

# 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 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. It is more complex to make this argument for hot water units, as these appliances are generally located outside the building. Thus, gas-powered hot water units were excluded from the gas appliance ban.

## Other relevant state policy - BASIX rating tool

5. NSW’s state planning policy requires that new developments be assessed against BASIX, which requires new builds to reach certain sustainability benchmarks around thermal performance, energy and water use, and greenhouse gas emissions.

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<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>

6. According to legal advice obtained by 350 Australia, the BASIX rating tool does not explicitly ban or require that new developments be connected to gas.<sup>3</sup> Therefore, councils that require new developments to be gas-free would not be in breach of BASIX because BASIX is effectively fuel agnostic.
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, Waverley Council is successfully using its new DCP to influence development outcomes with fewer gas appliances. While the council is unable to prevent gas hot water units being installed, the council is successfully requiring that new residential developments be free of indoor gas appliances (cooktops, stoves and heaters). Some developers however, are choosing to go completely all-electric by removing gas hot water.
9. In short, Waverley Council has successfully used the planning powers available to NSW local councils to create a carefully worded DCP that has reduced the number of gas appliances (cooktops, stoves and heaters) in new residential development across the municipality without appearing to conflict with relevant state planning policy.

## Recommendations

1. Interested councillors to send this document to their council's planning and sustainability officers to demonstrate the policy pathway for replicating Waverley's DCP at your council, and seek their commitment to implementation.

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<sup>3</sup> Environmental Defenders Office, '350 Australia 'Electrify your Council'-Sustainable Buildings SEPP Guidance Note', 27 July 2023.

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