plans	The Planning Proposal is consistent with the Greater Sydney Region Plan – A Metropolis of Three Cities and the North District Plan.	YES
1.3	**Approval and Referral Requirements** The objective of this direction is to ensure that LEP provisions encourage the efficient and appropriate assessment of development.	The Planning Proposal will be subject to consultation with State authorities as required by the Gateway Determination.	YES
1.4	**Site Specific Provisions** The objectives of this direction is to discourage unnecessarily restrictive site specific planning controls.	The Planning Proposal does not allow a particular development to be carried out.	YES
3.2	**Heritage Conservation** The objective of this direction is to conserve items, areas, objects and places of environmental heritage significance and indigenous heritage significance.	The Planning Proposal is consistent with this direction.	YES
6.1	**Residential Zones** The objectives of this direction are: (a) to encourage a variety and choice of housing types to provide for existing and future housing needs, (b) to make efficient use of existing infrastructure and services and ensure that new housing has appropriate	Council's current population forecast require delivery of 6,700 dwellings by 2036, Council is on track to exceed that target. The Planning Proposal will not impact Council's ability to exceed its housing target.	YES

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	access to infrastructure and services, and (c) to minimise the impact of residential development on the environment and resource lands.	The land will remain R3 medium density residential, and residential development will still be permitted on the land provided it is sensitive to the heritage items on the site. The residential yield on the site is already constrained noting that it is already a listed item. The amendments to the current the Development Application are a function of the need to deal with the existing heritage constraints. The Planning Proposal will ensure the LEP more accurately articulates and reflects the heritage significance of the site, facilitating its orderly development. Under Council's Local Housing Strategy, Naremburn' zoning was recently reviewed to ensure adequate local housing supply to address growth needs. The controls on the site and in its immediate surrounds have been designed to ensure development would occur in the appropriate locations within Narembrun and minimize the impact on heritage items and areas. The Planning proposal is, therefore, consistent with this direction.	

Section C – Environmental, social and economic impact

Q7 - Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of this proposal?

No. The Planning Proposal will not adversely impact critical habitat or threatened species, populations or ecological communities or their habitats.

Q8 — Are there any other likely environmental effects as a result of the Planning Proposal and how are they proposed to be managed?

No. There are no likely environmental effects that would arise as a result of the Planning Proposal.

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Q9 — Has the Planning Proposal adequately addressed any social and economic effects?

The background to the Planning Proposal is set out above. Relevantly, it is acknowledged that the Planning Proposal will have particular economic and other implications for the undetermined development application which relates to the Property. Ultimately, Council's position is that, having regard to the findings of the Holtham Report, the matters set out elsewhere in Part 3 to the Planning Proposal, the social benefits associated with the Planning Proposal outweigh these economic impacts.

Additionally, the progression of the Planning Proposal will not impact existing social infrastructure or existing retail centres. As noted at Section B above, the uplift in development potential effected by amendments to the Willoughby LEP will ensure that employment and housing targets set out in the NDP can be achieved should this Planning Proposal proceed.

It is noted additionally that the public exhibition of the planning proposal will provide additional opportunity for the owners of the Property and wider community to consider and comment upon the proposed amendment to the Willoughby LEP.

Section D – State and Commonwealth Interests

Q10 - Is there adequate public infrastructure for the Planning Proposal?

Yes. The Planning Proposal will have no impact on the demand for public infrastructure.

Q11 - What are the views of State and Commonwealth public authorities consulted in accordance with the gateway determination?

This section will be completed following consultation with public authorities identified in the gateway determination. Public authorities, including but not limited to the following, will be notified:

- Heritage NSW;
- Heritage Council of New South Wales; and
- The National Trust of NSW.

Any other authorities identified in the gateway determination will be consulted during the public exhibition of the Planning Proposal.

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Part 4 — Mapping

The Planning Proposal seeks to amend the Willoughby LEP's Heritage Map by expanding the depiction of the Existing Item.

Figure 1 below illustrates the existing Heritage Map.

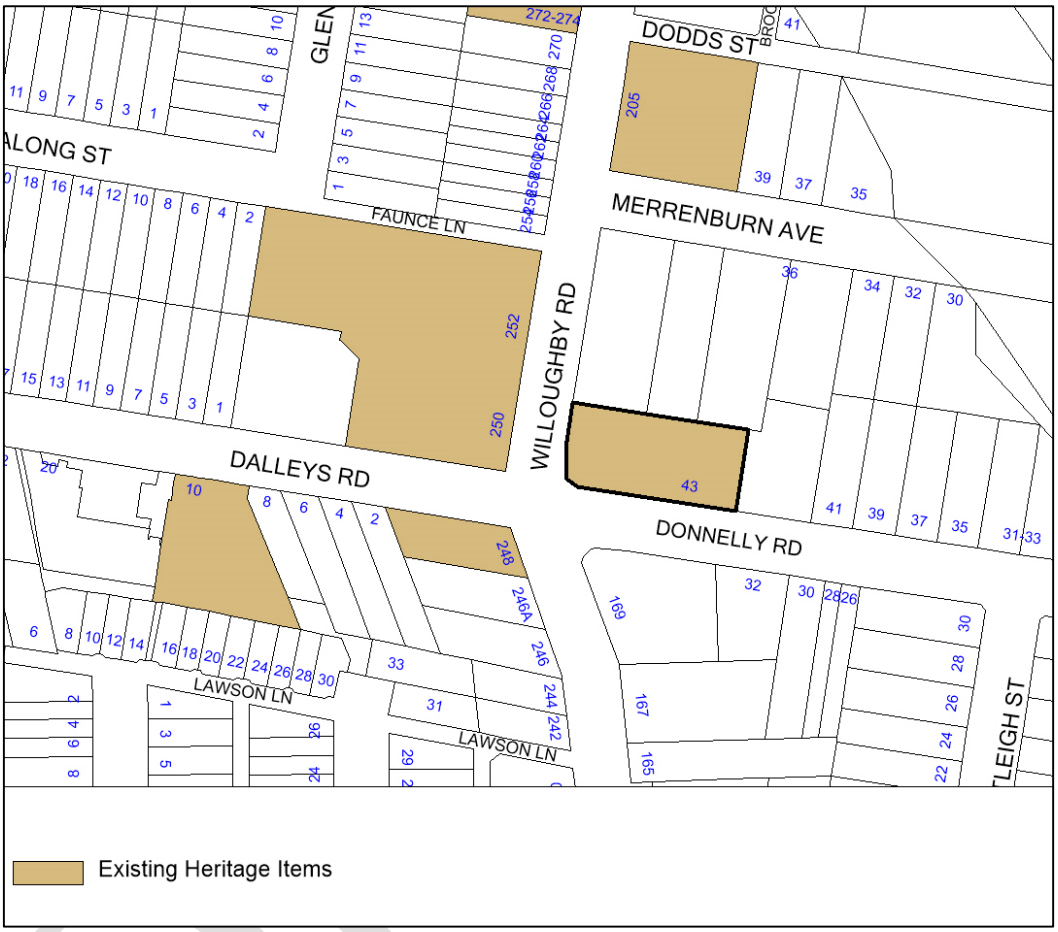


Figure 1: Existing Item extracted from the Willoughby LEP's Heritage Map

Figure 2 illustrates the mapping changes proposed pursuant to this Planning Proposal. These will be provided for the public exhibition.

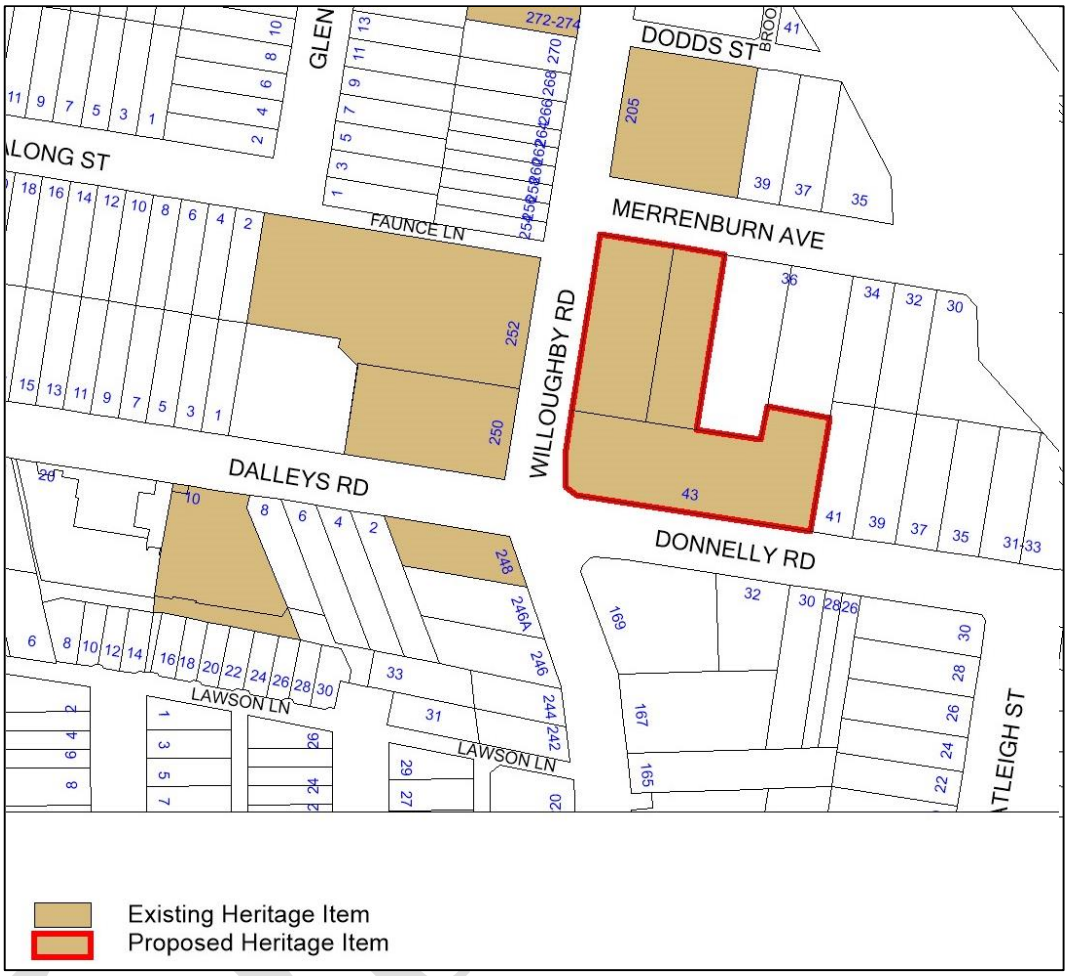


Figure 2: Proposed amendment to the Willoughby LEP's Heritage Map

Part 5 — Community Consultation

The public exhibition of the Planning Proposal will be undertaken in accordance with the *Environmental Planning and Assessment Act 1979*, the *Willoughby Community Participation Plan* (**Willoughby CPP**) and the *Local Environmental Plan Making Guideline*, as well as any conditions of the gateway determination.

It is recommended that the Planning Proposal is exhibited for a minimum of 28 days.

Public exhibition of the Planning Proposal will be carried out in accordance with Part B of the Willoughby CPP and will comprise, at a minimum, the methods of community engagement required by Table 4 of the Willoughby CPP, including requests for written submissions, surveys and online engagement tools and the provision of a responsible officer contact point.

During the public exhibition period, the following material will be available on Council's website and in the customer service area at Council's offices:

- the Planning Proposal, in the form approved by the gateway determination;
- the gateway determination;
- information relied upon by the Planning Proposal (such as the Holtham Report); and
- the Willoughby LEP.

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Part 6 — Project Timeline

As Council is authorised to exercise the functions of the Minister for Planning as local plan-making authority under section 3.36 of the *Environmental Planning and Assessment Act 1979*, the proposed timeline for completion is as follows:

Plan-making step	Estimated completion
Planning Proposal presented to WLPP for advice	10 October 2023
Council resolution to proceed	23 October 2023
Gateway determination	18 January 2024
The updated Planning Proposal be forwarded to the Minister for endorsement for public exhibition	12 February 2024
Ministerial (or delegate) endorsement confirmed	26 February 2024
Public exhibition period/government agency consultation	March/April 2024
Submissions assessment	May 2024
Council assessment of Planning Proposal post-exhibition	June 2024
Council decision to make amendment to the Willoughby LEP	June2024
Council to liaise with Parliamentary Counsel to prepare LEP amendment	July 2024
Forwarding of LEP amendment for notification	July 2024
Notification and commencement of the approved LEP	October 2024

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