



New South Wales

# **Willoughby Local Environmental Plan 1995 (Amendment No 54)**

under the

**Environmental Planning and Assessment Act 1979**

I, the Minister Assisting the Minister for Infrastructure and Planning (Planning Administration), make the following local environmental plan under the *Environmental Planning and Assessment Act 1979*. (S03/01528/S69)

DIANE BEAMER, M.P.,  
Minister Assisting the Minister for Infrastructure  
and Planning (Planning Administration)

## 2004 No 905

Clause 1 Willoughby Local Environmental Plan 1995 (Amendment No 54)

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# Willoughby Local Environmental Plan 1995 (Amendment No 54)

under the

Environmental Planning and Assessment Act 1979

## 1 Name of plan

This plan is *Willoughby Local Environmental Plan 1995 (Amendment No 54)*.

## 2 Aims of plan

The aims of this plan are:

- (a) to ensure existing amenity is maintained by:
  - (i) discouraging development that reduces the amount of sunlight reaching the living areas within adjoining and nearby properties, and
  - (ii) discouraging development that reduces the amount of sunlight reaching principal open space areas within adjoining and nearby properties, and
  - (iii) discouraging development that adversely impacts on the privacy of adjoining and nearby properties, and
  - (iv) providing for mitigating circumstances in these matters, and
- (b) to replace the provisions currently applying to the siting and preservation of trees on the land to which *Willoughby Local Environmental Plan 1995 (the 1995 plan)* applies with new provisions relating to the preservation of trees and bushland vegetation, and
- (c) to permit carparking, associated with a child care centre, on Lot 3, DP 162062, known as part of Bales Park, Willoughby, and
- (d) to clarify the definition of *floor space ratio* in the 1995 plan, and
- (e) to insert definitions of *access handle* and *bushland vegetation* in the 1995 plan, and
- (f) to rezone part of the land to which this plan applies from Zone 5 (c) (Special Uses "C" (Proposed County Road Reservation) Zone) to Zone 2 (a) (Residential "A" Zone) under the 1995 plan

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and to make provision for minimum allotment size in respect of that land, and

- (g) to rezone part of the land to which this plan applies from partly Zone 2 (b) (Residential “B” Zone) and partly Zone 6 (b) (Open Space “B” (Proposed Recreation Reservation) Zone) to partly Zone 6 (a) (Open Space “A” (Existing Recreation) Zone) and partly Zone 2 (b) (Residential “B” Zone) under the 1995 plan, and
- (h) to rezone part of the land to which this plan applies from Zone 5 (a) (Special Uses “A” Zone) to Zone 2 (a) (Residential “A” Zone) under the 1995 plan and to make provision for minimum allotment size in respect of that land, and
- (i) to make a minor amendment to the definition of *home occupation* in the 1995 plan.

### 3 Land to which plan applies

- (1) Except as provided by subclauses (2)–(5), this plan applies to all land to which *Willoughby Local Environmental Plan 1995* applies.
- (2) To the extent that this plan rezones land from Zone 5 (c) to Zone 2 (a) and makes provision for minimum allotment size in respect of that land, it applies to so much of Part Lot 41, DP 977055, Lot 4, DP 150607, Lot 3, DP 150607, Lot 2, DP 150607, Lot 1, DP 150607, Lot 2, DP 590018, Lot 1, DP 590018, Lot 361, DP 1032203, Lot 362, DP 1032203, Lot 35, DP 1037751, Lot 34, DP 1037751, Lot 33, DP 508777, Lot 1, DP 166910, Lot 2, DP 166910, Lot 1, DP 168467, Lot 30, DP 977055, Lot 101, DP 857252, Lot 100, DP 857252, Lot 1, DP 75374, Lot 11, DP 129153, Lot 1, DP 178525, Lot 1, DP 75133, Lot 1, DP 81135, Lot 1, DP 81401 and Lot 0, DP 977055, known as 1, 3, 5, 7, 9, 11, 11A, 13, 13A, 15, 17, 19, 21, 23, 25, 27, 29 and 29A Walter Street and 450, 452, 454, 456, 458 and 460 Willoughby Road, and remnant strip of reserve, Walter Street, Willoughby, as is indicated by heavy black edging on Sheets 2 and 5 of the map marked “Willoughby Local Environmental Plan 1995 (Amendment No 54)” deposited in the office of the Council of the City of Willoughby.
- (3) To the extent that this plan rezones land from Zone 5 (a) to Zone 2 (a) and makes provision for minimum allotment size in respect of that land, it applies to Lot 5, DP 10525, known as 26 Chatswood Avenue, Chatswood, as indicated by heavy black edging on Sheets 4 and 6 of that map.
- (4) To the extent that this plan rezones land from partly Zone 2 (b) and partly Zone 6 (b) to partly Zone 6 (a) and partly Zone 2 (b), it applies to Part 7 Section 1, DP 55815, as indicated by heavy black edging on Sheet 3 of that map.

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- (5) To the extent that this plan permits car parking ancillary to an adjoining child care centre, it applies to Lot 3, DP 162062, known as part of Bales Park, Willoughby, as indicated by heavy black edging on Sheet 1 of that map.

### **4 Amendment of Willoughby Local Environmental Plan 1995**

*Willoughby Local Environmental Plan 1995* is amended as set out in Schedule 1.

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## Schedule 1 Amendments

(Clause 4)

### [1] Clause 5 Definitions

Insert in alphabetical order in clause 5 (1):

***access handle*** means land on which is situated an access driveway, access corridor or an “axe-handle” to a battle-axe block or hatchet-shaped lot, the purpose of which is to provide vehicular, pedestrian or services access from the street to the main parcel of the battle-axe block or hatchet-shaped lot (regardless of whether it involves the creation of reciprocal rights of way, is affected by an easement or is for the exclusive use of one dwelling-house).

***bushland vegetation*** means vegetation which is either a remnant of the natural vegetation of the land on which it is situated or, if altered, is still representative of the structure and floristics of the natural vegetation.

### [2] Clause 5 (1), definitions of “floor space ratio” and “home occupation”

Omit the definitions. Insert instead:

***floor space ratio*** of a site means the ratio of the total gross floor area of all buildings on the site to the total area of the site zoned for the purpose for which the building or buildings may be erected, exclusive of the area of any existing or proposed access handle.

***home occupation*** means an occupation carried on in a dwelling by the permanent residents of the dwelling which would not have required the registration of the premises under sections 10–13 of the *Factories, Shops and Industries Act 1962*, as in force immediately before their repeal, and does not involve:

- (a) prostitution, or
- (b) the employment of persons other than those residents, or
- (c) interference with the amenity of the neighbourhood by reason of the emission of noise, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil, or otherwise, or
- (d) the display of goods, whether in a window or otherwise, or
- (e) the exhibition of any notice, advertisement or sign (other than a notice, advertisement or sign exhibited on the dwelling to indicate the name and occupation of the resident), or

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- (f) the sale of items (whether goods or materials) or the exposure or offer for sale of items, by retail.

**[3] Clause 5 (1), definition of “the map”**

Insert in appropriate order:

Willoughby Local Environmental Plan 1995 (Amendment No 54)—Sheets 2–4

**[4] Clause 6**

Omit the clause. Insert instead:

**6 Model Provisions**

The *Environmental Planning and Assessment Model Provisions 1980* are adopted for the purposes of this plan except for the definitions of terms defined in clause 5 (1) of this plan and clauses 7, 8, 15, 16, 18, 23 and 33 of the Model Provisions.

**[5] Clauses 13C and 13D**

Insert after clause 13B:

**13C Tree and bushland preservation order**

- (1) The objective of this clause is the preservation and management of trees and bushland vegetation within the City of Willoughby.
- (2) Where it appears to the Council that it is expedient for the purpose of securing amenity or of preserving existing amenity or of preserving or securing trees and bushland vegetation in order to ensure the integrity of the natural environment for both residents of and visitors to the City of Willoughby, it may, for that purpose and by resolution, make a tree and bushland preservation order and may, by like resolution, repeal or amend any such order.
- (3) A tree and bushland preservation order must specify, by characteristics, location, species, type, class or other identifying criteria set out in the order, the trees or bushland vegetation covered by the order.
- (4) A tree and bushland preservation order may specify, by characteristics, location, species, type, class or other identifying criteria set out in the order, any trees or bushland vegetation as exempt from being covered by the order.
- (5) A tree and bushland preservation order, and an amendment or repeal of any such order, has effect only when it has been published in the Gazette and in a local newspaper.

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- (6) The Council must establish and maintain a register of all tree and bushland preservation orders made, repealed or amended by the Council after the commencement of this clause and must record in the register the date of the relevant resolution, the dates of the publication of the order in the Gazette and the local newspaper under subclause (5), and the terms of the order as made, repealed or amended as the case may be.
- (7) The Council may add to the register established under subclause (6) any information it possesses in respect of tree preservation orders made before the commencement of this clause.
- (8) While a tree and bushland preservation order is in force, a person must not ringbark, cut down, top, lop, prune, remove, injure or wilfully destroy any tree or bushland vegetation covered by the order without development consent.
- (9) Subclause (8) does not apply where:
- (a) the trees or bushland vegetation concerned are dealt with in accordance with a permit granted by the Council, or
  - (b) the trees or bushland vegetation concerned are dying or dead or have become dangerous, or
  - (c) the action taken is reasonably necessary to protect human life, buildings or other property from imminent danger from a bush fire burning in the vicinity of the land on which the trees or bushland vegetation are situated, or
  - (d) written notice is given to the Council, the action proposed in the notice is the removal of trees or bushland vegetation that pose a fire hazard, the Council confirms in writing before the action is taken:
    - (i) that the trees or bushland vegetation concerned are in an Inner Protection Area within the meaning of the document entitled *Planning for Bushfire Protection*, ISBN 0 9585987 8 9, prepared by Planning & Environment Services, NSW Rural Fire Service in co-operation with the former Department of Urban Affairs and Planning, and dated December 2001, or
    - (ii) that the species of trees or the type of bushland vegetation concerned is a species or type, as the case may be, classified by the Council as being likely to present a significant fire hazard,and the action taken is the action proposed in the notice and is taken for the purpose of bush fire hazard reduction, or
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- (e) written notice is given to the Council, a period of not less than 14 days occurs after the notice is given (and before the trees or bushland vegetation concerned are dealt with), the Council does not advise the person during that period that it opposes the action proposed and the action taken is the action proposed in the notice and is taken for the purpose of bush fire hazard reduction.
- (10) A notice under subclause (9) must specify the name and address of the person who gives the notice, the trees concerned (and species of tree) or the type of bushland vegetation concerned, the location of the trees or bushland vegetation concerned, the address of the land on which the trees or bushland vegetation concerned are situated, and the action that is proposed to be taken in respect of the trees or bushland vegetation concerned.
- (11) The provisions of a tree and bushland preservation order do not apply to activities lawfully conducted in accordance with the *Telecommunications Act 1997* of the Commonwealth, the *Roads Act 1993*, the *Rural Fires Act 1997*, the *Local Government Act 1993* or the *Environmental Planning and Assessment Act 1979*.
- (12) To the extent that it identifies the trees to which the order applies, an order made under clause 8 of the *Environmental Planning and Assessment Model Provisions 1980* as adopted by this plan and in force immediately before the commencement of this clause, is taken to be an order made and published in accordance with this clause.

### 13D Amenity

Before granting consent for development, the Council must consider whether the proposed development is likely to have an adverse impact on an adjoining or nearby property by causing loss of views, loss of privacy or a reduction of sunlight to the living areas or principal open space recreation areas, and whether:

- (a) there are no other design alternatives that would mitigate the impacts, or
- (b) there are special circumstances applying to the site or its context.

### [6] Clause 15 Minimum allotment sizes

Insert in appropriate order at the end of clause 15 (1):

Willoughby Local Environmental Plan 1995 (Amendment No 54)—Sheets 5 and 6



**[7] Clause 15 (2)**

Omit the subclause. Insert instead:

- (2) For the purpose of this clause, the area of any existing or proposed access handle is to be excluded when determining the area of each allotment.

**[8] Clause 22 Minimum allotment size**

Omit clause 22 (2). Insert instead:

- (2) For the purpose of this clause, the area of any existing or proposed access handle is to be excluded when determining the area of each allotment.

**[9] Clause 33 Subdivision**

Omit clause 33 (4). Insert instead:

- (4) The floor space ratio of each dwelling to the allotment created by such a subdivision is not to exceed 0.4:1.

**[10] Clause 55 Development for certain additional purposes**

Insert at the end of clause 55 (b):

, or

- (c) carparking, in conjunction with the use of adjoining land for a child care centre, on Lot 3, DP 162062 (known as part of Bales Park, Willoughby), as indicated by heavy black edging on Sheet 1 of the map marked "Willoughby Local Environmental Plan 1995 (Amendment No 54)".