

# Waverley Council Development Control Plan Summary

## Background

1. In December 2022, Waverley Council passed a new Development Control Plan (DCP) that prohibits the installation of gas stoves, cooktops and space heaters in all new residential development across the entire municipality. The new DCP states:

*“Gas cooktops, gas ovens or gas internal space heating systems are not permitted in any residential development. Instead, electric systems should be installed and clearly marked on DA (development application) plans”<sup>1</sup>*

2. The DCP was carefully worded so as to avoid a potential conflict with the Sustainable Buildings State Environment Planning Policy, specifically Chapter 2.2 (Standards not affected by environmental planning instruments or development control plans), which states:
  - 1) *A competing provision of an environmental planning instrument or **development control plan**, whenever made, **is of no effect to the extent to which the provision aims***
    - a) ***to reduce consumption of mains-supplied potable water or greenhouse gas emissions related to the use of—***
      - i) ***a building, or***
      - ii) *the land on which a building is located, or*
    - b) *to improve the thermal performance of development<sup>2</sup>*

(emphasis added)
4. It appears that the intent of the above SEPP is to prohibit councils from passing DCPs that exceed the minimum sustainability requirements of the SEPP. To avoid a potential conflict with this clause of the SEPP, Waverley Council chose to justify their ban on certain gas appliances in residential development using health grounds (indoor air quality), rather than environmental grounds.
5. This explains why Waverley Council’s gas appliance ban applies only to appliances located within the home (gas cooktops, stoves and heaters), as these are linked to producing indoor air pollution, whereas hot water units, which are typically located outside the building, cannot be said to cause indoor air pollution. Thus, gas-powered hot water units were excluded from the gas appliance ban.

## Significance

8. Even though Waverley’s new DCP does not ban gas-powered hot water units from new residential developments, the DCP is an effective gas ban in new residential buildings because few developers, if any, are likely to install new gas infrastructure to service one set of appliances (hot water units) in new developments. From the developer’s perspective, it makes more economic sense to connect new

---

<sup>1</sup> Waverley Council, Development Control Plan, Part B2 (Ecologically Sustainable Development), Section 2.3 (Indoor Air Quality))c, p.20, 2022, accessed 13 June 2023 at, [https://www.waverley.nsw.gov.au/\\_data/assets/pdf\\_file/0006/212100/WDCP\\_2022\\_-\\_Full\\_Document.pdf](https://www.waverley.nsw.gov.au/_data/assets/pdf_file/0006/212100/WDCP_2022_-_Full_Document.pdf)

<sup>2</sup> Sustainable Buildings State Environment Planning Policy, Chapter 2.2 (Standards not affected by environmental planning instruments or development control plans), accessed 13 June 2023 at, <https://legislation.nsw.gov.au/view/whole/html/inforce/current/epi-2022-0521>

residential developments to the electricity network only, in order to save on the costs associated with gas infrastructure installation for a single type of appliance (hot water units).

### Other relevant state policy - BASIX rating tool

5. NSW's state planning policy requires that new developments be assessed against the BASIX sustainability rating tool, which requires new builds to reach certain sustainability benchmarks around thermal performance, water use etc.
6. Some councillors are under the impression that BASIX prohibits councils from requiring all-electric, gas-free development. While 350 Australia is not clear on what basis this advice has been provided, based on our analysis and conversations with planning practitioners, we understand BASIX to be a fuel agnostic ratings tool. In other words, BASIX technically does not require that new developments be connected to gas, nor does it prohibit this, based on our understanding.<sup>3</sup>
7. We understand the state government's BASIX policy team provides advice to councils on planning changes, including in relation to DCPs. We are not aware of the BASIX team advising councils that banning indoor gas appliances conflicts with BASIX.<sup>4</sup>

### Impact

8. Since implementation of the DCP in December 2022, 350 Australia have been told that Waverley Council has received zero residential development applications connected to gas, including some very large developments.
9. The council is successfully referring to the anti-gas provisions of the DCP to require developers who initially propose residential developments connected to gas, to rewrite their plans to show gas-free dwellings.
10. In short, Waverley Council has successfully used the planning powers available to NSW local councils to create a carefully worded DCP that has led to an effective gas ban in new residential development across the municipality without appearing to conflict with relevant state planning policy.

### Recommendations

1. Interested councillors encouraged to pursue similar changes to their DCPs at their council by raising the issue with council officers;
2. Interested councillors can encourage their their sustainability and planning departments to speak with the same departments at Waverley Council for advice on implementation; and
3. Engage with James Conlan directly to assist with developing a strategy for your council.

---

<sup>3</sup> This is not legal advice.

<sup>4</sup> This is not legal advice.