



STRATEGIC PLANNING AND DEVELOPMENT COMMITTEE MEETING

A meeting of the STRATEGIC PLANNING AND DEVELOPMENT COMMITTEE will be held at Waverley Council Chambers, Cnr Paul Street and Bondi Road, Bondi Junction at:

7.30 PM, TUESDAY 5 JULY 2022

A handwritten signature in black ink, appearing to read 'Emily Scott', with a stylized flourish at the end.

Emily Scott
General Manager

Waverley Council
PO Box 9
Bondi Junction NSW 1355
DX 12006 Bondi Junction
Tel. 9083 8000
E-mail: info@waverley.nsw.gov.au

Delegations of the Waverley Strategic Planning and Development Committee

On 10 October 2017, Waverley Council delegated to the Waverley Strategic Planning and Development Committee the authority to determine any matter **other than**:

1. Those activities designated under s 377(1) of the *Local Government Act* which are as follows:
 - (a) The appointment of a general manager.
 - (b) The making of a rate.
 - (c) A determination under section 549 as to the levying of a rate.
 - (d) The making of a charge.
 - (e) The fixing of a fee
 - (f) The borrowing of money.
 - (g) The voting of money for expenditure on its works, services or operations.
 - (h) The compulsory acquisition, purchase, sale, exchange or surrender of any land or other property (but not including the sale of items of plant or equipment).
 - (i) The acceptance of tenders to provide services currently provided by members of staff of the council.
 - (j) The adoption of an operational plan under section 405.
 - (k) The adoption of a financial statement included in an annual financial report.
 - (l) A decision to classify or reclassify public land under Division 1 of Part 2 of Chapter 6.
 - (m) The fixing of an amount or rate for the carrying out by the council of work on private land.
 - (n) The decision to carry out work on private land for an amount that is less than the amount or rate fixed by the council for the carrying out of any such work.
 - (o) The review of a determination made by the council, and not by a delegate of the council, of an application for approval or an application that may be reviewed under section 82A of the *Environmental Planning and Assessment Act 1979*.
 - (p) The power of the council to authorise the use of reasonable force for the purpose of gaining entry to premises under section 194.
 - (q) A decision under section 356 to contribute money or otherwise grant financial assistance to persons,
 - (r) A decision under section 234 to grant leave of absence to the holder of a civic office.
 - (s) The making of an application, or the giving of a notice, to the Governor or Minister.
 - (t) This power of delegation.
 - (u) Any function under this or any other Act that is expressly required to be exercised by resolution of the council.
2. Despite clause 1(i) above, the Waverley Strategic Planning and Development Committee does not have delegated authority to accept any tenders.
3. The adoption of a Community Strategic Plan, Resourcing Strategy and Delivery Program as defined under sections 402, 403, and 404 of the *Local Government Act*.

Live Streaming of Meetings

This meeting is streamed live via the internet and an audio-visual recording of the meeting will be publicly available on Council's website.

By attending this meeting, you consent to your image and/or voice being live streamed and publicly available.

AGENDA

PRAYER AND ACKNOWLEDGEMENT OF INDIGENOUS HERITAGE

The Chair will read the following Opening Prayer and Acknowledgement of Indigenous Heritage:

God, we pray for wisdom to govern with justice and equity. That we may see clearly and speak the truth and that we work together in harmony and mutual respect. May our actions demonstrate courage and leadership so that in all our works thy will be done. Amen.

Waverley Council respectfully acknowledges our Indigenous heritage and recognises the ongoing Aboriginal traditional custodianship of the land which forms our Local Government Area.

1. Apologies/Leaves of Absence

2. Declarations of Pecuniary and Non-Pecuniary Interests

3. Addresses by Members of the Public

4. Confirmation of Minutes

PD/4.1/22.07	Confirmation of Minutes - Strategic Planning and Development Committee Meeting - 3 May 2022	4
--------------	---	---

5. Reports

PD/5.1/22.07	Planning Proposal - 34-36 Flood Street, Bondi	12
PD/5.2/22.07	Planning Agreement Policy 2014 (Amendment No. 4) - Adoption	102
PD/5.3/22.07	Sustainability Expert Advisory Panel - Community Membership	182

6. Urgent Business

7. Meeting Closure

CONFIRMATION OF MINUTES PD/4.1/22.07



Subject: Confirmation of Minutes - Strategic Planning and Development Committee Meeting - 3 May 2022

TRIM No: SF21/6065

Author: Al Johnston, Governance Officer

RECOMMENDATION:

That the minutes of the Strategic Planning and Development Committee meeting held on 3 May 2022 be received and noted, and that such minutes be confirmed as a true record of the proceedings of that meeting.

Introduction/Background

The minutes of committee meetings must be confirmed at a subsequent meeting of the committee, in accordance with clause 20.23 of the Code of Meeting Practice.

Attachments

1. Strategic Planning and Development Committee Meeting Minutes - 3 May 2022 .



**MINUTES OF THE STRATEGIC PLANNING AND DEVELOPMENT COMMITTEE MEETING
HELD AT WAVERLEY COUNCIL CHAMBERS, CNR PAUL STREET AND BONDI ROAD, BONDI JUNCTION ON
TUESDAY, 3 MAY 2022**

Present:

Councillor Steven Lewis (Chair)	Hunter Ward
Councillor Paula Masselos (Mayor)	Lawson Ward
Councillor Elaine Keenan (Deputy Mayor)	Lawson Ward
Councillor Sally Betts	Hunter Ward
Councillor Angela Burrill	Lawson Ward
Councillor Ludovico Fabiano	Waverley Ward
Councillor Leon Goltsman	Bondi Ward
Councillor Michelle Gray	Bondi Ward
Councillor Tony Kay	Waverley Ward
Councillor Tim Murray	Waverley Ward
Councillor Dominic Wy Kanak	Bondi Ward

Staff in attendance:

Emily Scott	General Manager
George Bramis	Acting Director, Planning, Environment and Regulatory
Sharon Cassidy	Acting Director, Community, Assets and Operations
Meredith Graham	Acting Director, Customer Service and Organisation Improvement
Richard Sheridan	Interim Director, Finance and Governance

At the commencement of proceedings at 8.44 pm, those present were as listed above.

At 9.35 pm, during the consideration of item PD/5.3/22.05, Cr Betts left the meeting and did not return.

At 9.39 pm, following the vote on item PD/5.3/22.05, Cr Goltsman left the meeting and did not return.

PRAYER AND ACKNOWLEDGEMENT OF INDIGENOUS HERITAGE

The Chair read the following Opening Prayer and Acknowledgement of Indigenous Heritage:

God, we pray for wisdom to govern with justice and equity. That we may see clearly and speak the truth and that we work together in harmony and mutual respect. May our actions demonstrate courage and leadership so that in all our works thy will be done. Amen.

Waverley Council respectfully acknowledges our Indigenous heritage and recognises the ongoing Aboriginal traditional custodianship of the land which forms our Local Government Area.

1. Apologies

Apologies were received from Cr Nemesh.

2. Declarations of Pecuniary and Non-Pecuniary Interests

The Chair called for declarations of interest and none were received.

3. Addresses by Members of the Public

There were no addresses by members of the public.

4. Confirmation of Minutes

PD/4.1/22.05 Confirmation of Minutes - Strategic Planning and Development Committee Meeting - 5 April 2022 (SF21/6065)

MOTION / UNANIMOUS DECISION

Mover: Cr Lewis
Seconder: Cr Gray

That the minutes of the Strategic Planning and Development Committee meeting held on 5 April 2022 be received and noted, and that such minutes be confirmed as a true record of the proceedings of that meeting.

5. Reports

PD/5.1/22.05 Waverley Park Plan of Management - Exhibition (A20/0656)

MOTION

Mover: Cr Murray

Seconder: Cr Fabiano

That Council:

1. Endorses the draft Waverley Park Plan of Management attached to the report subject to the following amendments:
 - (a) The inclusion of an overarching statement that turfed playing fields will remain turfed and not considered for synthetic turf replacement.
 - (b) The inclusion of an overarching statement that the laying of additional concrete throughout the park be kept to a minimum.
 - (c) Cars and parking (page 43 of the attachments under separate cover) – Amend the third line of the first paragraph to read: ‘The whole car park, with the exception of the Mayor and General Manager reserved car spaces, is available to park users after hours and on weekends.’
 - (d) Disc golf – Remove all reference to disc golf and associated facilities (for example, on pages 49 and 90 of the attachments under separate cover).
 - (e) Action Plan (page 80 of the attachments under separate cover) – Replace action item B1.1vii (‘Provide an accessible car space at the MWRC’) with ‘Provide an accessible car space in the car park behind Waverley Council Chambers.’
 - (f) Action Plan (page 80 of the attachments under separate cover) – Replace action item B1.1iv (‘Move existing sandstone wall on boundary of Field #1 and continue pathway around field’) with ‘Continue pathway around Field #1, minimising damage to the sandstone wall.’
 - (g) Action Plan (page 88 of the attachments under separate cover) – Delete the word ‘complete’ from action item C1.4 such that it now reads: ‘Waverley Park will provide a fitness experience for the community and will include the following...’
2. Seeks approval of the draft Plan of Management from the NSW Minister for Planning in accordance with the *Crown Land Management Act 2016*.
3. Authorises the Acting Director, Community, Assets and Operations to make changes to the draft Plan of Management as directed by the NSW Minister for Planning.
4. Publicly exhibits the draft Plan of Management, as amended following feedback from the NSW Minister for Planning, for 42 days.
5. Officers prepare a report to Council following the exhibition period.

THE MOVER OF THE MOTION THEN ACCEPTED AN AMENDMENT TO CLAUSE 1(c).

THE MOTION AS AMENDED WAS THEN PUT AND DECLARED CARRIED UNANIMOUSLY.

UNANIMOUS DECISION

That Council:

1. Endorses the draft Waverley Park Plan of Management attached to the report subject to the following amendments:
 - (a) The inclusion of an overarching statement that turfed playing fields will remain turfed and not considered for synthetic turf replacement.
 - (b) The inclusion of an overarching statement that the laying of additional concrete throughout the park be kept to a minimum.
 - (c) Cars and parking (page 43 of the attachments under separate cover) – Amend the third line of the first paragraph to read: ‘The whole car park, with the exception of the Mayor and General Manager reserved car spaces, is available to park users after hours and on weekends, with the exception of Tuesday nights until 8 pm.’
 - (d) Disc golf – Remove all reference to disc golf and associated facilities (for example, on pages 49 and 90 of the attachments under separate cover).
 - (e) Action Plan (page 80 of the attachments under separate cover) – Replace action item B1.1vii (‘Provide an accessible car space at the MWRC’) with ‘Provide an accessible car space in the car park behind Waverley Council Chambers.’
 - (f) Action Plan (page 80 of the attachments under separate cover) – Replace action item B1.1iv (‘Move existing sandstone wall on boundary of Field #1 and continue pathway around field’) with ‘Continue pathway around Field #1, minimising damage to the sandstone wall.’
 - (g) Action Plan (page 88 of the attachments under separate cover) – Delete the word ‘complete’ from action item C1.4 such that it now reads: ‘Waverley Park will provide a fitness experience for the community and will include the following...’
2. Seeks approval of the draft Plan of Management from the NSW Minister for Planning in accordance with the *Crown Land Management Act 2016*.
3. Authorises the Acting Director, Community, Assets and Operations to make changes to the draft Plan of Management as directed by the NSW Minister for Planning.
4. Publicly exhibits the draft Plan of Management, as amended following feedback from the NSW Minister for Planning, for 42 days.
5. Officers prepare a report to Council following the exhibition period.

PD/5.2/22.05

**Social and Affordable Housing Review Project - Findings and Recommendations
(SF20/3503)**

MOTION

Mover: Cr Masselos
Seconder: Cr Keenan

That Council:

1. Notes the findings and recommendations of the Social and Affordable Housing Program and Portfolio Review Report prepared by SGS Economics and Planning attached to the report.

2. Updates the Affordable Housing Program Tenancy Policy to target highest priority households that are in severe housing stress to maximise the social outcomes achieved from Council's affordable housing portfolio.
3. Endorses the award of a new contract to a community housing provider to manage Council's social and affordable housing tenancies following a tender process, with the new contract to reframe maintenance responsibilities and contain a robust performance management framework to ensure improved outcomes for tenants and Council, with a report to be prepared to Council to endorse the award of the contract.
4. Continues to support the funds raised through voluntary planning agreements to be paid into the Affordable Housing Contributions Reserve to be used to fund additional housing to expand Council's affordable housing portfolio only, in accordance with the Planning Agreement Policy.
5. Endorses entering a new partnership with a community housing provider to deliver additional housing stock under a delivery contract via an open tender process, noting that the partnership will allow Council to leverage off a community housing provider's access to significant State and Federal funding to increase Council's affordable housing portfolio, with a report to be prepared to Council to endorse the award of the contract.
6. Pursues additional opportunities outside of the community housing provider delivery contract to further increase housing stock, including regional partnerships or alternative models that may present themselves in the affordable housing space.
7. Notes that Council submitted the Affordable Housing Contributions Scheme to the Department of Planning and Environment in April 2021, with a decision expected by mid-2022.
8. Notes that it is proposed to retain vacant units in the portfolio to be used to temporarily house tenants from those units in the greatest need of refurbishment to allow for the asset management backlog to be addressed, with this only taking place if the vacant unit is in a satisfactory condition and meets the tenants' needs.

THE MOVER OF THE MOTION THEN ACCEPTED AN AMENDMENT TO CLAUSE 6.

THE MOTION AS AMENDED WAS THEN PUT AND DECLARED CARRIED UNANIMOUSLY.

UNANIMOUS DECISION

That Council:

1. Notes the findings and recommendations of the Social and Affordable Housing Program and Portfolio Review Report prepared by SGS Economics and Planning attached to the report.
2. Updates the Affordable Housing Program Tenancy Policy to target highest priority households that are in severe housing stress to maximise the social outcomes achieved from Council's affordable housing portfolio.
3. Endorses the award of a new contract to a community housing provider to manage Council's social and affordable housing tenancies following a tender process, with the new contract to reframe maintenance responsibilities and contain a robust performance management framework to ensure improved outcomes for tenants and Council, with a report to be prepared to Council to endorse the award of the contract.

4. Continues to support the funds raised through voluntary planning agreements to be paid into the Affordable Housing Contributions Reserve to be used to fund additional housing to expand Council's affordable housing portfolio only, in accordance with the Planning Agreement Policy.
5. Endorses entering a new partnership with a community housing provider to deliver additional housing stock under a delivery contract via an open tender process, noting that the partnership will allow Council to leverage off a community housing provider's access to significant State and Federal funding to increase Council's affordable housing portfolio, with a report to be prepared to Council to endorse the award of the contract.
6. Pursues additional opportunities outside of the community housing provider delivery contract to further increase housing stock, including regional partnerships or alternative models, such as co-operative housing, that may present themselves in the affordable housing space.
7. Notes that Council submitted the Affordable Housing Contributions Scheme to the Department of Planning and Environment in April 2021, with a decision expected by mid-2022.
8. Notes that it is proposed to retain vacant units in the portfolio to be used to temporarily house tenants from those units in the greatest need of refurbishment to allow for the asset management backlog to be addressed, with this only taking place if the vacant unit is in a satisfactory condition and meets the tenants' needs.

PD/5.3/22.05 87-99 Oxford Street and 16-22 Spring Street, Bondi Junction - Classification of Land (SF18/2505)

MOTION / DECISION

Mover: Cr Masselos
Seconder: Cr Keenan

That Council:

1. In accordance with section 34 of the *Local Government Act 1993*, publicly exhibits for 28 days its intent to classify as operational land the commercial office Suites 2, 4, 5 and 6 of 87–99 Oxford Street, Bondi Junction, and Suite 1 of 16–22 Spring Street, Bondi Junction (Lots 128, 129, 131, 132 and 133 of DP 1274466).
2. Creates a covenant under section 88D of the *Conveyancing Act* for transparency regarding the use of the premises.

Cr Betts was not present for the vote on this item.

Cr Wy Kanak requested that his vote against the motion be recorded in the minutes.

PD/5.4/22.05 Bicycle Ridership Survey Engagement (A11/0612)

MOTION / UNANIMOUS DECISION

Mover: Cr Murray
Seconder: Cr Fabiano

That Council:

1. Notes the community responses received from the Bicycle Ridership Engagement Survey and

particularly the strong community concern about the safety of riding a bicycle in Waverley and the absence of safe bicycle lanes.

2. Conducts community workshops to discuss and investigate potential separated bicycle routes that will inform the development of a revised Waverley Bike Plan.

Crs Betts and Goltsman were not present for the vote on this item.

PD/5.5/22.05 Bus Privatisation Inquiry - Submission (A11/0612)

MOTION / UNANIMOUS DECISION

Mover: Cr Masselos

Seconder: Cr Keenan

That Council endorses the submission to the NSW Parliament Bus Privatisation Inquiry attached to the report (Attachment 1).

Crs Betts and Goltsman were not present for the vote on this item.

6. Urgent Business

There were no items of urgent business.

7. Meeting Closure

THE MEETING CLOSED AT 9.48 PM.

.....
SIGNED AND CONFIRMED
CHAIR
5 JULY 2022

REPORT
PD/5.1/22.07

Subject: Planning Proposal - 34-36 Flood Street, Bondi

TRIM No: PP-1/2022

Author: Shima Niavarani, Strategic Planner

Director: Mitchell Reid, Acting Director, Planning, Sustainability and Compliance

RECOMMENDATION:

That Council:

1. Does not support the planning proposal set out in the report to amend the *Waverley Local Environmental Plan 2012* in respect of 34–36 Flood Street, Bondi, as the proposal lacks strategic merit and involves a change in the Council's long-established policy in relation to SP2 Infrastructure Zones.
2. Investigates the strategic merit of amending the current zoning of SP2 Infrastructure 'Educational Establishment' to SP2 Infrastructure 'Place of Public Worship' in a future housekeeping planning proposal.

1. Executive Summary

This report informs Council of the receipt of a planning proposal from Karimbla Properties (the Proponent) for 34-36 Flood Street, Bondi (the subject site). The Proponent-led planning proposal (the Proposal) and associated documentation were submitted to Council on 9 March 2022.

The Proposal seeks to amend the *Waverley Local Environmental Plan 2012* (WLEP2012) in relation to the subject site by changing the land use zone from SP2 Special Infrastructure 'Educational Establishment' to R3 Medium Density Residential. The Proposal does not seek to change the height or floor space ratio (FSR) of the site.

The site to the south of the subject site, 36A Flood Street, is an educational establishment (Yeshiva College), and is zoned R3 Medium Density Residential instead of SP2 Infrastructure (Educational Establishment). Both sites are under the same ownership.

The Proposal was reported to the Waverley Local Planning Panel (WLPP) on 25 May 2022 and was not supported by the Panel.

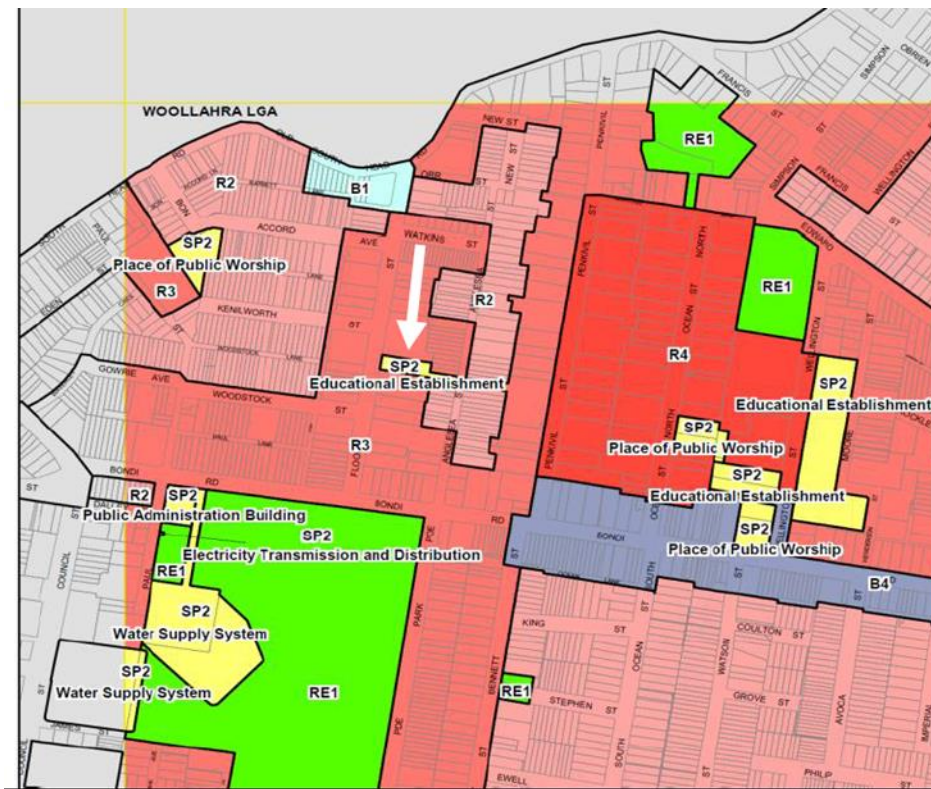


Figure 1. Subject site and associated zoning.

2. Background

The subject site is located at 34-36 Flood Street, Bondi (Lot 1 DP 1094020). The total area of the site is 1,327 m². The primary frontage of the site is Flood Street, and the secondary frontage is Anglesea Street.

The site contains a Synagogue (Place of Public Worship), and a commercial-type community rear kitchen at the rear of the Synagogue with a shared driveway and path. The site is surrounded by medium density residential buildings, with two-storey of detached dwellings at the rear. On the north of the site, there is a multi-storey Seniors Housing development that shares vehicle access with 34-36 Flood Street. Located on the southern side of the site is 36A Flood Street, housing Yeshiva College, a school serving years K-10.

The site is currently zoned SP2 Infrastructure (Educational Establishment), and the surrounding area is R3 zone Medium Density Residential and R2 Zone Low-Density Residential.

The Proponent has prepared a planning proposal to amend WLEP2012 to change the land use zone from SP2 Special Infrastructure 'Educational Establishment' to R3 Medium Density Residential. To support this proposal, the Proponent has provided the following documentation as in Attachments 1-3:

- Planning proposal.
- Future development advice.
- Pre-lodgement advice.

History of the site

The subject site was utilised from the late 1950s to the 1980s as a school, Yeshiva College. As the school expanded it moved into the adjacent site at 36A Flood Street. Following the relocation of the school, the site was then utilised as a synagogue attached to the school.

In 2010, Council adopted the *Waverley Local Environmental Plan 2011*, which would go on to become the WLEP2012, and requested to enable the draft plan to be publicly exhibited. The public exhibition of the draft WLEP2012 identified the site as R3 Medium Residential in accordance with the Practice Note provided by the NSW Government, which required that all educational establishments and places of worship sites be zoned as the adjacent zone.

When the WLEP2012 was reported to Council post-exhibition and subsequently adopted by Council, it was done so with the condition that all schools within the Waverley local government area (LGA) instead be zoned Infrastructure SP2 Educational Establishment. As a result, the original Infrastructure Zoning was carried over from the WLEP1996 into the WLEP2012 for the subject site so the land remained zoned SP2 'Education Establishment', despite the site being utilised as a synagogue.

The position adopted by Council was contrary to a Practice Note prepared by the NSW Government in relation to Infrastructure zoning, however this position was upheld by the NSW Government in the drafting of the legal instrument. Further discussion relating to this matter is provided later in the report. The incongruity of the adjoining land located at 36A Flood Street being rezoned zoned R3 Medium Density Residential, rather than as Special Infrastructure 'Educational Establishment' was not identified during the drafting of the WLEP2012, despite the site at that time housing the Yeshiva College.

This anomaly was, however, identified in 2013 when a housekeeping planning proposal was reported to Council which included a proposal to amend the zoning of 36A Flood Street, from R3 Medium Density Residential to SP2 Infrastructure 'Educational Establishment' to better reflect the actual use of the land. During the exhibition process, the owner of the site made an objection to this rezoning and subsequent to this, Council did not support the rezoning, and the site at 36A Flood Street remained R3 Medium Density Residential.

This has resulted in an anomaly where the subject site (34-36 Flood Street) is zoned SP2 – Educational Establishment but contains a Place of Public Worship and associated community facilities, and the adjacent site (36A Flood Street) is zoned R3 Medium Density Residential but contains an Educational Establishment.

3. Relevant Council Resolutions

See Attachment 4.

4. Discussion

The planning proposal

The table below outlines the LEP controls applicable to the site and what is proposed by the Proposal.

Table 2. LEP controls and planning proposal.

WLEP 2012 Provision	Current planning controls	Planning proposal
Zone	SP2 Infrastructure	R3 Medium Density Residential
Permitted Use	Aquaculture; Roads; The purpose shown on the Land Zoning Map (Educational Establishment), including any development that is ordinarily incidental or ancillary to development for that purpose	Attached dwellings; Bed and breakfast accommodation; Boarding houses; Building identification signs; Business identification signs; Centre-based child care facilities; Community facilities; Group homes; Home industries; Kiosks; Markets; Multi dwelling housing; Neighbourhood shops; Oyster aquaculture; Places of public worship; Respite day care centres; Roads; Seniors

		housing; Tank-based aquaculture; Any other development not specified in item 2 or 4
FSR	0.9:1	0.9:1
Height	12.5m	12.5m
Heritage	No	No

The Proposal seeks to amend the WLEP2012 for the subject site from the current zoning of SP2 Infrastructure (Educational Establishment), which provides for uses for educational purposes only. The Proposal seeks to amend the zoning to R3 Medium Density Residential Zone. The Proposal does not seek to change the height or FSR of the site.

The proposed zone change is not out of character with the surrounding area of Flood Street, which is predominantly R3 medium density residential as identified in Figure 1. Whilst not identified as the expressed purpose of the Proposal, the resulting zone would enable residential development on the site to the same height and FSR as the surrounding properties.

To demonstrate what a potential redevelopment of the site may allow, at the request of Council officers, the Proponent provided a document that outlined the potential future development (Attachment 2). This document provides a demonstration of two compliant development possibilities to demonstrate overshadowing and character, should the site be redeveloped in the future.

Under the current land use controls of the WLEP2012, the existing use on the site (Place of Public Worship) is not a permissible use – though as it is an existing use, it may remain. Furthermore, it is likely that the ‘existing use’ provisions under the *Environmental Planning and Assessment Act* and Regulation would apply in respect to any future proposal involving:

- (a) the carrying out of alterations or extensions to or the rebuilding of a building or work being used for an existing use, and*
- (b) the change of an existing use to another use, and*
- (c) the enlargement or expansion or intensification of an existing use.*

This means that there is an ability to further develop the land subject to meeting the relevant requirements under the Act.

A summary of the reasons for the rezoning of the site from SP2 Educational Establishment to R3 Medium Density Residential provided by the Proponent:

- 1. The current zone does not facilitate feasible alterations or significant new work to the existing Synagogue building nor do they facilitate other forms of compatible development which would enhance the feasibility of improving the Synagogue. The current zoning does not facilitate the most desirable future use of the site within the context of the streetscape and neighbourhood character and within the setting of surrounding medium density residential development. The provisions for existing use right that may apply to the site only permit minor alterations for the purposes of an educational establishment. The building would require more than minor alterations in order to be used as an educational establishment that would meet contemporary standards.*
- 2. It is a better option to provide a range of alternatives for the redevelopment of the site and the financial benefits of new development options to be factored into the provision of new facilities either at the site or elsewhere.*

Assessment process

As part of the criteria in the NSW Department of Planning and Environment *Local Environmental Plan Making Guidelines*, Council is required to report the Proposal to Council for a decision on whether the Proposal should proceed to Gateway Determination within 90 days, otherwise, the Proponent can seek to lodge a Rezoning Review which would result in the matter being referred to the Sydney Eastern City Planning Panel. Due to the schedule of WLPP, Council and Committee Meetings, the Proposal is being reported to Council outside of the 90-day requirement.

Waverley Local Planning Panel (WLPP)

Council is required to report planning proposals of this nature to the Waverley Local Planning Panel (WLPP) for advice. The planning proposal was reported to the WLPP on 25 May 2022 for advice with the view of proceeding the Proposal to a Gateway Determination for the purposes of exhibition, in order to receive public feedback on the Proposal.

The Proponent was present at the WLPP to address questions from panel members about the proposal, including concerns in relation to the change of the SP2 Infrastructure zone in contradiction with Council policy.

At the meeting, the WLPP unanimously resolved that:

- The recommendations in the officer's report relating to this planning proposal are noted. However, the Panel does not support the planning proposal proceeding to a Gateway Determination for the purposes of exhibition.
- This planning proposal involves an anticipated change in long-established policy by the Council in relation to SP2 Zones. The Council has specifically sought variation to the Practice Note 11-002 of 2011 to allow private and public-school sites and places of public worship to be zoned SP2 as opposed to reflecting the adjoining zone. It is noted that the 2020 Local Strategic Planning Statement was adopted by Council and assured by the Greater Sydney Commission that the 'retention of the SP2 Infrastructure Zone was identified as an action when undertaking any review of the Local Environmental Plan. The reason for this was that many of the sites currently zoned SP2 in Waverley provide crucial social infrastructure.'
- The adjoining site of Yeshiva College is zoned R3. It would appear that there is a mapping discrepancy in the LEP, however, the Panel is not aware of the history of how the zoning lines were determined at the relevant time.

Following the WLPP Meeting, officers considered the concerns raised and advice provided by the Panel and have subsequently recommended that the Proposal does not have sufficient merit to proceed to Gateway Determination for the reasons discussed in this report.

Strategic merit of the Proposal

The Proponent is of the view that the proposed LEP amendment has strategic merit which is aligned with the relevant matters for consideration set out in Council's Local Strategic Planning Statement (WLSPS). The strategic merit test, which is part of the assessment criteria to determine the Proposal, is addressed in the attached planning proposal (Attachment 1, Table 3, p. 38).

In the preparation of the WLSPS, the retention of the SP2 Infrastructure zone was identified as an action when undertaking any review of the WLEP2012. The reason for this is that many of the sites currently zoned SP2 around the Waverley LGA provide crucial social infrastructure.

The retention of this social infrastructure is important to continue to support a resilient community through the provision of spaces in which people can gather, and form relationships within the community. In addition, these places often provide safe spaces where people can partake in public life and low-cost community activities, which is important for maintaining mental wellbeing in high-density areas. The following Planning Priorities and Actions from the WLSPS are relevant to the proposal:

- Planning Priority 4 (PP4) – Ensure the community is well serviced by crucial social and cultural infrastructure.
- PP4, Action 4 – Review and strengthen existing planning controls in the WLEP to continue to provide crucial social and cultural infrastructure for the area.
- PP4, Action 8 – Investigate and implement planning mechanisms to identify and protect crucial cultural and social infrastructure for the community.

On the matter of the SP2 zoning, the WLSPS states:

When Waverley Council moved to the Standard Instrument LEP, Council chose to retain all land zoned 'SP2 – Infrastructure' for the purposes of retaining these crucial pieces of infrastructure in our area. This has meant that despite increasing pressures for residential development, Council has largely been able to protect these facilities for the community. Council will seek to retain and protect existing social infrastructure uses and will not allow the deterioration of this land to other uses preferred by the current market such as residential, or tourist and visitor accommodation.

It is considered that the Proposal is not in keeping with the Planning Priority or Actions of the WLSPS and does not demonstrate strategic merit for the following reasons:

1. In the preparation of the WLSPS, the retention of the SP2 Infrastructure zone was identified as an action when undertaking any review of the WLEP 2012. The reason for this is that many of the sites currently zoned SP2 around the Waverley LGA provide crucial social infrastructure. The retention of this social infrastructure is important to continue to support a resilient community through the provision of spaces in which people can gather, and form relationships within the community.
2. The amendment to WLEP2012 to change the zoning from SP2 Infrastructure to R3 Medium Density Residential will involve a departure from the policy that was adopted by the Council in 2012 and supported by the NSW Government at the time. Any changes to the policy may have a significant impact on similar SP2 Infrastructure sites in Waverley Council by creating a precedent.

The Proponent raises an issue regarding the inability to undertake alterations or additions to the current building on site due to the site being for the purpose of 'Educational Establishment' rather than 'Place of Public Worship'. As has been previously indicated, this is not correct as the existing use including the built form could be expanded under the existing use provisions in the Act. Notwithstanding this, the existing zoning anomaly will be investigated by officers in a future housekeeping amendment.

Site-specific merit

The site is surrounded by medium density residential land uses and the change in zoning will not change the character of the area, however it may result in the loss of the existing use as a Place of Public Worship. The assessment criteria outlined in the DPE Guideline to determine if a planning proposal has site-specific planning merit is addressed in Table 4 on page 40 of the planning proposal Report prepared by the Proponent provided in Attachment 1.

Traffic, parking and road safety

The proposed change in the zone may facilitate a future redevelopment or the intensification of the current development, which may result in an increase in traffic. It is noted that there is no increase in density (height and floor space ratio) proposed under this Proposal, however different uses will place different pressures on the road network and parking availability. Traffic and parking impacts would be assessed in conjunction with any future development application.

Overshadowing

Overshadowing from any future redevelopment of the site may have an impact on the surrounding properties, which the Proponent has demonstrated in two Scenarios of design which are available in section 3.3 in the planning proposal. Overshadowing impacts would be assessed in conjunction with any future development application.

Character

The land uses surrounding the site are predominantly characterised by residential flat buildings and the properties immediately north and south of the site are zoned R3 Medium Density Residential. The residential purpose is generally consistent with the character of the locality.

5. Financial impact statement/Time frame/Consultation*Financial impact statement*

There have been no upfront or recurrent costs associated with this planning proposal other than staff costs associated with the administration, assessment and exhibition of the Proposal and these have been budgeted.

Consultation

This Proposal is not recommended to proceed to public exhibition. If the Proposal was to proceed to public exhibition it would be done so in accordance with any Gateway Conditions.

6. Conclusion

An amendment to WLEP2012 to change the zoning from SP2 Infrastructure to R3 Medium Density Residential will be inconsistent with the policy that was adopted by the Council and supported by the Department of Planning due to the character and density of the LGA and any changes to this Social Infrastructure will have an impact on the area.

In the preparation of the WLSPS, the retention of the SP2 Infrastructure zone was identified as an action when undertaking any review of the WLEP2012. The basis for this is that many of the sites currently zoned SP2 around the Waverley LGA provide crucial social infrastructure.

The retention of this social infrastructure is an important strategic planning outcome to continue to support a resilient community through the provision of spaces in which people can gather, and form relationships within the community.

7. Attachments

1. Planning proposal [↓](#)
2. Future development scenarios [↓](#)
3. Pre-lodgement advice [↓](#)
4. Minute Extract - Finance, Ethics and Strategic Planning Committee - 6 March 2012 - Item F-06.12 - Waverley Planning Review 2011 [↓](#) .

RECEIVED
Waverley Council

Application No: PP-1/2022

Date Received: 14/03/2022



APPLICATION FOR A PLANNING PROPOSAL

Amendment to Waverley Local Environmental Plan 2012 to change the land use zone from Zone SP2 Educational Establishment to Zone R3 Medium Density Residential

34 Flood Street, BONDI
Lot 1 in DP 1094020

Prepared for: Karimbla Properties (No.10) Pty Limited

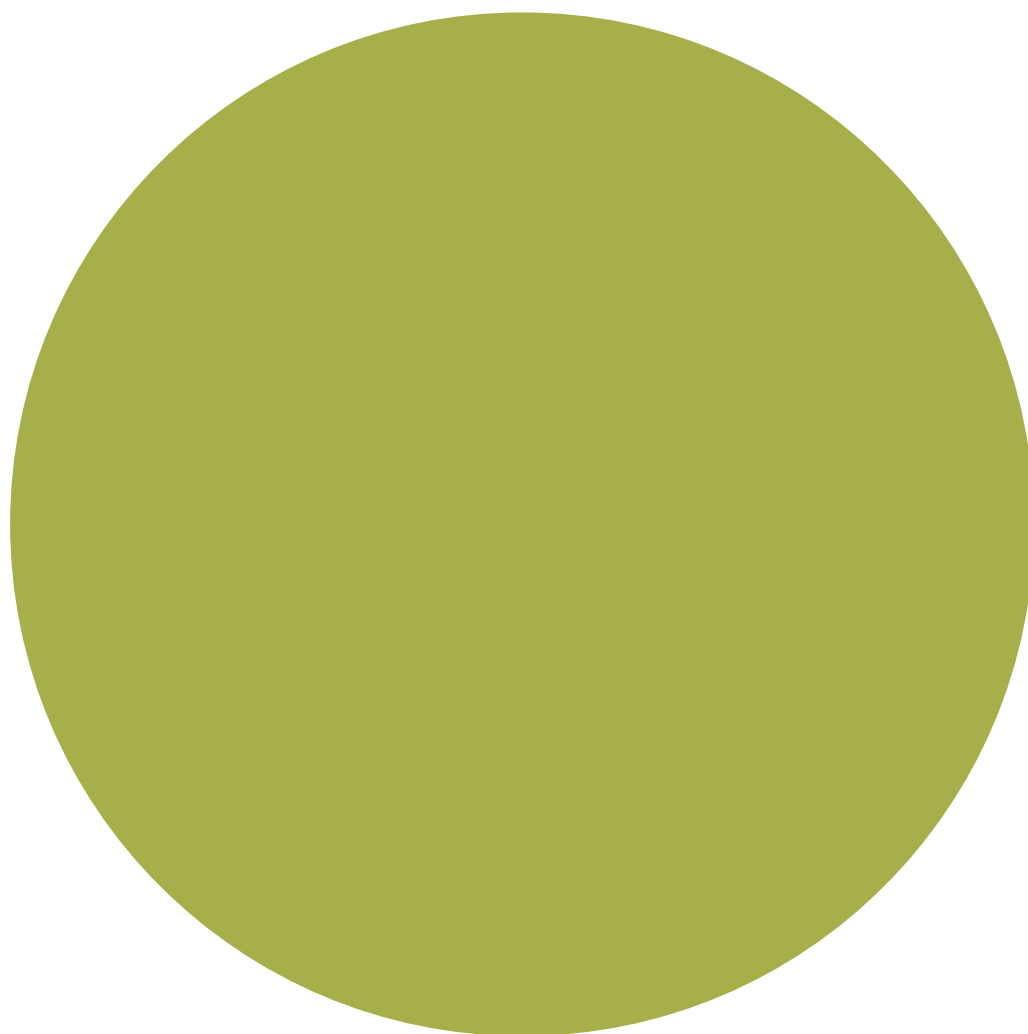
REF: M220012
Date: 28 February 2022





APPLICATION FOR A PLANNING PROPOSAL

Details:
Prepared for: Karimbla Properties (No.10) Pty Limited
REF: M220012
Date: 28 February 2022





Contents

1. INTRODUCTION	1
2. LOCALITY AND SITE ANALYSIS	3
2.1 Regional Context	3
2.2 The Site	5
2.3 Surrounding Development	9
2.4 Infrastructure and Services	19
3. FUTURE DEVELOPMENT OPTIONS	20
3.1 Overview	20
3.2 Future Development Options	20
3.3 Future Option 1	22
3.4 Future Option 2	22
4. EXISTING PLANNING PROVISIONS	24
4.1 Waverley Local Environmental Plan 2012	24
4.1.1 Existing Zoning	25
5. PLANNING PROPOSAL	26
5.1 Part 1 – Objectives or Intended Outcomes	26
5.2 Part 2 – Explanation of Provisions	26
5.3 Part 3 – Justification	26
5.3.1 Section A - Need for the Planning Proposal	27
5.3.2 Section B – Relationship to Strategic Planning Framework	30
5.3.3 Section C – Environmental, Social and Economic Impact	45
5.3.4 Section D – State and Commonwealth Interests	47
5.4 Part 4 – Mapping	47
5.5 Part 5 – Community Consultation	47
5.6 Part 6 – Project Timeline	47
6. CONCLUSION	48





FIGURES

Figure 1 Bondi regional context (Source: Waverley LSPS)	4
Figure 2 Aerial photo of site (outlined yellow) (Source: www.maps.six.nsw.gov.au)	5
Figure 3: North west corner of No.34 Flood Street showing the entry to the Synagogue building and the vehicle access shared with the northern neighbouring site.	6
Figure 4: Front footpath, planter bollards and front fence to No.36 (foreground) and No.34 looking north along Flood Street	7
Figure 5: Entry to Synagogue from Flood Street	7
Figure 6: Northern façade of the Synagogue building at No 34 Flood Street on the right of the photo. Community kitchen at rear.....	8
Figure 7: Entry to community kitchen to right of photo	8
Figure 8: Community kitchen and outdoor space at rear of Synagogue building	9
Figure 9: Adjoining Seniors Housing development 'Lifestyle Manor' as viewed from Flood Street	9
Figure 10: Centre of Seniors Housing development 'Lifestyle Manor' as viewed from the vehicle access shared with the site	10
Figure 11: Adjoining Seniors Housing "Lifestyle Manor" looking north along Flood Street frontage	10
Figure 12: Adjoining Seniors Housing 'Lifestyle Manor' as viewed from Anglesea Street looking south	11
Figure 13: View of the Synagogue and College from Flood Street looking south east.....	11
Figure 14: Entry to Yeshiva College from Flood Street	12
Figure 15: Vehicle access to Yashiva College shared with adjoining neighbour to the south as viewed from Flood Street	12
Figure 16: Reference map for location of photos in Table 1	14
Figure 17: Perspective drawing for Future Development Scenario 1	22
Figure 18: Perspective drawing for Future Development Scenario 2	23
Figure 19: Extract from Land Zoning Map to WLEP 2012 with subject site indicated by white arrow	25





TABLES

Table 1: Photos of diversity of residential buildings surrounding the site 15

Table 2 Summary of Current Planning Controls that apply to No.34 Flood Street under WLEP 2012 24

Table 3 Strategic Merit Test 33

Table 4 Site-Specific Merit Test 35

Table 5 Section 9.1 Ministerial Directions 43

©This document and the research reported in it remains the property of Planning Ingenuity Pty Ltd and are protected by copyright. Apart from fair dealings for the purposes of private study, research or review, as permitted under the Copyright Act 1968, no part of the document may be reproduced, by any process, without the written permission of the author. All inquiries in this regard are to be directed to the Managing Director, Planning Ingenuity Pty Ltd.

Acknowledgement of Country: *Planning Ingenuity acknowledges the Traditional Custodians of the land and pays respect to Elders past, present and future. We recognise First Nations peoples’ unique cultural and spiritual relationships to place and their rich contribution to society.*



1. Introduction

This application is submitted on behalf of the Karimbla Properties (No.10) Pty Limited. The purpose of the application is to initiate a Planning Proposal process to amend *Waverley Local Environmental Plan 2012* (WLEP 2012) to change the land use zone that applies to No.34 Flood Street, Bondi. It is proposed to change the land use zone from Zone SP2 Educational Establishment to Zone R3 Medium Density Residential. No other changes are sought to the LEP provisions,

The current zoning of the land is an anomaly as the use of the site is not an educational establishment. This means that the zoning is contrary to the guidelines and directions in Planning Practice Note PN10-001 and Planning Practice Note PN11-002. If the current zone is not rectified, existing use rights provisions do not facilitate feasible alterations or significant new work to the existing Synagogue building nor do they facilitate other forms of compatible development which would enhance the feasibility of improving the Synagogue. The current zoning does not facilitate the most desirable future use of the site within the context of the streetscape and neighbourhood character and within the setting of surrounding medium density residential development.

The current planning provisions for No.34 Flood Street do not provide a feasible incentive for substantial redevelopment. The land use controls to WLEP 2012 only permits an educational establishment with consent. No uses are permitted without consent. The provisions for existing use right that may apply to the site only permit minor alterations for the purposes of an educational establishment. The building would require more than minor alterations in order to be used as an educational establishment that would meet contemporary standards.

The building at No.34 has no feasible future development potential as an educational establishment under the current land use zoning and planning provisions.

While there are no immediate intentions to redevelop the site, the broader LEP review process initiated a review of the site and clarified the anomaly. Representations were made to Council to address this matter as part of the LEP review by Council, however, Council advised a separate site-specific Planning Proposal was necessary.

Accordingly, this application for a planning proposal has been prepared in accordance with Division 3.5 of the *Environmental Planning and Assessment Act 1979* as well as the NSW Department of Planning, Industry and Environment publication "*Local Environmental Plan Making Guideline*" (December 2021) (DPIE Guideline). It explains the intended effect of the proposed amendment to WLEP 2012 and sets out the justification for making the amendment to that Plan.

This application demonstrates that the proposed LEP amendment has strategic and site specific merit. It is aligned with the relevant matters for consideration set out in Waverley Council's Local Strategic Planning Statement. Planning Practice Note PN10-001 provides guidance for the application of Zone SP2 with standard instrument Local Environmental Plans (LEPs). Planning Practice Note PN11-002 provides guidance on the application of zones for Standard Instrument LEPs. The existing zoning does not meet the guidelines and principles set out in PN10-001 and PN11-002. If the current LEP review correctly applies the guidance of these Practice Notes, the site clearly must be zoned R3 without the need for a site-specific Planning Proposal.

The proposed zoning change is consistent with the local and neighbourhood character and does not prevent the future use of the site for a wide range of land use opportunities including contemporary multi-use facilities for education, public worship and community purposes. By contrast the current zoning prevents the feasible replacement of buildings that are reaching the end of their useful life and precludes any significant enhancement, alteration or reconstruction under existing use rights provisions.





An initial submission and pre-lodgement meeting was discussed with Waverley Council's Strategic Planning staff on 14 December 2021. Feedback from the pre-lodgement meeting was supportive of the preparation and lodgement of this application noting that particular reference is to be made to the Key Themes and Planning Priorities, Strategic Merit Tests and the public benefits identified in Council's Local Strategic Planning Statement. No specialist studies were identified by Council as necessary to support the application. In accordance with the DPIE Guideline a copy of Council's Pre-lodgement Advice is included in Annexure A.

This report is divided into sections including a locality and site analysis, discussion of future development schemes, the existing planning provisions, the proposed amendments, justification for the proposal and project timeline. This planning proposal application demonstrates with evidence that there will be positive outcomes from the proposed change to the land use zone and that change is aligned with the guidance and instruction applicable to all Standard Instrument LEPs as contained in PN10-001 and PN11-002.





2. Locality and Site Analysis

2.1 REGIONAL CONTEXT

The Waverley Local Government Area (LGA) and the metropolitan Sydney coastal areas are the traditional lands of the Bidjigal and Gadigal people. Indigenous people were dispossessed of this land with European occupation over 200 years ago. The ongoing connection to Country and the protection and recognition of items, places and cultural interpretation can continue to be valued and protected. There are no items, places or cultural connections of significance to Indigenous people that are specific to the site the subject of this application for a Planning Proposal.

Bondi is an iconic place within the Waverley LGA. It includes the world-famous Bondi beach and foreshore, the regionally significant Bondi Junction strategic centre and a variety of housing all well connected by road and rail to the Sydney CBD (refer Figure 1).

Key planning and infrastructure issues at a Regional Scale include:

- Protecting and improving the scenic, recreation and cultural assets of the locality that are important to the greater metropolitan area
- Providing employment, housing and recreation for the second highest population density in the Sydney metropolitan area
- Upgrading infrastructure standards and capacity
- Promoting housing diversity and improve housing affordability
- Creating opportunities for more active transport
- Encouraging “village” hubs surrounded by “leafy” suburbs and streetscapes with local character



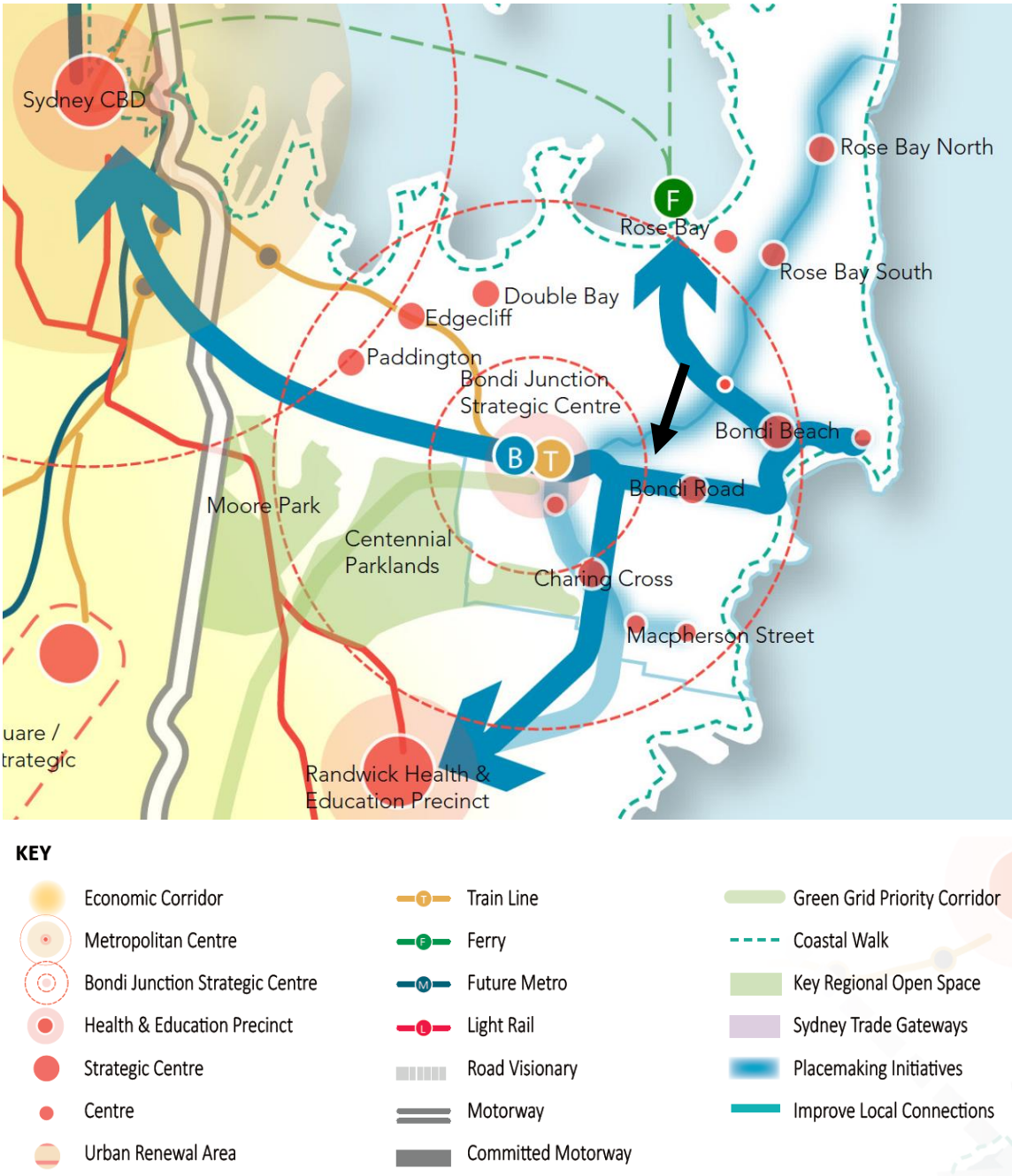


Figure 1 Bondi regional context (Source: Waverley LSPS) (subject site approximate location indicated by black arrow)

2.2 THE SITE

The address of the subject site is No. 34 Flood Street, Bondi. It is located on the eastern side of Flood Street and extends through to Anglesea Street. The site is legally identified as Lot 1 in DP 1094020. The total area of the site is 1,327m². The site is shown in the aerial photo in Figure 2.



Figure 2 Aerial photo of site (outlined yellow) (Source: www.maps.six.nsw.gov.au)

The site has its primary frontage to Flood Street. The frontage is 18m. The secondary frontage to Anglesea Street is 7m.

The site contains a Synagogue with pedestrian access direct to Flood Street. There is a not-for-profit community kitchen at the rear of the Synagogue accessed via a shared driveway and path located on the adjoining property to the north.

The eastern portion of the site contains a two storey detached dwelling with frontage and vehicle access to Anglesea Street.

The site has been used and developed in conjunction with the adjoining land to the south (No.36 Flood Street) which is under the same ownership as described in Section 2.3. This development history means the buildings and land uses at No 34 Flood Street are connected with the buildings and uses of adjoining sites.

The site is connected to all essential services.

No.34 Flood Street does not have an independent vehicle crossing to Flood Street. The vehicle access is shared with the adjoining Seniors Housing development to the north (as shown in Figure 3).

The road shoulder fronting No.34 has time restricted parking coinciding with the drop off and pick up times of the adjoining college.

The street frontage to No.34 Flood Street is concrete paved with planter beds also functioning as bollards (see Figure 4). High concrete and block stone walls define the front boundary. The entry to the Synagogue is via steps as shown in Figure 5. Originally established in 1956 the Synagogue building was used for worship, events and as a learning centre. Since its commencement the Synagogue has included outreach services for education and observance, refugee support programs and future leadership training.

The Synagogue has a single storey façade to Flood Street and is three storeys at the rear (see Figure 6). The rear of the Synagogue is used as a community kitchen known as “Our Big Kitchen” (<https://www.obk.org.au/>). The kitchen is a registered charity working with ‘food rescue’ organisations such as SecondBite and Foodbank to prepare and distribute meals to charities, shelters/refuges and individual households in need. Our Big Kitchen accepts group and individual volunteer assistance, provides catering for functions and conducts school programs.

There is a separate two storey building with frontage to Anglesea Street suitable for residential use.

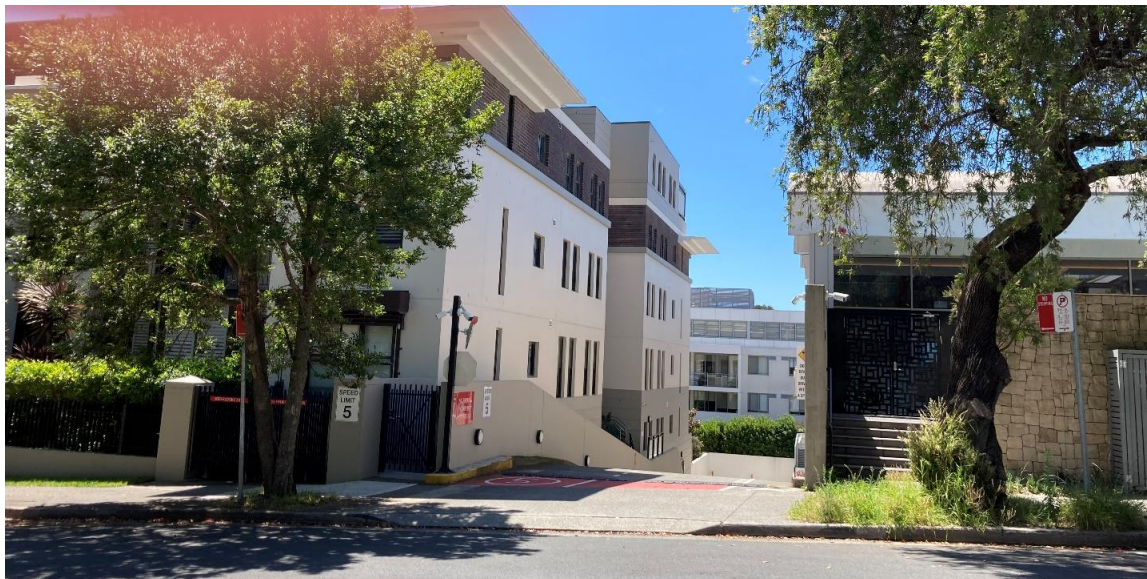


Figure 3: North west corner of No.34 Flood Street showing the entry to the Synagogue building and the vehicle access shared with the northern neighbouring site.



Figure 4: Front footpath, planter bollards and front fence to No.36 (foreground) and No.34 looking north along Flood Street



Figure 5: Entry to Synagogue from Flood Street



Figure 6: Northern façade of the Synagogue building at No 34 Flood Street on the right of the photo. Community kitchen at rear.



Figure 7: Entry to community kitchen to right of photo



Figure 8: Community kitchen and outdoor space at rear of Synagogue building

2.3 SURROUNDING DEVELOPMENT

No.34 Flood Street has a long history of development and use in conjunction with the adjoining properties to the north and south. As a result, the multi storey Seniors Housing development to the north of No.34 shares a vehicle access with No.34 as shown in Figures 3, 6 and 7. There are multiple basement access points extending from the shared driveway and pedestrian pathway access to the rear of No.34 from Flood Street along this common driveway. The adjoining Seniors Housing development extends through to Anglesea Street. Photos of the neighbouring Seniors Housing development known as 'Lifestyle Manor' are included in Figures 9 to 12.



Figure 9: Adjoining Seniors Housing development 'Lifestyle Manor' as viewed from Flood Street





Figure 10: Centre of Seniors Housing development 'Lifestyle Manor' as viewed from the vehicle access shared with the site



Figure 11: Adjoining Seniors Housing "Lifestyle Manor" looking north along Flood Street frontage



Figure 12: Adjoining Seniors Housing 'Lifestyle Manor' as viewed from Anglesea Street looking south

The Yeshiva College is located at No.36 Flood Street and adjoins the southern side of the site (see Figure 13). The college entry is via Flood Street as shown in Figures 13 and 14. The college has a two storey façade to Flood Street and is two and three storeys at the rear. An outdoor play space ancillary to the college is located at the rear of the site. The college shares vehicle access with the adjoining residential apartments to the south as shown in Figure 15.



Figure 13: View of the Synagogue and College from Flood Street looking south east





Figure 14: Entry to Yeshiva College from Flood Street



Figure 15: Vehicle access to Yashiva College shared with adjoining neighbour to the south as viewed from Flood Street

The streetscape of Flood Street is notable for its mature canopy trees and diversity of housing forms, building age and architectural styles. Photos of the streetscape are included in Table 1 and the location of each photo is referenced in Figure 16. The road connects two high volume traffic routes being Old South Head Road to the north and Bondi Road



to the south. A raised pedestrian crossing is located in Flood Street immediately north of the subject site. There are concrete pedestrian pathways on both sides of Flood Street. The road is painted to indicate the carriageway is shared by vehicles and bicycles.

The diversity of housing includes:

- Multi-storey residential flat buildings
- Post-war walk up brick flats
- Two and three storey terrace rows
- Single storey attached and detached bungalows
- New attached dual occupancies, manor houses and attached townhouses
- Heritage-listed residential buildings

There is no consistent pattern to building height, setbacks, built form and character, architectural style or density. The surrounding neighbourhood is almost exclusively residential.



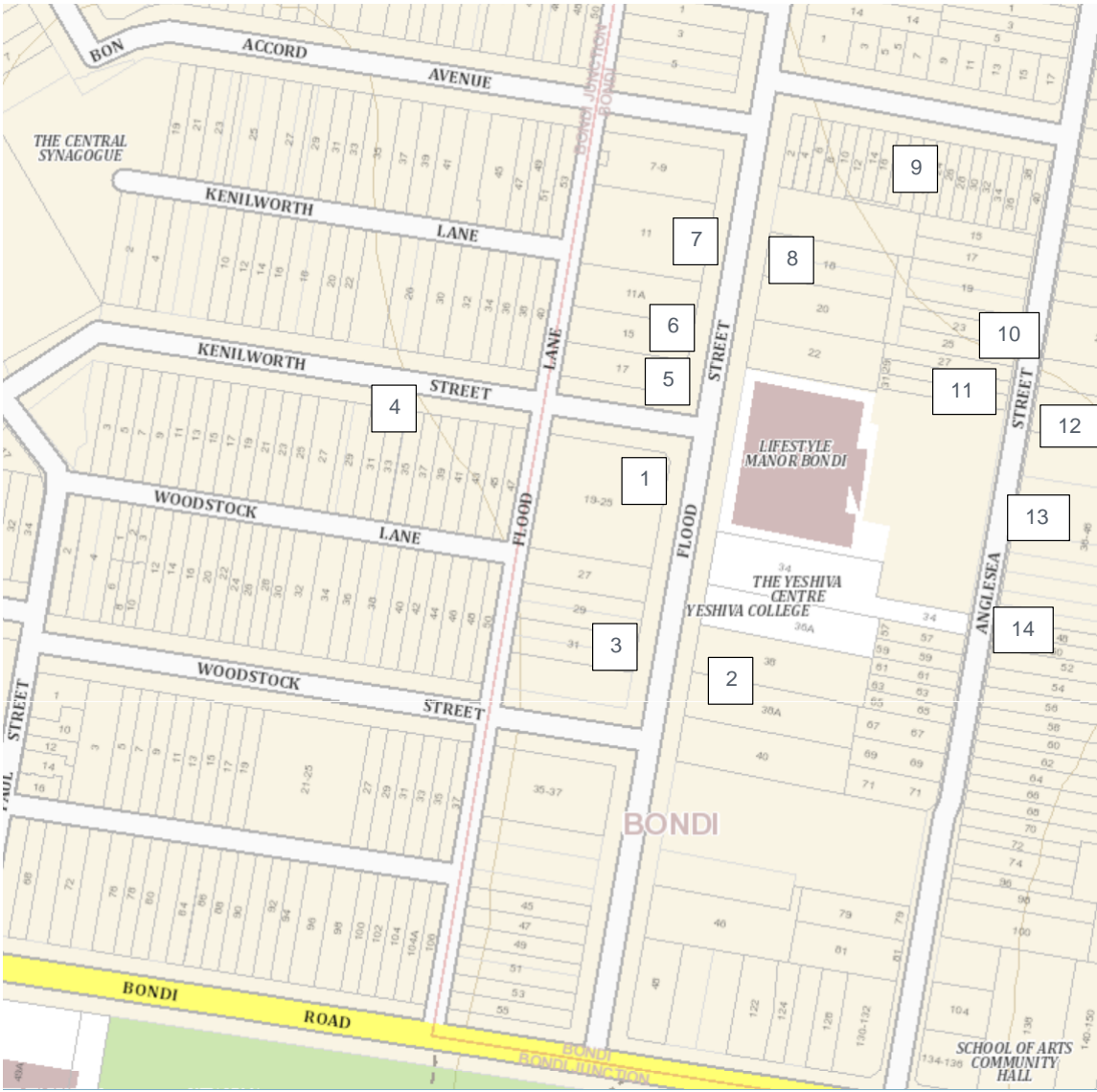


Figure 16: Reference map for location of photos in Table 1



Table 1: Photos of diversity of residential buildings surrounding the site

<p>1.</p> <p>No.19 – 25 Flood Street.</p> <p>9 storey residential flat building</p>	
<p>2.</p> <p>No.36 and No.38A Flood Street</p> <p>3 and 4 storey walk up post-war residential flats</p>	
<p>3.</p> <p>31 Flood Street</p> <p>Detached dwelling</p>	
<p>4.</p> <p>Streetscape southern side of Kenilworth Street</p>	



5. 17 Flood Street Heritage listed detached dwelling	
6. 15 Flood Street Detached dwelling	
7. 11 Flood Street 3 storey Residential apartment building	
8. No.16 Flood Street 2 and 3 storey walk up apartment building	



<p>9.</p> <p>Southern side of Watkins Street</p> <p>2 storey attached terraces with loft space</p>	
<p>10.</p> <p>No.23-25 Anglesea Street</p> <p>Detached single storey bungalows</p>	
<p>11.</p> <p>No. 27-31 Anglesea Street</p> <p>Attached single storey bungalows</p>	
<p>12.</p> <p>No.32 Anglesea Street</p> <p>3 storey walk up apartments</p>	



<p>13.</p> <p>No.36 – 40 Anglesea Street</p> <p>Waverley Zone Electricity substation No.36800</p>	
<p>14.</p> <p>No.48 – 50 Anglesea Street</p> <p>Single and two storey detached dwellings</p>	

Further beyond the site are non-residential uses including recreational spaces and facilities, places of public worship and schools.

Less than 200m walking distance south of the site are accessible bus stops in Bondi Road which are part of State Transit busline Route 333 connecting Circular Quay with Bondi Junction and North Bondi. These bus stops are used by three (3) other state bus routes connecting to local destinations within the LGA.

There are dedicated on-road and off-road cycle routes within 200m of the site connecting to high visitation destinations as shown in Waverley Council's Cycle Route Map Brochure (https://www.waverley.nsw.gov.au/data/assets/pdf_file/0018/7524/CycleRouteMapBrochure.pdf).

The Margaret Whitlam Recreation Centre, former Waverley Council Administration Building, Waverley Park and Waverley Oval are a cluster of publicly accessible indoor and outdoor social and recreational spaces all within 200m to 400m walking distance south of the site. The variety of services and facilities available to the community at these locations is described in Section 5.3.

Other community facilities within 2km radius of the site are:

- Mill Hill Centre
- Burnie Park Community Centre

The following schools are located within a 2km radius of the site:

- Bellevue Hill Public School
- Bondi Public School
- Bronte Public School
- Waverley Public School
- Bondi Beach Public School





- Clovelly Public School
- Woollahra Public School
- Holy Cross School
- Reddam House School
- Waverley College
- St Clare's College
- St Charles Primary School
- Scot's College

There are more than twelve (12) places of public worship within 2km radius of the site.

2.4 INFRASTRUCTURE AND SERVICES

The proposed zoning change will not increase demand for local or regional scale infrastructure and services beyond the current level of provision.

The proposal will facilitate feasible options for future uses of the site.





3. Future Development Options

3.1 OVERVIEW

The purpose of the planning proposal is to amend WLEP 2012 to apply Zone R3 Medium Density Residential Zone to No.34 Flood Street, Bondi.

The site is currently in Zone SP2 Education Facility as shown in the extract to the WLEP 2012 Land Zoning Map in Figure 19 (see Section 4.1). As explained above, the site is not an education facility. The site has been used as a Synagogue since 1956 and remains substantially in the same built form today. The College building on the adjoining site is of a similar age to the Synagogue building and there are features and uses of both buildings that span the site boundaries. Both the Synagogue and College buildings are aged and would require major alterations to meet contemporary requirements and the needs of the community and users such as:

- Accessibility and features for people with mobility, sight and hearing challenges
- Vehicle access and parking for staff and visitors, loading/unloading, service and emergency vehicle access
- Colocation and multi-function / multipurpose activities
- Environmental performance
- Integration with the streetscape
- Indoor, outdoor and transition spaces
- Landscaped areas and deep soil zones

The current planning provisions for No.34 Flood Street do not provide a feasible incentive for substantial redevelopment. The land use controls to WLEP 2012 only permits an educational establishment with consent. No uses are permitted without consent. The provisions for existing use right that may apply to the site only permit minor alterations for the purposes of an educational establishment. The building would require more than minor alterations in order to be used as an educational establishment that would meet contemporary standards.

The building at No.34 has no feasible future development potential as an educational establishment under the current land use zoning and planning provisions.

The current planning provisions that apply to No.36 Flood Street when considered in conjunction with those for No.34 Flood Street also prevent feasible future development of No.36 Flood Street. No.36 has been used as a College since the 1950's. The College relies on vehicle access via a driveway on the neighbouring site to the south and pedestrian access from Flood Street is via No.34 Flood Street. No.36 has a width of 14m. Zone R3 Medium Density Residential applies to No.36 Flood Street. The existing FSR of the College building is close to the maximum permitted FSR of 0.9:1. Expansion or intensification of the College is limited in scale by the site constraints, by the LEP controls and by the limitations for expansion and intensification in State Environmental Planning Policy (Educational Establishment and Child Care Facilities) 2017. The narrow lot width and vehicle access constraints make it unfeasible for redevelopment for residential uses in isolation.

3.2 FUTURE DEVELOPMENT OPTIONS

Notwithstanding the above, there are no immediate intentions to redevelop the site and it will continue to provide a range of religious, educational and community services. However, to substantiate the planning proposal some schematic designs have been prepared in order to demonstrate that the LEP amendments proposed by this application can facilitate future development of the site in a manner that:





- Is consistent with adopted key planning strategies
- Is compatible with the context and setting of the site
- Does not require additional local or state infrastructure and services; and
- Delivers future social, environmental, cultural and economic benefits.

Following the amendment of the LEP, the proposed future development of the site would be subject to a detailed development application to be prepared in accordance with the relevant objectives, development standards and controls of WLEP 2012 and Council's Development Control Plan.

A new development application will need to demonstrate, amongst other things:

- connectivity to all essential services and contemporary energy and water efficiency performance standards;
- safe means of pedestrian and vehicle access, loading and unloading, waste management and service vehicle access;
- consistency with the streetscape; and
- no significant detrimental impacts to the heritage significance of the adjoining Heritage Conservation Area C16 Woodstock Street and the Flood Street Landscape Conservation Area C42.

The current land use zone does not facilitate the potential for new development to achieve the above.

The future development scenario options most suited to the context and setting are described below. They are based on amalgamation of the subject site with No.36 Flood Street to avoid site isolation and to achieve the following positive outcomes:

- Site-specific at-grade vehicle access to Anglesea Street which is dedicated to the site (that is, not shared by other properties and reliant on legal agreements with neighbours as is the current situation);
- Onsite parking, waste management, plant and equipment in a concealed basement to protect visual and acoustic amenity;
- Built form that complies with Council's development standards and objectives
- Boundary setbacks compatible with the separation requirements between residential buildings with associated benefits to solar access, privacy, streetscape, landscape opportunities and amenity
- Deep soil planting throughout the site including mid-block where it will be of greatest benefit within the site and for residential neighbours
- A greater percentage of the site provided as landscaped open spaces
- Reconstruction of the footpath reserve in Flood Street and an increased front setback with opportunities for street tree planting and landscaping compatible with the Flood Street Landscape Conservation Area C42;
- Improved quality of the interface with Flood Street by removing high concrete walls and creating opportunities for passive surveillance and active private spaces adjoining the public footpath;
- Improved environmental performance of the land use.

Both future development scenarios are compliant with the existing WLEP 2012 development standards that currently apply to both No.34 and No.36 Flood Street being:

- Floor Space Ratio (FSR) of 0.9:1
- Height of Buildings Control of 12.5m





3.3 FUTURE OPTION 1

Future Development Scenario 1 is included in Annexure B and a basic block perspective drawing is included in Figure 17.

Future Development Scenario 1 proposes:

- A residential flat building
- A mix of apartment sizes and accessible common circulation and open space areas
- Height of Flood Street elevation 8.9m (3 storey façade to Flood Street, 4 storeys mid-block)
- Basement car parking for 30 cars (25 resident vehicles and 5 visitors)
- At-grade vehicle access to Anglesea Street
- Deep soil zone mid block
- Green roof

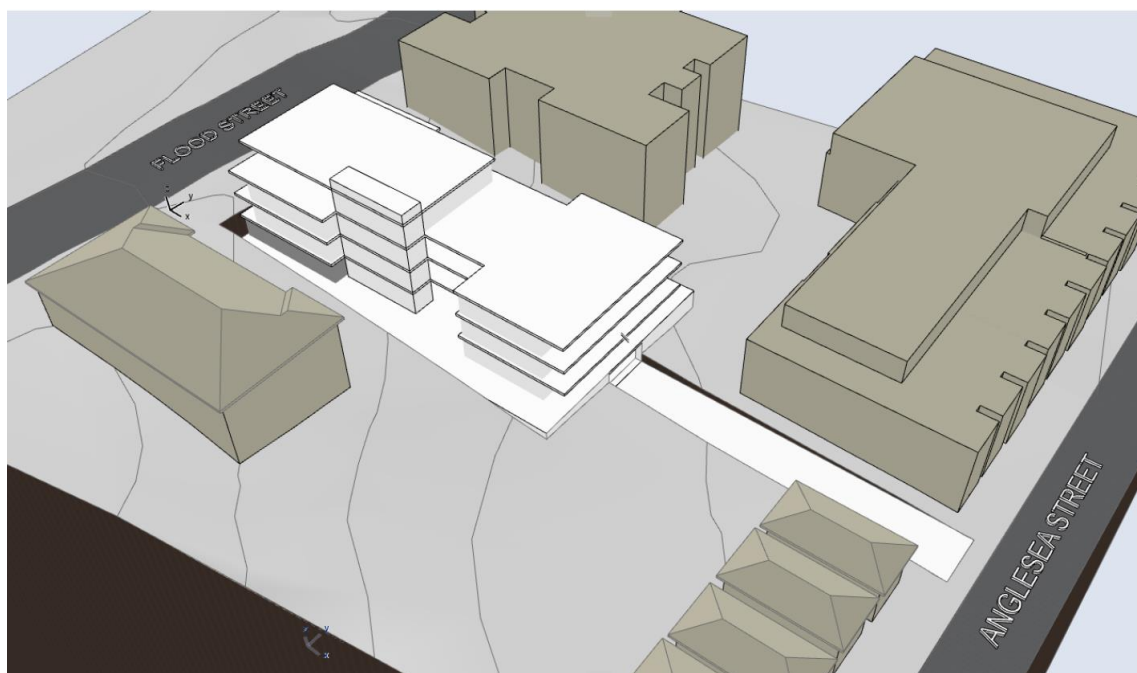


Figure 17: Perspective drawing for Future Development Scenario 1

3.4 FUTURE OPTION 2

Future Development Scenario 2 is included in Annexure B and a basic block perspective drawing is included in Figure 18.

Future Development Scenario 2 proposes:

- Attached multi-storey terraces in two (2) blocks
- Height of Flood Street elevation 8.9m (3 storey façade to Flood Street, 4 storeys mid-block)
- Basement car parking for resident and visitor cars



- At-grade vehicle access to Anglesea Street
- Deep soil zone mid block

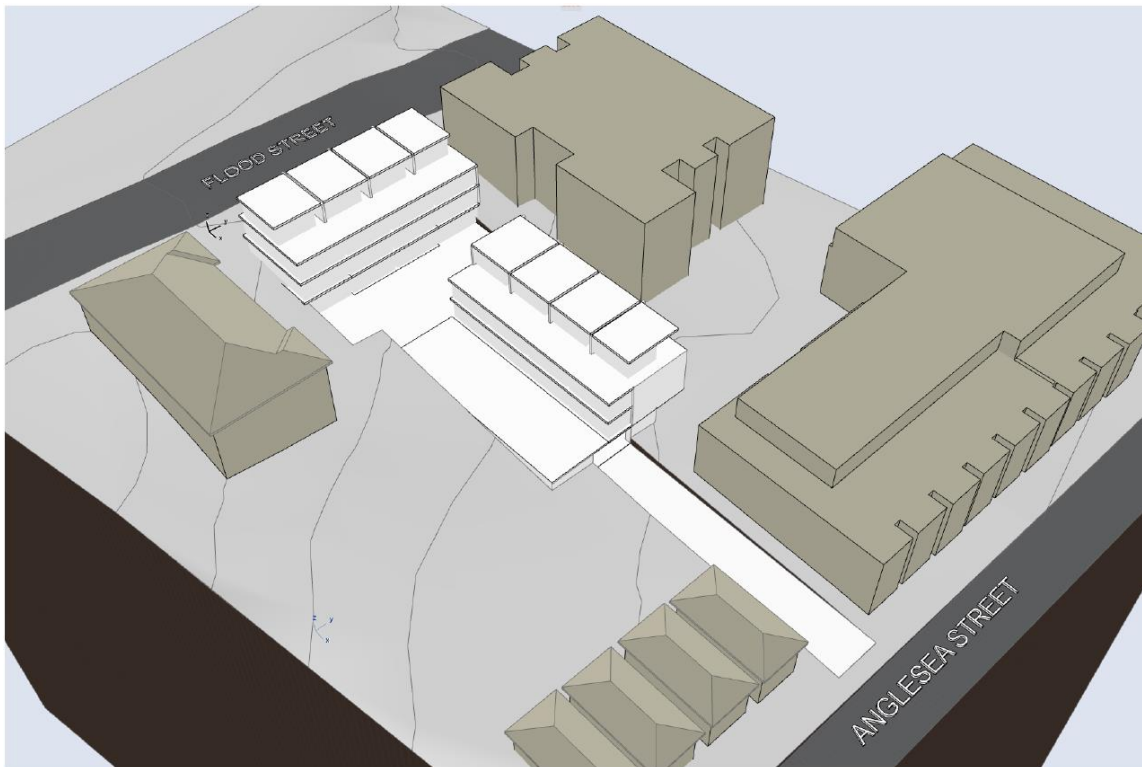


Figure 18: Perspective drawing for Future Development Scenario 2



4. Existing Planning Provisions

4.1 WAVERLEY LOCAL ENVIRONMENTAL PLAN 2012

The overall aims of the WLEP 2012 are:

- “(aa) to protect and promote the use and development of land for arts and cultural activity, including music and other performance arts,*
- (a) to promote and co-ordinate a range of commercial, retail, residential, tourism, entertainment, cultural and community uses to service the local and wider community,*
- (b) to maintain and reinforce Bondi Junction as the primary commercial and cultural centre in Sydney’s eastern suburbs,*
- (c) to provide for a range of residential densities and range of housing types to meet the changing housing needs of the community,*
- (d) to provide an appropriate transition in building scale around the edge of the commercial centres to protect the amenity of surrounding residential areas,*
- (e) to protect, maintain and accommodate a range of open space uses, recreational opportunities, community facilities and services available to the community,*
- (f) to enhance and preserve the natural environment through appropriate planning, protecting the integrity of natural systems and by protecting existing trees,*
- (g) to identify and conserve the cultural, environmental, natural, aesthetic, social and built heritage of Waverley.”*

The ways in which the zoning change aligns with the aims of the LEP are detailed in Section 5.3.

The provisions of the LEP that currently apply to the site are as follows:

Table 2 Summary of Current Planning Controls that apply to No.34 Flood Street under WLEP 2012

Control	Existing Requirement
Zone	SP2 Infrastructure (Education Facility)
Height of Buildings	12.5m
Floor Space Ratio	0.9:1
Minimum Lot Size	None
Heritage	None



4.1.1 Existing Zoning

An extract of the land use zoning map to WLEP 2012 is shown in Figure 19 with the site indicated by a white arrow.

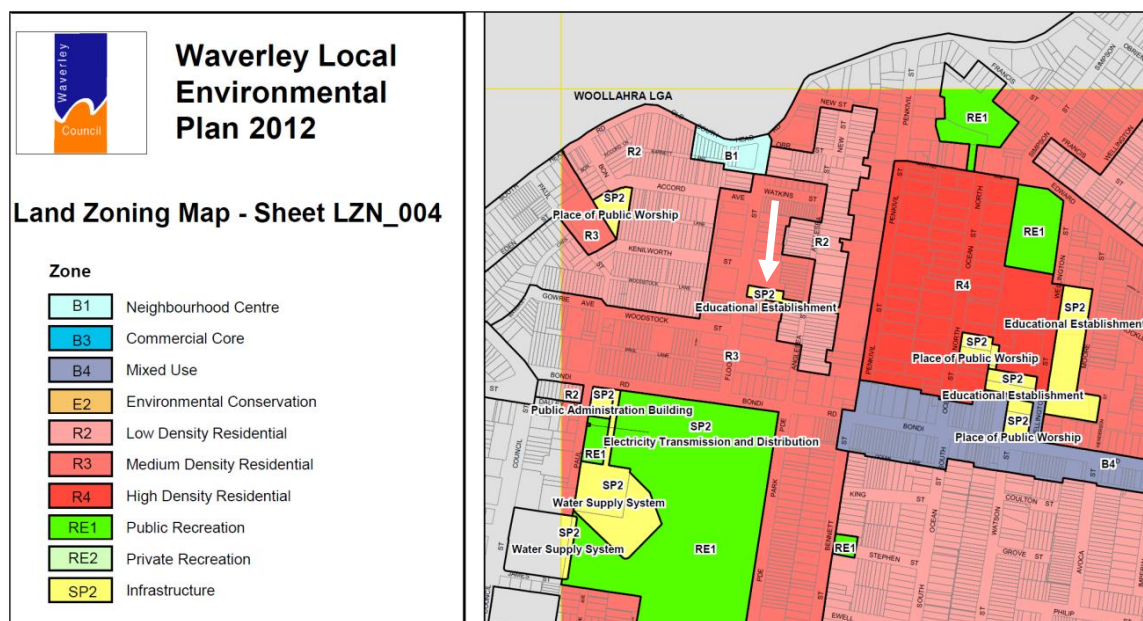


Figure 19: Extract from Land Zoning Map to WLEP 2012 with subject site indicated by white arrow

The objectives for development in Zone SP2 are:

- “ To provide for infrastructure and related uses.
- To prevent development that is not compatible with or that may detract from the provision of infrastructure.”

The land use table for Zone SP2 states as follows:

“2 Permitted without consent

Nil

3 Permitted with consent

Aquaculture; Roads; The purpose shown on the Land Zoning Map, including any development that is ordinarily incidental or ancillary to development for that purpose

4 Prohibited

Any development not specified in item 2 or 3”

As explained above, the zoning of the site:

- does not match the existing use of the site that has continued since 1956;
- does not facilitate redevelopment of the site in a manner that would suit the existing aged building and ancillary features.



5. Planning Proposal

5.1 PART 1 – OBJECTIVES OR INTENDED OUTCOMES

The objective of this planning proposal is to amend WLEP 2012 to change the zoning Lot 1 DP 1094020 from Zone SP2 Infrastructure (Educational Establishment) to Zone R3 Medium Density Residential.

The objectives for development in Zone R3 and the land use control table for Zone R3 are intended to apply to Lot 1 DP 1094020.

The intended outcome is to apply a land use zoning category that corrects the current anomaly and that is consistent with the zoning of surrounding land. Applying Zone R3 will facilitate feasible future development and use of the site and prevent isolation of the adjoining land to the south whereas current planning provisions create an impasse for any feasible future development of these lots either separately or as an amalgamated site.

5.2 PART 2 – EXPLANATION OF PROVISIONS

The proposed outcome will be achieved by amending the WLEP 2012 Land Zoning Map Sheet LZN_004 to change the land use zoning to Zone R3 Medium Density Residential for Lot 1 DP 1094020.

All other provisions of WLEP 2012 are to remain unchanged.

5.3 PART 3 – JUSTIFICATION

This section details the reasons for the proposed LEP amendment and is based on a series of questions and matters for consideration as outlined in the DPIE Guideline (December 2021). The matters to be addressed include the strategic planning context of the amendments, strategic merits, site-specific merits, potential State and Commonwealth agency interests, environmental, social and economic impacts.

In summary the proposed amendment to the land use zoning for Lot 1 DP 1094020 is:

- Aligned with the relevant key priorities and strategic merit matters in the Greater Sydney Regional Plan and Eastern City District Plan;
- consistent with the relevant key planning priorities and strategic and site-specific merit matters contained in the Waverley Local Strategic Planning Statement (LSPS);
- a response to circumstances that are not recognized by the existing planning framework (in that the site is not, and has never been, an educational facility and has no feasible redevelopment potential under the current Zone SP2);
- facilitating opportunities for future use of the site and adjoining land more compatible with the surrounding residential development and will result in improvements to the heritage-listed streetscape, deep soil landscaping, traffic, parking, vehicle and pedestrian access, street surveillance and ESG performance.



5.3.1 Section A - Need for the Planning Proposal

Q1. Is the Planning Proposal a result of an endorsed local strategic planning statement, strategic study or report?

No. The LEP amendment is an applicant-initiated, site specific planning proposal. It is not a result or recommended outcome from a strategic study or report. However, it is required due to an oversight or error made in the application of land use zoning to the site. Specifically the site is in Zone SP2 Infrastructure (Educational Establishment) however the site has been used as a Synagogue since the 1950's and is not an educational establishment.

As explained in Section 3, due to the incorrect zoning, the current planning provisions prevent any feasible future redevelopment of the site and create an impasse which prevents any feasible works to the ageing building which does not meet contemporary design and user standards for a publicly and universally accessible building used for congregations and related activities.

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

The Planning Proposal is the only means by which the zoning anomaly can be corrected and this has been confirmed by Council in pre-lodgement meetings.

The Planning Proposal is also necessary because there are no feasible future development options for the site under the current planning provisions and the building is reaching the end of its useful and appropriate life as a Synagogue due to the major works needed to bring the building and ancillary features up to contemporary standards with respect to:

- Accessibility and features for people with mobility, sight and hearing challenges
- Vehicle access and parking for staff and visitors, loading/unloading, service and emergency vehicle access
- Colocation and multi-function / multipurpose activities
- Environmental performance
- Integration with the streetscape and heritage conservation areas
- Indoor, outdoor and transition spaces
- Landscaped areas and deep soil zones.

The Planning Proposal also has benefits for the adjoining land No.36 Flood Street as explained in Section 3. Without the zoning amendment, No.36 Flood Street is an isolated site with no feasible potential for expansion or increase in intensity of use due to constraints including site width, lack of vehicle and pedestrian access, being close to the maximum FSR and the need to be responsive to the amenity of neighbouring residential uses.

The proposal LEP Amendment fits the category of a 'Standard' planning proposal described in the DPIE Guideline as follows:

Standard

A standard planning proposal refers to any one or more of the following proposed LEP amendment types, including an amendment:

- To change the land use zone where the proposal is consistent with the objectives identified in the LEP for that proposed zone
- That relates to altering the principal development standards of the LEP
- That relates to the addition of a permissible land use or uses and/or any conditional arrangements under Schedule 1 Additional Permitted Uses of the LEP
- That is consistent with an endorsed District/Regional Strategic Plan and/or LSPS
- Relating to classification or reclassification of public land through the LEP

The objectives for all development in Zone R3 in WLEP 2012 are as follows:

“Zone R3 Medium Density Residential

1 Objectives of zone

- To provide for the housing needs of the community within a medium density residential environment.
- To provide a variety of housing types within a medium density residential environment.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.
- To maximise public transport patronage and encourage walking and cycling.”

All land surrounding the site is within Zone R3. The proposed land use zone change will result in future development and use of the site in a manner entirely consistent with the character and objectives that apply to the neighbourhood. These objectives are more suited to the site and its context than the objectives for land in Zone SP2 which seek only to preserve land for infrastructure and do not consider compatibility with the broader neighbourhood context and setting. Applying Zone R3 to the site will provide opportunities for future development which is compatible with its broader environment.

The land use table for Zone R3 in WLEP 2012 are as follows (our emphasis added):

“2 Permitted without consent

Home occupations

3 Permitted with consent

Attached dwellings; Bed and breakfast accommodation; Boarding houses; Building identification signs; Business identification signs; Centre-based child care facilities; Community facilities; Group homes; Home industries; Kiosks; Markets; Multi dwelling housing; Neighbourhood shops; Oyster aquaculture; Places of public worship; Respite day care centres; Roads; Seniors housing; Tank-based aquaculture; Any other development not specified in item 2 or 4

4 Prohibited

Agriculture; Air transport facilities; Airstrips; Amusement centres; Animal boarding or training establishments; Biosolids treatment facilities; Boat building and repair facilities; Boat launching ramps; Boat sheds; Camping grounds; Car parks; Caravan parks; Cemeteries; Charter and tourism boating facilities; Commercial premises; Correctional centres; Crematoria; Depots; Eco-tourist facilities; Electricity generating works; Entertainment facilities; Extractive industries; Farm buildings; Forestry; Freight transport facilities; Function centres; Heavy industrial storage establishments; Helipads; Highway service centres; Home occupations (sex services); Industrial retail outlets; Industrial training facilities; Industries; Jetties; Marinas; Mooring pens; Moorings; Mortuaries; Open cut mining; Passenger transport facilities; Public administration buildings; Recreation facilities (major); Recreation facilities (outdoor); Registered clubs; Research stations; Restricted premises; Rural industries; Rural workers' dwellings; Service stations; Sewage treatment plants; Sex services premises; Shop top housing; Signage; Storage premises; Tourist and visitor accommodation; Transport depots; Truck depots; Vehicle body repair workshops; Vehicle repair stations; Veterinary hospitals; Warehouse or distribution centres; Waste or resource management facilities; Water recreation structures; Water recycling facilities; Water supply systems; Wharf or boating facilities; Wholesale supplies”

The land use table for Zone SP2 allows only for an educational establishment. The planning framework for existing use rights allows only for minor alterations to an existing use. Given that the ageing Synagogue would need major works to bring it up to contemporary standards, the current planning framework prevents feasible future development opportunities.

By comparison, the land use table for Zone R3 allows a variety of future uses and development opportunities. Furthermore it does not preclude a future development scheme that may include a community facility and place of public worship. However, as explained below, a future development scenario which did not replace the Synagogue



with a comparable facility would not result in a detrimental social or cultural outcome as there are a variety of alternative comparable facilities and more suitable sites for a new / replacement facility. Furthermore, as explained below, the people who currently use the Synagogue and Charity Kitchen have been consulted regarding this amendment and are fully supportive.

Planning Practice Note PN10-001 Zoning for Infrastructure in LEPs (PN10-001) is a guideline for the application of Zone SP1 and Zone SP2 in standard instrument LEPs. PN10-001 lists the 25 types of infrastructure to be considered for the application of SP zones. The list does not include places of public worship.

PN10-001 lists the matters to be considered in deciding whether to apply Zone SP to any land. The first consideration is whether the type of infrastructure is covered in the Infrastructure SEPP. Places of public worship are not covered in the Infrastructure SEPP.

PN10-001 lists six (6) sequential principles for zoning infrastructure. These principles are listed below along with comments specific to the subject site (with the exception of Principles 2, 5 and 6 which do not apply to the circumstances):

Principle (1): If the infrastructure type is permitted on all land under the Infrastructure SEPP, then “*existing ‘special use’ zones should be rezoned the same as the adjacent zone*”. If PN10-001 had been applied correctly in applying land use zones under WLEP 2012, the site would have been zoned as Zone R3 (not Zone SP2).

Principle (3): if the land is currently zoned for ‘special use’, only the following should remain zoned for ‘special purpose’:

- Special purposes such as cemeteries, sewage treatment plants, waste disposal or landfill sites (to be Zone SP2);
- Strategic sites (to be Zone SP2)
- Large complexes (to be SP1).

The site does not meet any of the above criteria or descriptions in Principle (3).

Principle (4): Where land is to be zoned SP1 or SP2 it should include flexible zone boundary provisions where appropriate and use generic land use map annotations. The current zoning does not match with Principle 4.

PN10-001 should be used as a reference tool in assessment of this application for a Planning Proposal. It is clear from the directions in PN10-001 that the current land use zone is incorrect and should not have been applied to the site.

Planning Practice Note PN11-002 Preparing LEPs using the Standard Instrument: Standard Zones (PN11-002) provides instruction and guidance on the application of all land use zones used in Standard Instrument LEPs. PN11-002 states:

“Councils must give effect to any relevant State or regional planning guidance when determining permitted and prohibited land uses. In addition, where the permissibility of certain land uses is provided for under a relevant SEPP (eg. Infrastructure SEPP), there is no need to include these types of development in Standard Instrument LEPs.”

As noted above, a place of public worship is not considered by DPIE to be infrastructure. Educational establishments are addressed in State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017. Therefore, based on the instruction in PN11-002 quoted above, there is no need to apply Zone SP2 to educational establishments unless they are large sites of strategic importance as explained in PN10-001.



PN11-002 also gives the following instructions on the application of all standard instrument zones:

“SP2 Infrastructure

Infrastructure land that is highly unlikely to be used for a different purpose in the future should be zoned SP2, for example ‘cemeteries’ and major ‘sewage treatment plants’.

It may also be appropriate for major state infrastructure or strategic sites such as major ‘hospitals’, large campus universities/TAFEs, major dams, power stations, landfill or waste disposal sites, ‘correctional centres’, and ‘airports’. Areas of Commonwealth land used for Defence purposes should be zoned SP2 (Defence). A small minority of ‘schools’ across NSW may also be considered a strategic site.

The use of clause 5.3 Development near zone boundaries is suggested when adopting SP1 or SP2 zones. This would enable development permitted on the adjoining land to be permitted if deemed compatible.”

With consideration to the above instruction in PN11-002, the subject site is not:

- major state infrastructure; nor
- a strategic site.

It is practical and reasonable that the site could be used for different purposes in the future.

Applying Zone SP2 to the subject site is not consistent with the guidance and instruction that applies to all Standard Instrument LEPs and in particular is not consistent with PN10-001 and PN11-002.

Furthermore, if the current Waverley LEP review is consistent with Planning Practice Notes (as it should be) this zoning anomaly should be rectified without the need for a site-specific Planning Proposal. Note that the DPIE strategic planning tool kit makes reference to all Standard Instrument LEP amendments being guided by a collection of documents published by DPIE including Planning Practice Notes.

5.3.2 Section B – Relationship to Strategic Planning Framework

Q3: Will the planning proposal give effect to the objectives and actions of the applicable regional, or district plan or strategy (including any exhibited draft plans or strategies)?

5.3.2.1 Greater Sydney Region Plan – A Metropolis of Three Cities (GSRP)

The GSRP produced by the NSW Government sets out strategic priorities for 2016 to 2036. The following Directions and Objectives of the GSRP are relevant for consideration in demonstrating that this application for a Planning Proposal is aligned:

Direction 1: A City supported by infrastructure

As confirmed by PN10-001 and PN11-002, a place of public worship is not a form of infrastructure to which Zone SP1 or SP2 should be applied in a standard instrument LEP.

Direction 3: A city for people

Objective 6: Services and infrastructure meeting communities’ changing needs

Objective 7: Communities are healthy, resilient and socially connected.

As noted in Section 3 and 5.3.1 above, the existing building on the site increasingly inadequate to meets the contemporary needs of the community, its neighbours and its users. Constraints which cannot be addressed by the limits of the current zoning include:

- A lack of accessibility and features for people with mobility, sight and hearing challenges



- No independent vehicle access and parking for staff and visitors, loading/unloading, service and emergency vehicle access
- Lack of space and design features that would support colocation and multi-function / multipurpose activities
- Poor environmental performance
- Lack of integration with the streetscape
- Limited indoor, outdoor and transition spaces
- No landscaped areas and deep soil zones.

An amendment to the land use zone to Zone R3 will facilitate the potential for changes to both the existing uses and/or future redevelopment options which would address the current features that do not meet contemporary expectations and needs of the community.

Direction 4: Housing in the city

Objective 10: Greater housing supply

Objective 11: Housing is more diverse and affordable

Applying Zone R3 to the site will facilitate more options for future uses including housing(adding to the existing supply) and at the same time it does not preclude the including of community facilities and places of public worship from future development options.

Direction 5: A city of great places

Objective 12: Great places that bring people together

Objective 13: Environmental heritage is conserved and enhanced

The change will not put at risk the future options for current users of the site to come together in the variety of ways that are currently facilitated by the Synagogue and community kitchen. It will enable the range of options permitted in Zone R3 for enhancement of the facilities in conjunction with other feasible and mutually supportive options. Such options are not available under the SP2 zoning.

While there are no immediate plans, future residential and mixed use redevelopment options must also consider new works which will be compatible with the environmental heritage and landscape values of the Woodstock Street Heritage Conservation Area C16 and the Flood Street Landscape Conservation Area C42. The zoning change allows opportunities for the future use of the site to enhance the environmental heritage of the site and its setting.

Direction 8: A city in its landscape

Objective 30: Urban Tree canopy cover is increased.

Currently there is no landscaped area or deep soil planting within the site. Increasing redevelopment opportunities by changing the zoning will facilitate new development scenarios that must achieve compliance with current landscaping requirements. This would include the provision of canopy street trees in Flood Street and deep soil zones within the site.

Direction 9: An efficient city

Objective 33: A low carbon city to net zero emissions by 2050

Objective 34: Capture and reuse of energy and water

Objective 35: Waste is reduced and recycled





The zoning change will provide options for redevelopment of the site where currently there are none. The current Synagogue building does not include features for energy and water re-use and is limited in the use of natural ventilation and lighting. Any redevelopment will be required to achieve higher standards of ESG performance and contribute to achieving the objectives of Direction 9.

In summary, the proposed zoning change will assist in achieving the Directions and Objectives identified above.

5.3.2.2 Eastern City District Plan (ECDP)

The ECDP adopts the Directions of the GSRP and lists the following Planning Priorities relevant for consideration in demonstrating that this application for a Planning Proposal is aligned:

Direction: A city supported by infrastructure

The zoning change will not generate the need for additional or new infrastructure and will not preclude the aim to achieve a movement network that delivers a 30-minute city.

Direction: A collaborative city

The zoning change may lead to future scenarios where the current Synagogue and community kitchen can be substantially upgraded or redeveloped to provide new, contemporary premises on the site which can be designed for multi-purpose uses and with indoor and outdoor spaces universally accessible. This is aligned with the ECDP performance indicator of increasing the use of community facilities.

Direction: A city for People – Livability

The zoning change is aligned with increasing quality of life through implementing a planning framework that gives options for feasible future uses of the site. Future use options will better facilitate the renovation, rebuilding and creation of new places, buildings and activities that enhance the site for users and neighbours. Improvements that can be anticipated include:

- Safe and independent vehicle access, parking, loading/unloading, and access for service and emergency vehicles
- ESG performance
- Integration with the streetscape and passive surveillance, landscaped setbacks and street trees
- Landscaped areas and deep soil zones throughout the site
- connectivity to all essential services and contemporary energy and water efficiency performance standards;
- enhancement to the heritage significance of the adjoining Heritage Conservation Area C16 Woodstock Street and the Flood Street Landscape Conservation Area C42.
- Built form that complies with Council's development standards and objectives
- Boundary setbacks compatible with the separation requirements between residential buildings with associated benefits to solar access, privacy, streetscape, landscape opportunities and amenity
- Prevention of site isolation for No.36 Flood Street

Direction: Housing in the City – Housing choice and affordability

The zoning change allows residential accommodation with consent. Any future development proposal for housing will be assessed with consideration to this matter. The Future Development Options in Section 3 demonstrate that the zoning change can facilitate a range of housing options.

Direction: A city of great places – giving effect to Objectives 12 and 13 in the GSRP

See Objectives 12 and 13 above.





Also the ECDP seeks:

- A well designed built environment
- Social infrastructure and opportunities
- Fine grain urban form

The above points can only be feasibly achieved for this site if the options for future development are expanded by changing the land use zone to Zone R3.

Direction: Sustainability – a city in its landscape

The ECDP specifically identifies the following Planning Priorities to achieve sustainability that are relevant to this application:

- Planning Priority E16
Protecting and enhancing scenic and cultural landscapes
- Planning Priority E17
Increasing urban tree canopy cover and delivering Green Grid connections

Increasing future redevelopment options for the site will facilitate new development more in keeping with the scenic values of the Woodstock Street Heritage Conservation Area C16 and the Flood Street Landscape Conservation Area C42 and would create opportunities for deep soil planting and canopy street trees within the site.

In summary, the proposed zoning change will assist in achieving the Directions and Planning Priorities identified above.

5.3.2.3 Strategic Merit

In addressing Question 3, the DPIE Guideline requires an application for a Planning Proposal to address the assessment criteria for strategic merit. The DPIE Guideline provides assessment criteria to determine if a planning proposal has strategic and site-specific planning merit. Accordingly, the planning proposal is considered against the assessment criteria below.

Strategic Merit

The assessment criteria to determine if a Planning Proposal has strategic planning merit is addressed in Table 3 below (known as the 'strategic merit test').

Table 3 Strategic Merit Test	
Assessment Criteria	Comment
Will the proposal "give effect to the relevant regional plan outside of the Greater Sydney Region, the relevant district plan within the Greater Sydney Region, or corridor/precinct plans applying to the site, including any draft regional, district or corridor/precinct plans released for public comment"	<p>The applicable strategic plan is the Eastern City District Plan (ECDP) prepared by the Greater Sydney Commission.</p> <p>Alignment with the relevant Planning Priorities of the ECDP has been demonstrated in Section 5.3.2.2.</p> <p>The planning proposal is considered to give effect to the Eastern City District Plan.</p>



Table 3 Strategic Merit Test

Will the proposal “give effect to a relevant local strategic planning statement or strategy that has been endorsed by the Department or required as part of a regional or district plan or local strategic planning statement”	<p>Consideration of the proposal against Waverley Local Strategic Planning Statement (LSPS) is addressed in detail under ‘Question 4’ below.</p> <p>In summary, the proposal will give effect to the LSPS by being aligned with the relevant themes and Planning Priorities and the potential public benefits that can be realised by facilitating new development options for the site.</p>
Is the proposal “responding to a change in circumstances, such as the investment in new infrastructure or changing demographic trends that have not been recognised by existing strategic plans”	<p>The proposal is a response to the incorrect zoning of the site. The ongoing use of the site as a Synagogue since the 1950’s has not been correctly accounted for by the application of Zone SP2 as explained in Section 5.3.1.</p> <p>The current and future use of the site is at an impasse as a result of the incorrect zoning. A change is needed to correct the error.</p>

Site-Specific Merit

The planning proposal has site-specific merit given the following:

- the site is surrounded by medium density residential land uses and the change in zoning will apply land use objectives and land use opportunities more consistent with, and respectful of the context and setting of the site than the current Zone SP2;
- the amendment will prevent the long term isolation of No.36 Flood Street as well as facilitate future development options which will be expected to achieve improvements in:
 - vehicle access, parking, loading/unloading, and access for service and emergency vehicles
 - ESG performance
 - Integration with the streetscape, passive surveillance, landscaped setbacks and street trees
 - Landscaped areas and deep soil zones throughout the site
 - connectivity to essential services;
 - enhancement to the heritage significance of the adjoining Heritage Conservation Area C16 Woodstock Street and the Flood Street Landscape Conservation Area C42.
 - Built form that complies with Council’s development standards and objectives
 - Boundary setbacks compatible with the separation requirements between residential buildings with associated benefits to solar access, privacy, streetscape, landscape opportunities and amenity
- it will not result in any significant adverse environmental impacts.

The assessment criteria outlined in the DPIE Guideline to determine if a planning proposal has site-specific planning merit is addressed in Table 4.

**Table 4 Site-Specific Merit Test**

Site-Specific Merit Test	Comment
Does the proposal have site-specific merit, having regard to the following:	
the natural environment (including known significant environmental values, resources or hazards)	<p>The site is not subject to any hazards or risks.</p> <p>The site does not contain items or features that have significant natural or environmental values.</p> <p>A change to the zoning will establish planning provisions with objectives and controls to enhance landscaping, deep soil planting, canopy street trees and buildings and uses with improved ESG performance in comparison to the limitations of the current zone.</p>
the existing uses, approved uses, and likely future uses of land in the vicinity of the proposal	The change to the zoning will facilitate options for future development more compatible with the context and setting of a medium density residential environment and the adjoining heritage and landscape conservation areas..
the services and infrastructure that are or will be available to meet the demands arising from the proposal and any proposed financial arrangements for infrastructure provision	<p>The zoning change will not generate demand for additional essential services.</p> <p>Redevelopment options will facilitate improvements to vehicle and pedestrian access and traffic-related infrastructure in particular.</p>

As demonstrated in the above assessment, the planning proposal has both strategic and site-specific merit and is suitable to be progressed to a Gateway determination.

Q4. Will the planning proposal give effect to a council's endorsed local strategic planning statement, or another endorsed local strategy or strategic plan?

5.3.2.4 Waverley Local Strategic Planning Statement (WLSPS)

Waverley LSPS adopts the Directions and Planning Priorities of the GSRP and ECDP as identified above. In addition the LSPS lists principles for change that must be considered with any LEP amendment and requires any LEP amendment to demonstrate public benefit.

Strategic Principles

Table 5 lists the local strategic principles for change in the LSPS that are relevant to the planning proposal and includes comments specific to the proposed zoning change.



Table 5: Local Strategic Principles for change in WLSPS

Local Strategic Principle for change	How it applies to the proposed change in land use zone to Zone R3 Medium Density Residential	Consistency? (Yes/No)
Proposals should be consistent with the Greater Sydney Region Plan and Eastern City District Plan	Consistency is demonstrated in Sections 5.3.2.2 and 5.3.2.3 above.	Yes
Proposals should be consistent with the relevant directions, objectives and actions of the Waverley Community Strategic Plan	Consistency is demonstrated in Section 5.3.2.5	Yes
Proposals should be consistent with the aims of the WLEP 2012	Consistency is demonstrated in Section 4.1 with the exception of Aim (aa). Given that the application of Zone SP2 has been made in error (as explained in Section 5.3.2.1) the site should not have been subject to Zone SP2. The site is not and has not been used for an infrastructure purposes. The change in zoning will not result in a loss of community infrastructure that would be detrimental to the quality of life of existing and future community members as explained in response to Question 9.	Yes
Proposals should be consistent with the relevant liveability, productivity, infrastructure and sustainability priorities, objectives and actions in this Local Strategic Planning Statement	Consistency is demonstrated with consideration to the relevant Planning Priorities of the LSPS below.	Yes
Proposals should be consistent with the relevant priorities, objectives and actions of any relevant strategies	There are no specific strategies for places of public worship land uses. The proposed zoning change will allow for a variety of future development options which have potential to deliver improvements to the uses and activities on the site with regard to vehicle and pedestrian access, accessibility, landscaping, deep soil planting, street tree provision, built form that considers neighbour amenity, microclimate and ESG performance.	Yes
Proposals should support the strategic objectives in Council's adopted strategies and action plans	As above.	Yes

Proposals should give consideration to strategically valuable land uses that are under-provided by the market, such as but not limited to hotels, cultural space (including performance and production space), medical and health-related uses, education uses and childcare centres, and urban services such as mechanics and bulky goods retailers, and have regard to the appropriateness of the use for the context.	<p>The Synagogue and Community Kitchen are socially valuable but not strategically valuable in the specific location. It is not essential to be maintained on this specific site.</p> <p>They are uses that can be accommodated on other sites.</p> <p>They are uses better suited to sites on major transport and movement routes, co-located for multipurpose visits and activities and where the built form, traffic and pedestrian activity will not detract from residential amenity.</p>	Yes
Local site-specific principles for change		
Proposals should locate development within reasonable walking distance of public transport that has capacity (assuming development capacity will be delivered) and is frequent and reliable	As noted in Section 2.3 the site is within 200m walking distance of the major, multi-modal and multi-networked transport route along Bondi Road.	Yes
Proposals should meet high sustainability standards, improve urban resilience, and mitigate negative externalities. Proposals can satisfy these high standards by committing all development on the subject site to achieve a 5+ Green Star rating with the Green Building Council of Australia, or a Core Green Building Certification or Zero Carbon Certification with the Living Futures Institute of Australia, or equivalent	The proposed zoning change allows the consideration of future development options for the subject site and for the adjoining No.36 Flood Street that could achieve higher ESG performance and reduce current externalities of shared vehicle and pedestrian access, time limited on-street parking, a lack of landscaped and deep soil areas and a lack of canopy street trees and poor passive surveillance which are all legacies of aged building stock.	Yes
Proposals should include an amount and type of non-residential floor space appropriate to the site's strategic location and proximity to, or location within, a centre or activity street	<p>The site is not within a centre.</p> <p>Flood Street has been identified as part of the Green Grid Movement Network (see below).</p> <p>A portion of non-residential floor space could be incorporated into a future development scheme. However this could only be achieved with a change of land use zoning because the current zoning prevents any major work on the site and limits that work to an educational establishment. Under the current zoning and site conditions such work would be unfeasible as explained in Section 3.</p>	Yes

	The change in zoning is needed to expand the redevelopment options to achieve any change to the current built form and land use.	
Proposals should create demonstrable public benefit.	<p>The zoning change can facilitate new development options which can include the following public benefits:</p> <ul style="list-style-type: none"> • Safe vehicle access, parking, loading/unloading, and access for service and emergency vehicles contained within the site rather than reliant upon adjoining land and time limited parking restrictions in Flood Street. This will make the street safer for pedestrians, cyclists and drivers and increase on-street parking availability • ESG performance with new buildings better designed and fitted out for efficient capture and re-use of energy and water, natural ventilation and natural lighting, reduced heat retention and the inclusion of landscaping • Integration with the streetscape, passive surveillance, landscaped setbacks and canopy street trees with microclimate and CPTED benefits and improved compatibility with the heritage and aesthetic values of the Flood Street Landscape Conservation Area C42 and the Woodstock Street Heritage Conservation Area C16 • Landscaped areas and deep soil zones throughout the site to improve microclimatic conditions and enhance the separation distances to neighbours • Boundary setbacks and building separation compatible with the separation requirements between residential buildings with associated benefits to solar access, privacy, streetscape, landscape opportunities and amenity. 	Yes
Proposals should be supported by an infrastructure assessment and demonstrate any demand for infrastructure generated can be satisfied, assuming existing development capacity in the area will be delivered	The change to land use zone will not create an increased demand for infrastructure.	N/A
Proposals should make a positive contribution to the built environment and	The existing zoning isolates the site and limits future development to an educational establishment. Any such works would require major changes to the site which are	Yes

result in an overall better urban design outcome than existing planning controls.	<p>not consistent with the existing use rights provisions of the EP&A Act and would require continued reliance on vehicle access and parking requirements that rely on impacts to neighbours and the street.</p> <p>The objectives of the current SP2 Zone require only that the site be preserved for infrastructure purposes and do not require design integration with the context and setting of surrounding development.</p> <p>The change in zoning introduces new land use objectives which seek development compatible with the surrounding medium density residential environment.</p>	
Proposals should result in high amenity for occupants or users	<p>The aging Synagogue building does not match contemporary expectations for its user group.</p> <p>Amenity could be improved for future users and for neighbours if the zoning change is applied and a range of future development options are made available.</p>	Yes
Proposals should optimise the provision and improvement of public space and public connections	<p>Flood Street is part of the Green Movement Grid (see below).</p> <p>Redevelopment options can result in improvements to the street frontage and adjoining public footpath and street as follows:</p> <ul style="list-style-type: none"> • Canopy street trees to match the well established avenue of trees on both sides of Flood Street • Time restricted kerb side parking can be removed, freeing up space for the community • New landscaping and front setbacks can be established to achieve passive surveillance and integration with the streetscape • Vehicle movements for loading/unloading and servicing can be relocated to Anglesea Street to improve prioritisation and safety of pedestrians and cyclists in Flood Street 	Yes

Planning Priorities

The Planning Priorities of the LSPS relevant to this proposed LEP amendment are listed below along with comments specific to the proposal and site.

Planning Priority 4 – Ensure the community is well serviced by crucial social and cultural infrastructure

Specifically the LSPS states as follows (our emphasis added):

“When Waverley Council moved to the Standard Instrument LEP, Council chose to retain all land zoned ‘SP2 – Infrastructure’ for the purposes of retaining these crucial pieces of infrastructure in our area. This has meant

that despite increasing pressures for residential development, Council has largely been able to protect these facilities for the community. Council will seek to retain and protect existing social infrastructure uses, and will not allow the deterioration of this land to other uses preferred by the current market such as residential, or tourist and visitor accommodation."

As explained in the response to Question 2 above, Zone SP2 has been applied to the site in error. The site has been used as a Synagogue since the 1950's (not an Educational Establishment). In accordance with PN10-001 and PN11-002 the current land use zone is incorrect and should not have been applied to the site. Furthermore PN10-001 does not list places of public worship as "crucial pieces of infrastructure".

There are more appropriate and contemporary means by which Council can achieve the retention and improvement of community facilities rather than "locking down" and restricting future development options for existing land in Zone SP1 and Zone SP2. Best practice in planning for community facilities is increasingly shifting to multi-purpose facilities such as the nearby Margaret Whitlam Centre and surrounding open spaces. Sites should be located on major, multimodal transport routes. Facilities should be useable day and night, 7 days a week without those use times being detrimental to neighbourhood amenity. Facilities need to be fitted out as universally accessible. These attributes cannot be readily achieved at the subject site under the current zoning and the amenity of the medium density residential neighbourhood is sensitive to the need for safe parking, vehicle access, shared pedestrian and cycling paths, safety lighting and hours of operation of non-residential uses. Community facilities can be more feasibly supported when delivered in coordination with a mix of land uses and increasing the flexibility of zoning and land use tables is key to achieving this.

Notwithstanding, the proposed zoning change facilitates the retention, enhancement and redevelopment of the Synagogue as compared to the current zoning which prevents feasible improvements.

For these reasons the subject site must be considered an exception to the abovementioned quotation from the LSPS.

Planning Priority 6 – Facilitate a range of housing opportunities in the right places to support and retain a diverse community

As demonstrated in Section 3, the change in zoning can increase options for redevelopment of No.34 Flood Street as well as avoid site isolation for No.36 Flood Street. There are a potentially a variety of redevelopment options for an amalgamated site and some of the benefits of those options are identified in Section 3 including:

- Built form compatible with the context and setting of the site within a medium density residential neighbourhood
- contemporary energy and water efficiency performance standards
- safe means of pedestrian and vehicle access, loading and unloading, waste management and service vehicle access
- consistency with the streetscape
- enhancement of the interface with the adjoining Heritage Conservation Area C16 Woodstock Street and the Flood Street Landscape Conservation Area C42
- Site-specific at-grade vehicle access to Anglesea Street which is dedicated to the site (that is, not shared by other properties or reliant on legal agreements with neighbours as is the current situation);
- Onsite parking, waste management, plant and equipment concealed basement to protect visual and acoustic amenity
- Boundary setbacks compatible with the separation requirements between residential buildings with associated benefits to solar access, privacy, streetscape, landscape opportunities and amenity
- Deep soil planting including mid-block where it will be of greatest benefit within the site and for residential neighbours
- A greater percentage of the site provided as landscaped open spaces
- Reconstruction of the footpath reserve in Flood Street and an increased front setback with opportunities for street tree planting and landscaping compatible with the Flood Street Landscape Conservation Area C42





- Improved quality of the interface with Flood Street by removing high concrete walls and creating opportunities for passive surveillance and active private spaces adjoining the public footpath;
- Improved environmental performance of the land use.

Planning Priority 7 – Recognise and celebrate Waverley's unique place in the Australian contemporary cultural landscape

As stated above, a change to the zoning can facilitate a redevelopment of the site (and No.36 Flood Street) in a manner more compatible with the adjoining Flood Street Landscape Conservation Area C42 and the Woodstock Street Heritage Conservation Area C16.

Planning Priority 13 – Protect and grow our areas of biodiversity and connect people to nature

As noted below, Flood Street is identified in the LSPS as part of the Green Grid Movement Network and the established tree canopy is a green corridor.

Planning Priority 14 – Achieve net zero carbon emissions in the built environment

The current planning framework prevents feasible major works on the site which would be needed to make the buildings energy and water efficient and utilise natural lighting and ventilation. By comparison, future development options enabled by Zone R3 increase the potential for delivery of a high performing new development on the site or enhancement, revitalisation and major upgrades of the existing Synagogue.

Local Implementation

Local implementation projects relevant to the site as identified in the LSPS are:

- Urban greening
- Green grid link along Flood Street
- Urban Street tree canopy

Figure 20 is an extract from the Sustainability graphic in the LSPS that shows Flood Street is identified as part of the Green Grid Connection and as a biodiversity corridor (related to the established urban tree canopy). As already noted in this report, the zoning change is needed if the site features are to be substantially changed. These changes can include:

- new landscape and deep soil zones within the site
- frontage works for canopy street tree planting and landscaping
- relocation of vehicle access to Anglesea Street
- removing time-limited parking.

All of the abovelisted changes will enhance the function of Flood Street as a green link and contribute to urban greening.



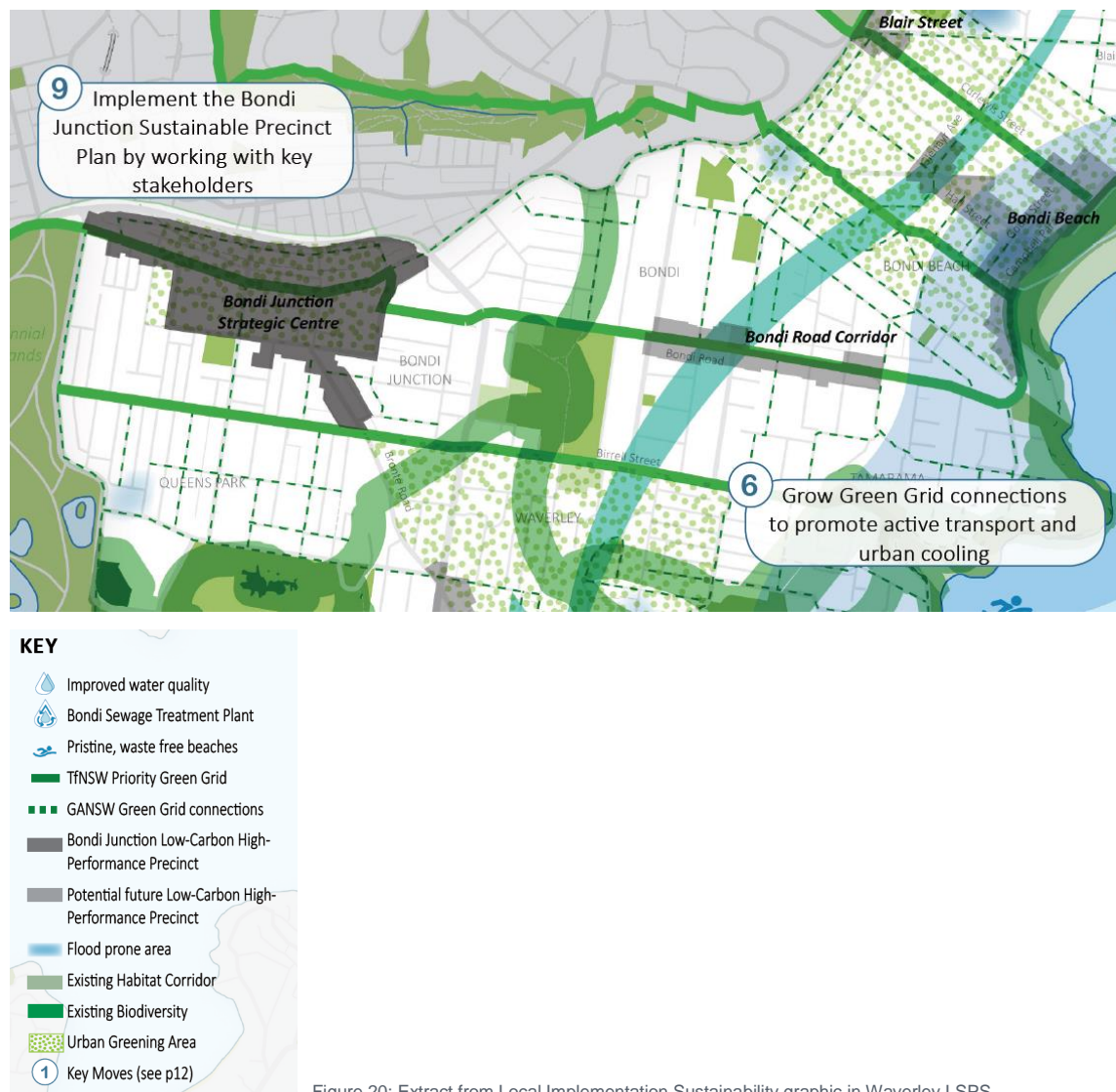


Figure 20: Extract from Local Implementation Sustainability graphic in Waverley LSPS

Q5. Is the planning proposal consistent with applicable state and regional studies or strategies?

Under the current Zone SP2 the planning framework does not require future development to improve ESG performance.

Under Zone R3 future development of the site will be assessed against Council's Development Control Plan and may require elements which align with ESG performance.

There are no other state and regional studies or strategies to which the proposed LEP amendment is required to align.

Q6. Is the planning proposal consistent with applicable State Environmental Planning Policies?

The proposed zoning change does not impact the way in which current and draft State Environmental Planning Policies (SEPPs) operate.

Q6. Is the planning proposal consistent with applicable Ministerial Directions (s9.1 directions)?

The proposal is consistent with all applicable Ministerial Directions under Section 9.1 of the *Environmental Planning and Assessment Act 1979* as outlined in the below table.

Table 6 Section 9.1 Ministerial Directions

Ministerial Direction	Relevance	Consistency	Comments
2. Environmental and Heritage			
2.3 Heritage Conservation	A planning proposal must contain provisions that facilitate the protection and conservation of heritage significance and Indigenous heritage significance	Yes	<p>The subject site is adjacent to the Woodstock Road Heritage Conservation Area C16 and the Flood Street Landscape Conservation Area C42.</p> <p>The proposed future development of the site will provide opportunities for changes within the site that may be more compatible with the context and setting created by these heritage areas such as the provision of canopy street trees and landscaping within the setback to Flood Street.</p> <p>The change in zoning will have no physical impact to the significance of these heritage and landscape conservation areas.</p> <p>A full assessment of potential heritage impacts would be required as part of the future detailed development application and would address any potential impacts, including visual impacts.</p> <p>The proposed LEP amendment is consistent with Direction 2.3..</p>
3. Housing, Infrastructure and Urban Development			
3.1 Residential Zones	<p>The objectives of this Direction are to:</p> <p>(a) encourage variety and choice of housing types to meet needs</p> <p>(b) make efficient use of existing infrastructure and services</p> <p>(c) minimise impacts on environment and resource lands.</p> <p>A planning proposal must align with the objectives and include provision for good design, essential services connections and not reduce residential density.</p>	Yes	<p>The planning proposal seeks to apply Zone R3 to the site which permits a wide variety of residential accommodation with consent. The site is connected to all essential services and is within the established urban footprint.</p> <p>WLEP 2012 already contains provisions for essential services and good design. The planning proposal does not seek to change the existing FSR control of 0.9:1.</p> <p>The proposed LEP amendment is consistent with Direction 3.1.</p>
3.4 Integrating Land Use and Transport	A planning proposal must locate zones for urban purposes and include provisions that give effect to and are	Yes	The planning proposal will facilitate development options that can continue to take advantage of the wide variety of



Table 6 Section 9.1 Ministerial Directions

	<p>consistent with the aims, objectives and principles of:</p> <p>(1) <i>Improving Transport Choice – Guidelines for planning and development (DUAP 2001), and</i></p> <p>(2) <i>The Right Place for Business and Services – Planning Policy (DUAP 2001).</i></p>		<p>transport and movement options available in the neighbourhood.</p> <p>The proposed LEP amendment is consistent with Direction 3.4.</p>
6. Local Plan Making			
6.1 Approval and Referral Requirements	<p>A planning proposal must:</p> <ul style="list-style-type: none"> minimise the inclusion of provisions that require the concurrence, consultation or referral of development applications to a Minister or public authority, not identify development as designated development unless the relevant planning authority has obtained the approval of the Director-General of the Department of Planning 	Yes	The planning proposal does not introduce any additional concurrence requirements or identify the development as designated development.
6.3 Site Specific Provisions	<p>A planning proposal that will amend another environmental planning instrument in order to allow a particular development proposal to be carried out must either:</p> <p>(a) allow that land use to be carried out in the zone the land is situated on, or</p> <p>(b) rezone the site to an existing zone already applying in the environmental planning instrument that allows that land use without imposing any development standards or requirements in addition to those already contained in that zone, or</p> <p>(c) allow that land use on the relevant land without imposing any development standards or requirements in addition to those already contained in the principal environmental planning instrument being amended.</p>	Yes	The planning proposal is consistent with this Direction. It does not allow a particular development proposal.
7. Metropolitan Planning			
7.1 Implementation of A Plan for Growing Sydney	This Direction applies to all Planning Proposals in nominated Local Government Areas including Waverley and seeks to give legal effect to the	Yes	The relevant strategic planning documents are the GSRP and the ECDP prepared by the Greater Sydney Commission. The planning proposal is

Table 6 Section 9.1 Ministerial Directions

planning principles, directions and priorities for subregions, strategic centres and transport gateways contained in *GSRP*.

A Planning Proposal must be consistent with the Plan unless the inconsistency is of minor significance and the planning proposal achieves the overall intent of the Plan.

considered to give effect to these Plans and will assist in achieving the Planning Priorities and Indicators relevant to the site and the proposal - refer to discussions at Part 5.3.2 of this report.

5.3.3 Section C – Environmental, Social and Economic Impact

Q8. 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 the proposal?

The site is part of an urban environment and does not contain habitat for threatened species, populations or ecological communities.

Q9. Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?

The change in land use zone will not result in any unacceptable detrimental environmental effects. The potential environmental impacts are considered below and would be specifically investigated with any future development application.

Social and Cultural Impacts

The neighbourhood is well provided with recreational, cultural, spiritual and educational facilities and places. As detailed in Section 2.3 there are a variety of publicly accessible open spaces, community facilities, schools and places of public worship within a 2km radius of the site.

The closest community facilities and services are located 200m to 300m walking distance south of the site and include the Margaret Whitlam Recreation Centre, Waverley Oval, Waverley Park and the Memorial Gardens. These facilities are located along a major movement route of Bondi Road serviced by buses and including dedicated cycling and pedestrian pathways.

The Margaret Whitlam Recreation Centre includes multi purpose indoor sports courts (basketball, netball, volley ball, indoor soccer, table tennis Tai Chi, Pilates, Yoga and other group classes), 170m² function room with seated capacity of 120 with commercial kitchen available for hire Sunday-Wednesday 7am-10pm, Thursday-Saturday 7am-12am, 250-seat grandstand overlooking the oval, club rooms with kitchen facilities suitable for small meetings available for hire Monday to Friday 9am to 10pm, a commercially leased café (Waverley Park Kiosk) which can cater for functions on and off the premises and is open 7.30am to 3pm daily. There are also change rooms and store rooms for sports participants. The indoor sports facilities are available for bookings and are open from 7am to 10pm daily. All facilities at the Margaret Whitlam Centre are fully accessible.

Waverley Park is a district-scale sport and recreation facility. It was the first public park in Waverley having been dedicated in 1880. It has cultural, heritage, recreational, aesthetic and community significance. Waverley Oval includes a cricket pitch and grandstand, synthetic athletics field, netball courts, multi-purpose courts, fitness stations and walking/running tracks. Most of the sports facilities have lighting and can be used after daylight hours. All facilities are available for hire and a free of charge if the use is less than 1 hour.



There are a wide variety of indoor and outdoor spaces for community gathering in a formal or informal manner which are readily accessible from the subject site.

The change in land use zone will not result in a loss of service or facility that would be detrimental to the quality of life of existing and future community members.

The current users of the Synagogue and the Charity Kitchen have been consulted with regard to the proposed change in land use zone. The current users are fully supportive of the proposed LEP amendment.

Heritage Impacts

The site is adjacent to Woodstock Street Heritage Conservation Area C16 and the Flood Street Landscape Conservation Area C42. As noted throughout this report, the change in land use zone will enable consideration of a range of future redevelopment opportunities all of which would need to comply with the requirements of Clause 5.10 to WLEP 2012 and demonstrate compatibility with the heritage and landscape significance of C16 and C42.

Traffic Impacts

The site currently relies upon shared pedestrian and vehicle access with the neighbouring property to the north as explained in Section 2.2. A change to the land use zone will enable a variety of future redevelopment options and avoid future site isolation for No.36 Flood Street. The anticipated outcome from the change in land use zone is the potential for a site amalgamation of No.34 and No.36 Flood Street to achieve a development site with safe vehicle and pedestrian access which does not rely on access shared with neighbouring properties.

Q10. Has the planning proposal adequately addressed any social and economic effects?

Economic Impacts

The change in zoning will correct an error in WLEP 2012 and is consistent with PN10-001 and PN11-002. This site has a long history of use as Synagogue and the Community Kitchen is a more recent additional use. However, the building does not meet contemporary standards for a place of public worship particularly with regard to:

- Accessibility and features for people with mobility, sight and hearing challenges
- Vehicle access and parking for staff and visitors, loading/unloading, service and emergency vehicle access
- Colocation and multi-function / multipurpose activities
- Environmental performance
- Integration with the streetscape
- Indoor, outdoor and transition spaces
- Landscaped areas and deep soil zones

The current planning framework does not make major works required to address these inadequacies feasible. The building would require major re-work or redevelopment to be upgraded. It is a better option to provide a range of alternatives for the redevelopment of the site and the financial benefits of new development options to be factored into the provision of new facilities either at the site or elsewhere.

The current land use zone prevents any consideration of economically feasible options for a better Synagogue building.

Social Impacts

The Synagogue currently hosts a variety of small scale community-based activities and the current users are fully supportive of the potential for the land use zoning change to facilitate more options for their future needs.





As described in response to Question 9 above, there are a wide variety of community facilities and services available for free and for hire that can accommodate the variety of activities currently conducted on the site.

5.3.4 Section D – State and Commonwealth Interests

Q10. Is there adequate public infrastructure for the planning proposal?

The site is within an established area well serviced by infrastructure, utilities, public transport and a variety of social, educational, cultural and recreational facilities as described throughout this report. The zoning amendment will not trigger requirements for local or regional scale amplification or introduction of new infrastructure, services or facilities.

Future development of the site may trigger contributions in accordance with Council's adopted Contributions Plans and standard approvals for utilities and services provisions that are conditional with specific development consents. These contributions and works would be tailored to the specific future development of the site.

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

The proposed LEP amendment does not trigger any changes to:

- Infrastructure and services provided by State agencies and public authorities;
- Resources managed by State agencies and public authorities.

The proposal does not trigger the referral criteria in Attachment B to the DPIE Guideline. For these reasons no referrals or consultation with State agencies and authorities are considered necessary.

A future Gateway determination will specify agencies and public authorities to be consulted and the methods and timing of such consultation if these are considered necessary.

5.4 PART 4 – MAPPING

The planning proposal will require amendment to WLEP 2012 Land Use Zoning Map LZN_004 to replace Zone SP2 with Zone R3 for the subject site only.

5.5 PART 5 – COMMUNITY CONSULTATION

Consistent with the requirements for a Standard LEP amendment and the DPIE Guidelines, it is anticipated the draft planning proposal would be publicly exhibited for a period of 28 days. The exhibition material will be specified in the Gateway determination and will include a copy of the planning proposal, an explanation of provisions, the draft LEP maps and an indication of the timeframes for completion of the process as estimated by Council.

Anticipated community consultation methods will include notice of public exhibition in a local newspaper and on Waverley Council's website, copies of exhibition material in electronic and hard copy at local government premises and letters of notification to nearby and adjoining land owners. Government agency referrals are considered unnecessary.

5.6 PART 6 – PROJECT TIMELINE

The proposed LEP amendment fits the category of a 'Standard' amendment as defined in the DPIE Guidelines and therefore is expected to take 320 days (225 working days) from the date of positive Gateway determination.

Notwithstanding, given the clear inconsistency with PN10-001 and PN11-002 we would anticipate an expedited resolution of this matter as a correction of an error to the current LEP.





6. Conclusion

This planning proposal seeks to amend *Waverley Local Environmental Plan 2012* (WLEP 2012) to apply Zone R3 Medium Density Residential Zone to Lot 1 DP 1094020 to replace the existing Zone SP2 Educational Establishment. The amendment will correct an anomaly to the current zoning as the site does not contain an Education Facility.

This application for a planning proposal has been prepared in accordance with Division 3.5 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) as well as the NSW DPIE "*Local Environmental Plan Making Guideline*" (December 2021).

The application demonstrates the proposed LEP amendment has strategic and site specific merit. The amendment is consistent with the Greater Sydney Regional Plan, the Eastern City District Plan, the majority of key priorities of Waverley Local Strategic Planning Statement, applicable State Environmental Planning Policies and Ministerial Directions as prescribed by Section 9.1 of the EP&A Act. The proposed LEP amendment is consistent with the Planning Practice Note PN10-001 which provides specific guidance in the application of zones SP1 and SP2. The proposal is consistent with the Planning Practice Note PN11-002 in that the site is not major infrastructure, is not a large education facility in a strategic location and could reasonably be expected to support a variety of uses in the future (including community facilities and a place of public worship coordinated with other compatible land uses).

The planning proposal will enable the feasible renewal of No.34 Flood Street and will prevent isolation of the adjoining No.36 Flood Street because:

- the existing buildings no longer meet contemporary requirements for their existing uses; and
- future development options are not possible under the current zoning.

The planning proposal will not result in unacceptable environmental effects or demands for new or augmented local and regional infrastructure and services. The amendment will facilitate future development options on the site that:

- are consistent with adopted key planning strategies
- are compatible with the context and setting including the heritage-listed conservation areas and streetscape; and
- can deliver future social, environmental, cultural and economic benefits.

The change to the land use zoning will facilitate feasible development options for major improvements to the existing Synagogue (and potentially also the adjoining college at No.36 Flood Street) that can be expected to make improvements to the following:

- vehicle access, parking, loading/unloading, and access for service and emergency vehicles
- ESG performance
- Integration with the streetscape, passive surveillance, landscaped setbacks and canopy street trees
- Landscaped areas and deep soil zones throughout the site
- Enhancement to the heritage significance of the adjoining Heritage Conservation Area C16 Woodstock Street and the Flood Street Landscape Conservation Area C42.
- Built form that complies with Council's development standards and objectives
- Boundary setbacks compatible with the separation requirements between residential buildings with associated benefits to solar access, privacy, streetscape, landscape opportunities and amenity.

Accordingly, this application for a Planning Proposal is entirely worthy of Council's support and forwarding to the Department for a positive Gateway determination.





ANNEXURE A

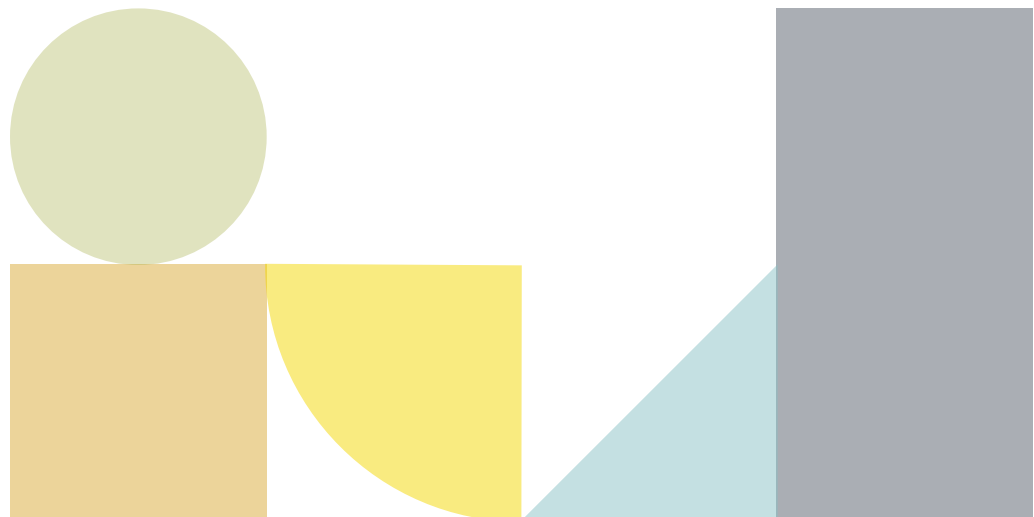
Pre-lodgement advice from Waverley Council





ANNEXURE B

Future Development Scenarios



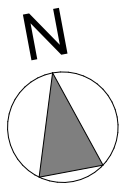


LOCATION PLAN

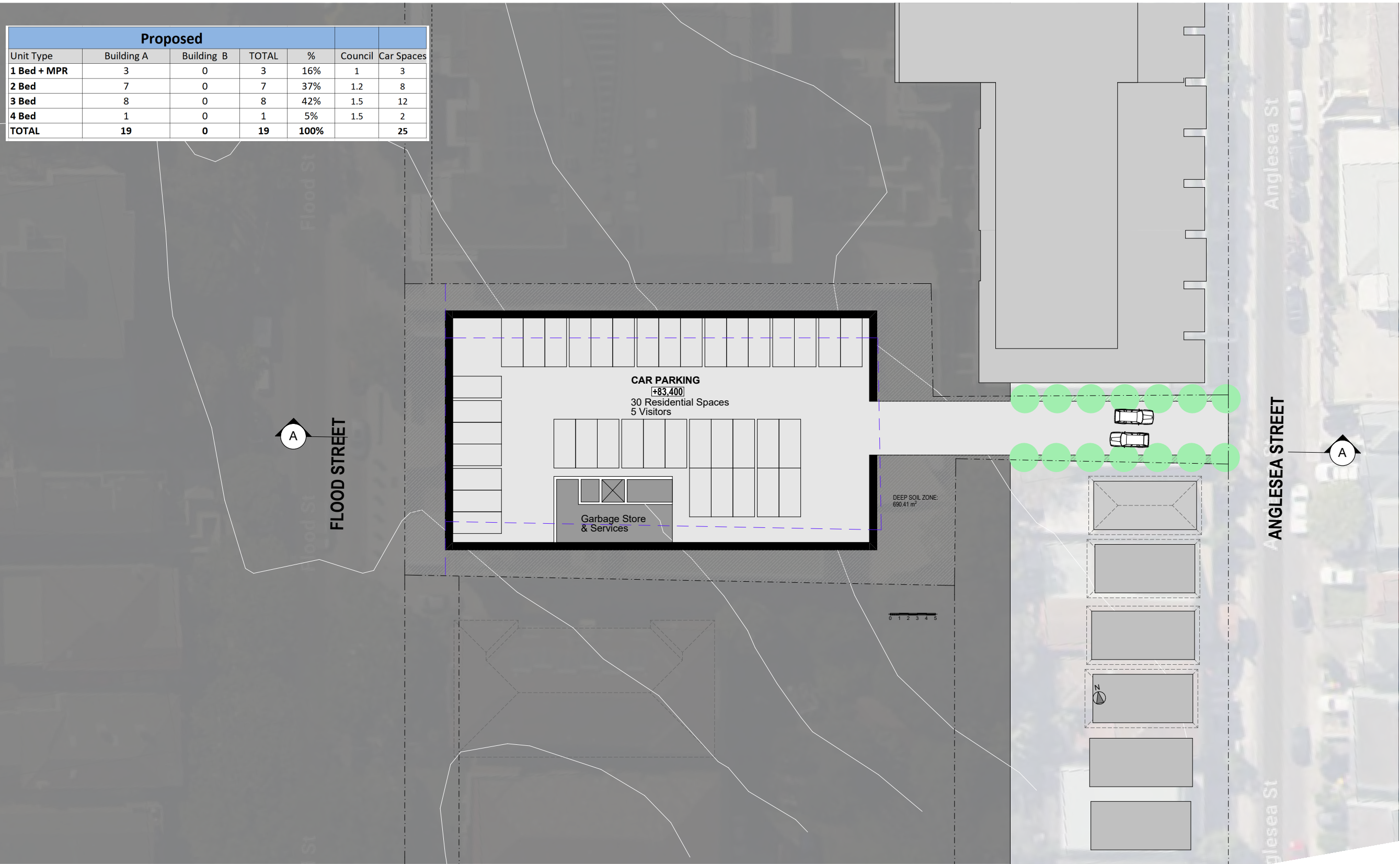


VIEW FROM FLOOD STREET

RECEIVED
Waverley Council
Application No: PP-1/2022
Date Received: 14/03/2022



Proposed						
Unit Type	Building A	Building B	TOTAL	%	Council	Car Spaces
1 Bed + MPR	3	0	3	16%	1	3
2 Bed	7	0	7	37%	1.2	8
3 Bed	8	0	8	42%	1.5	12
4 Bed	1	0	1	5%	1.5	2
TOTAL	19	0	19	100%		25



36A Flood Street, Bondi Beach, NSW 2026

2 Ground Floor

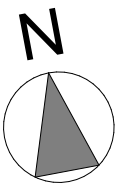
1:200

RECEIVED

Waverley Council

Application No: PP-1/2022

Date Received: 14/03/2022



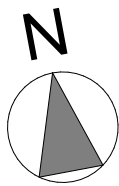
Proposed					
Unit Type	Building A	Building B	TOTAL	%	Council
1 Bed + MPR	3	0	3	16%	1
2 Bed	7	0	7	37%	1.2
3 Bed	8	0	8	42%	1.5
4 Bed	1	0	1	5%	1.5
TOTAL	19	0	19	100%	25

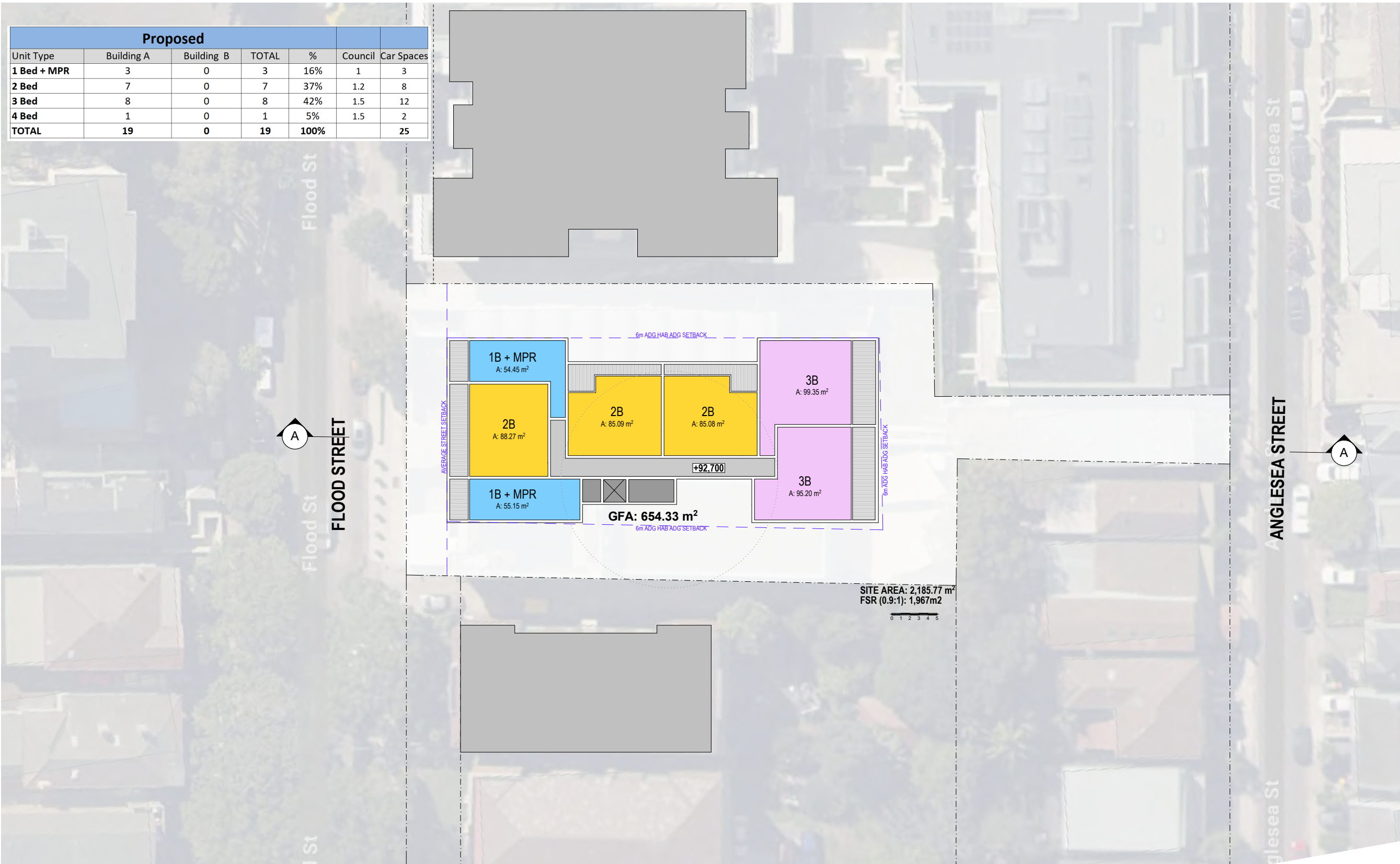


36A Flood Street, Bondi Beach, NSW 2026
3 Level 01

1:200

RECEIVED
Waverley Council
Application No: PP-1/2022
Date Received: 14/03/2022







36A Flood Street, Bondi Beach, NSW 2026

5 Level 03

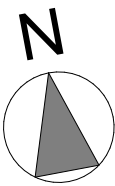
1:200

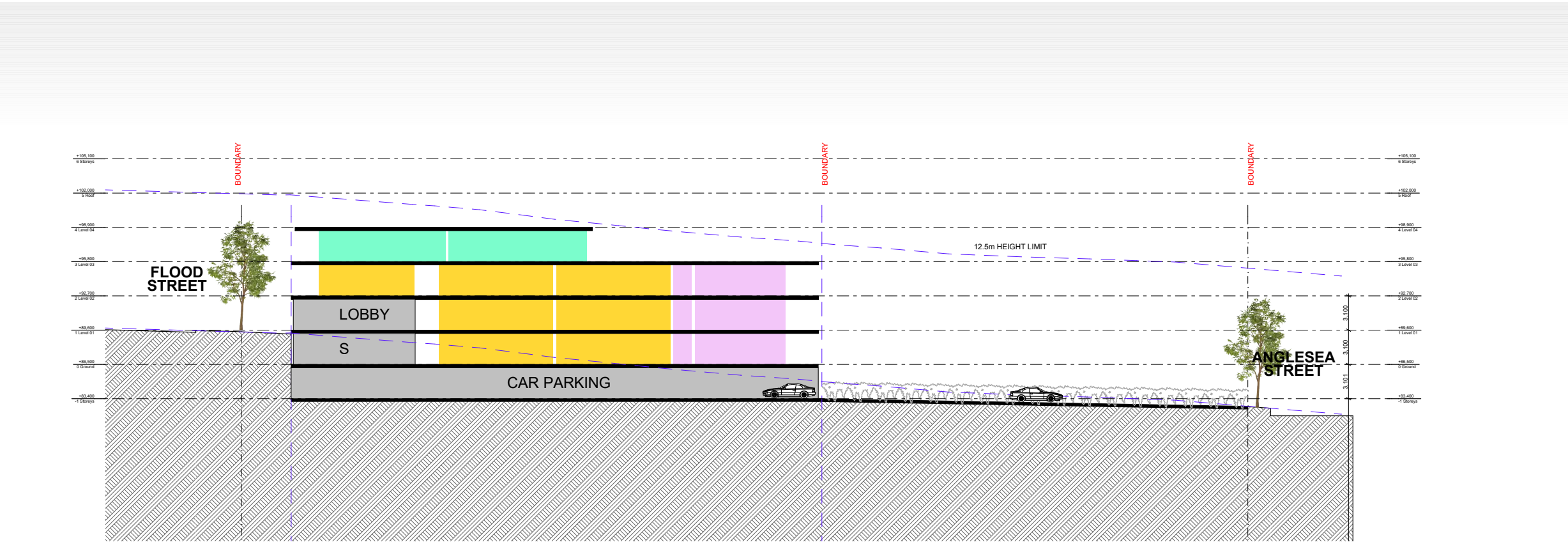
RECEIVED

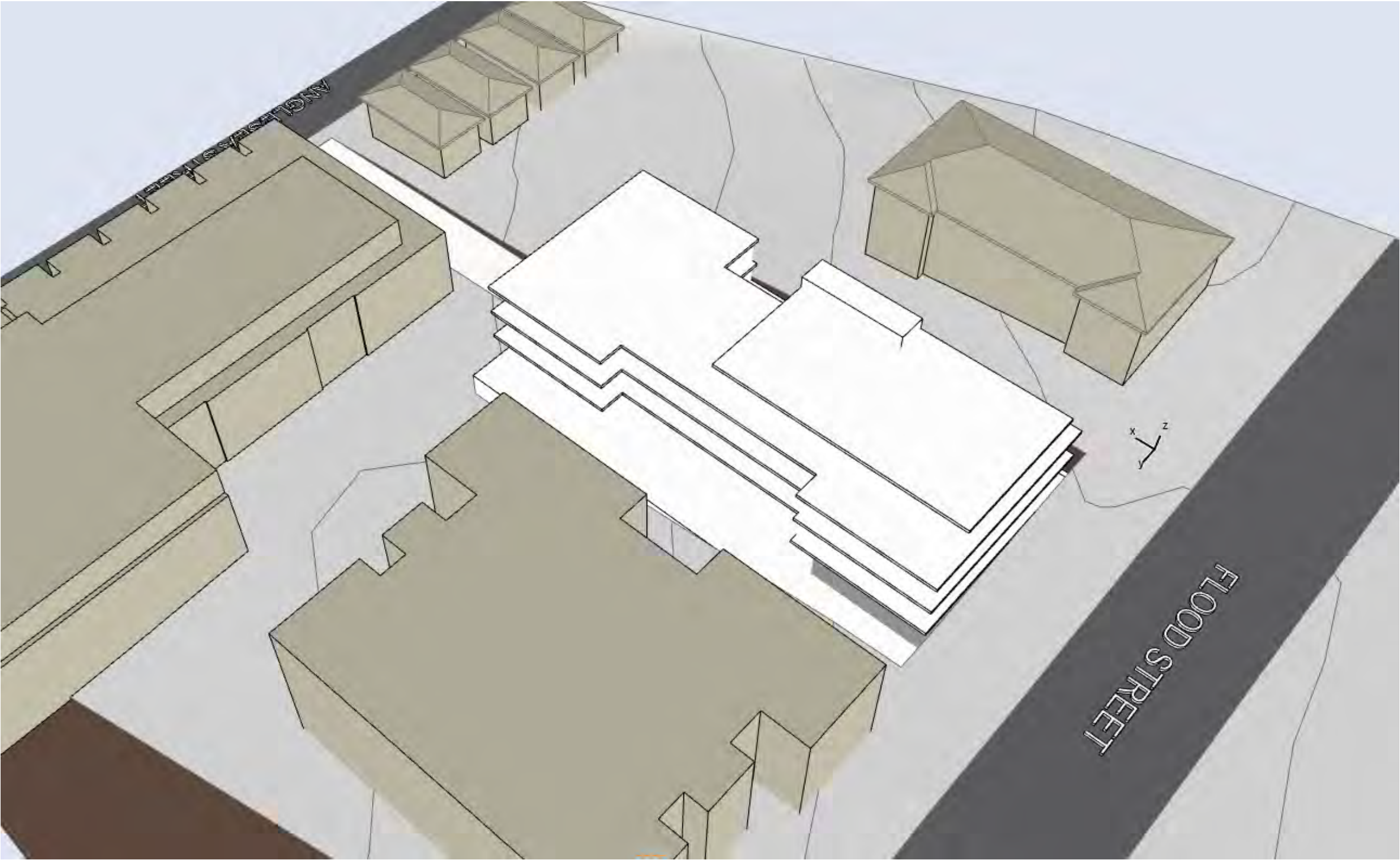
Waverley Council

Application No: PP-1/2022

Date Received: 14/03/2022



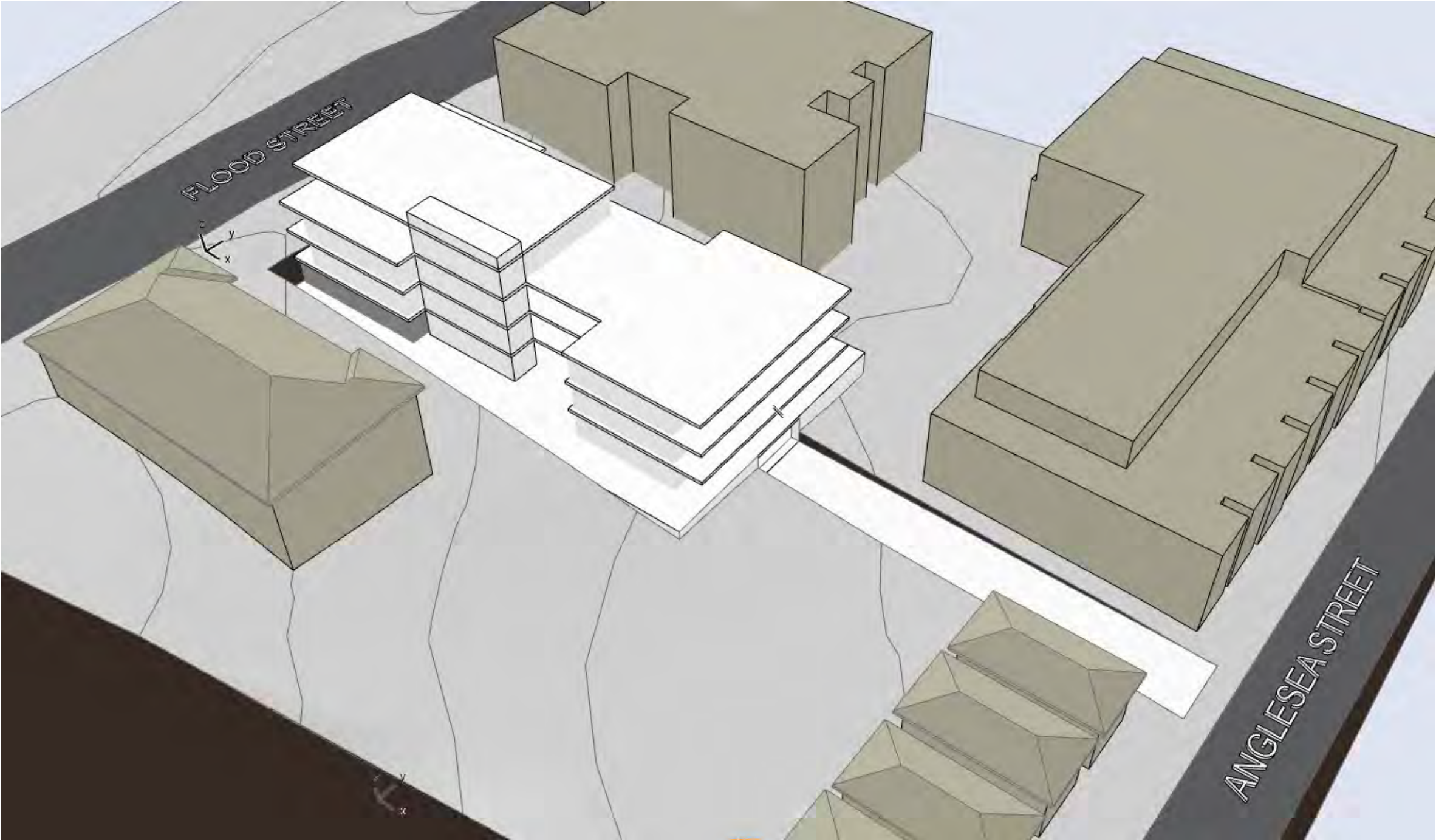




RECEIVED
Waverley Council
Application No: PP-1/2022
Date Received: 14/03/2022

36A Flood Street, Bondi Beach, NSW 2026
7 Perspective 1





RECEIVED
Waverley Council
Application No: PP-1/2022
Date Received: 14/03/2022

36A Flood Street, Bondi Beach, NSW 2026
8 Perspective 2





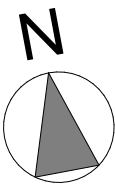
Ground Floor

APARTMENT OPTION

RECEIVED
Waverley Council

Application No: PP-1/2022

Date Received: 14/03/2022





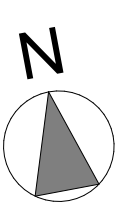
Level 01

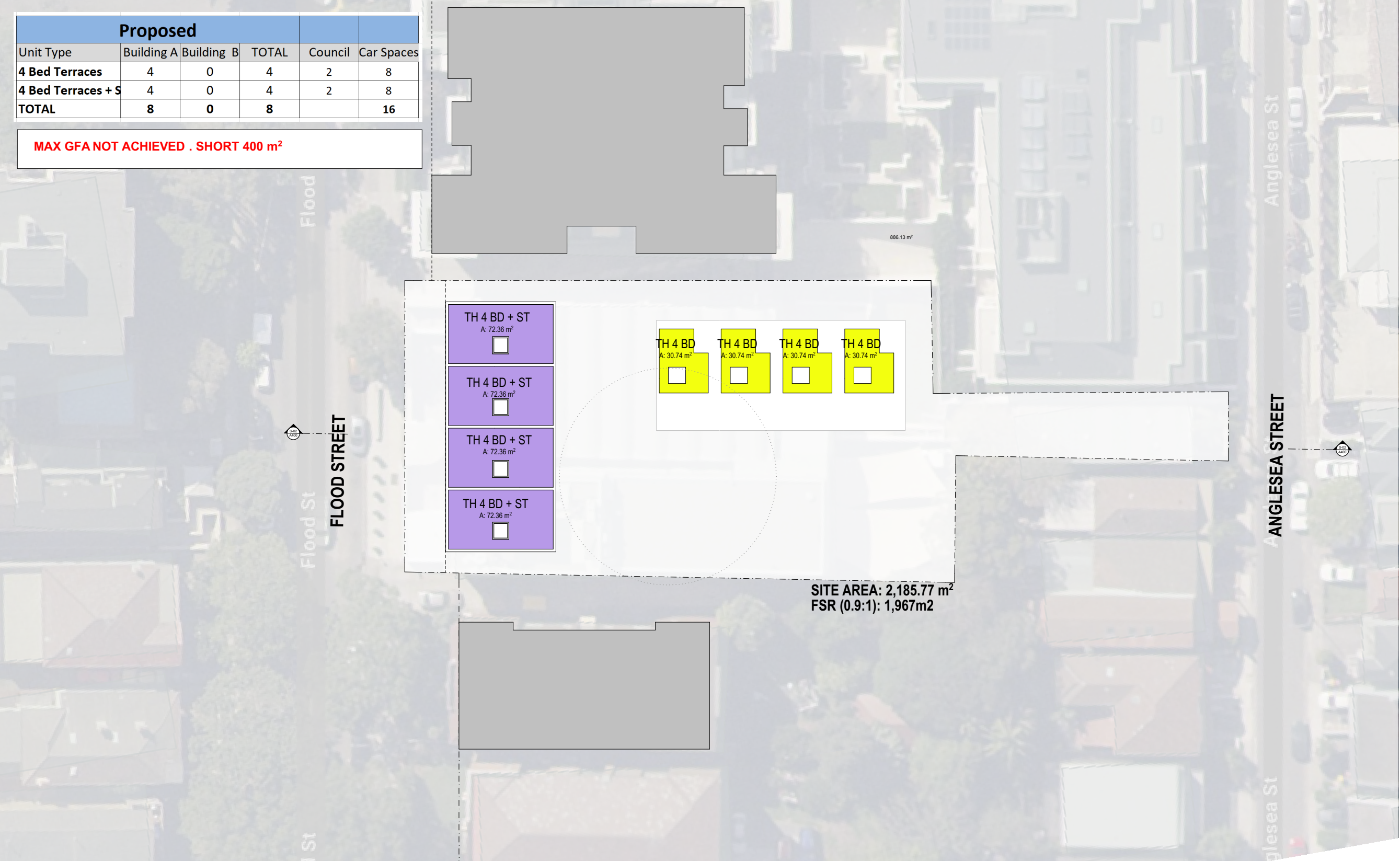
APARTMENT OPTION

RECEIVED
Waverley Council

Application No: PP-1/2022

Date Received: 14/03/2022





Level 02

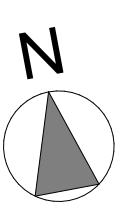
APARTMENT OPTION

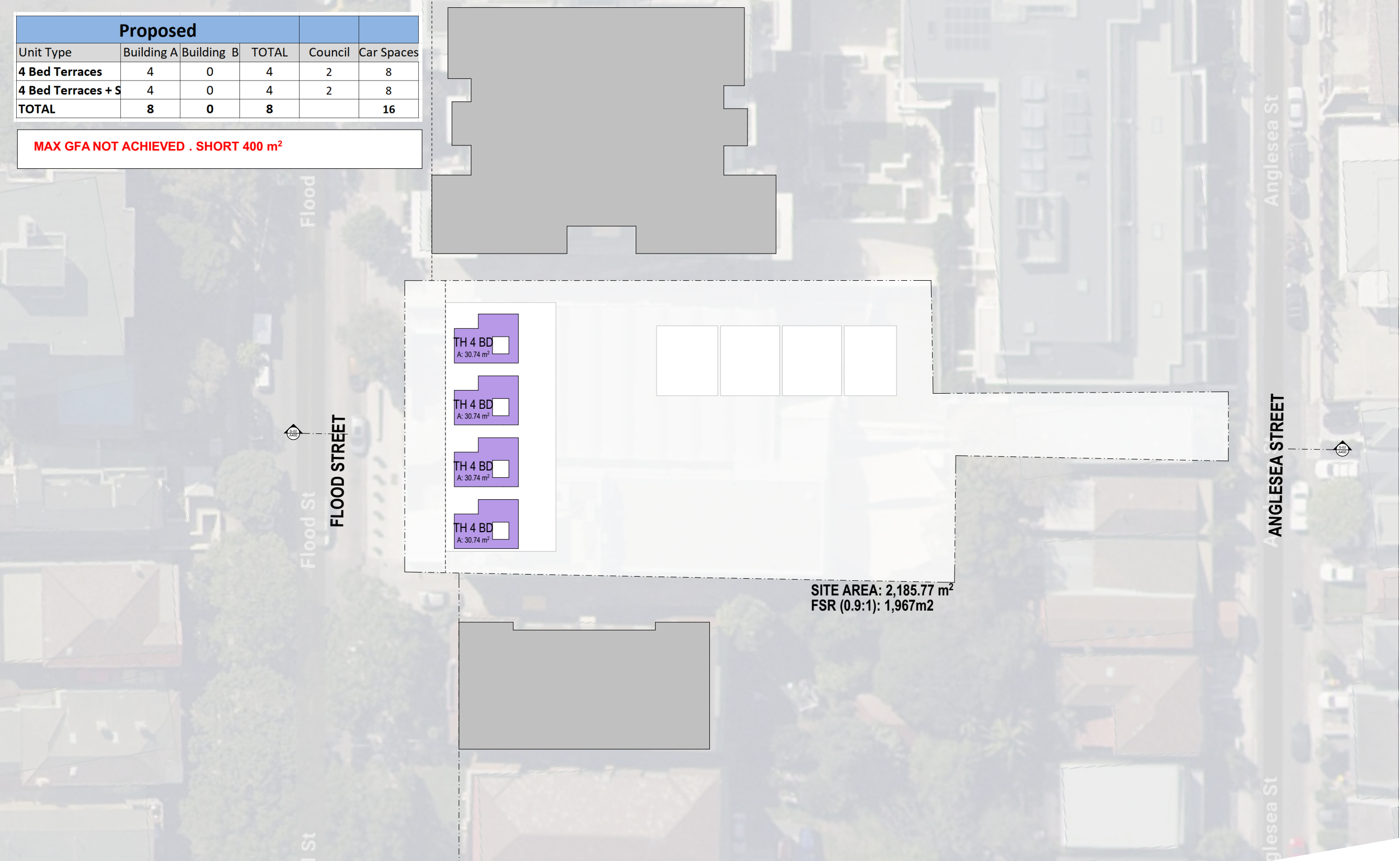
RECEIVED

Waverley Council

Application No: PP-1/2022

Date Received: 14/03/2022





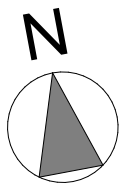
Level 03

APARTMENT OPTION

RECEIVED
Waverley Council

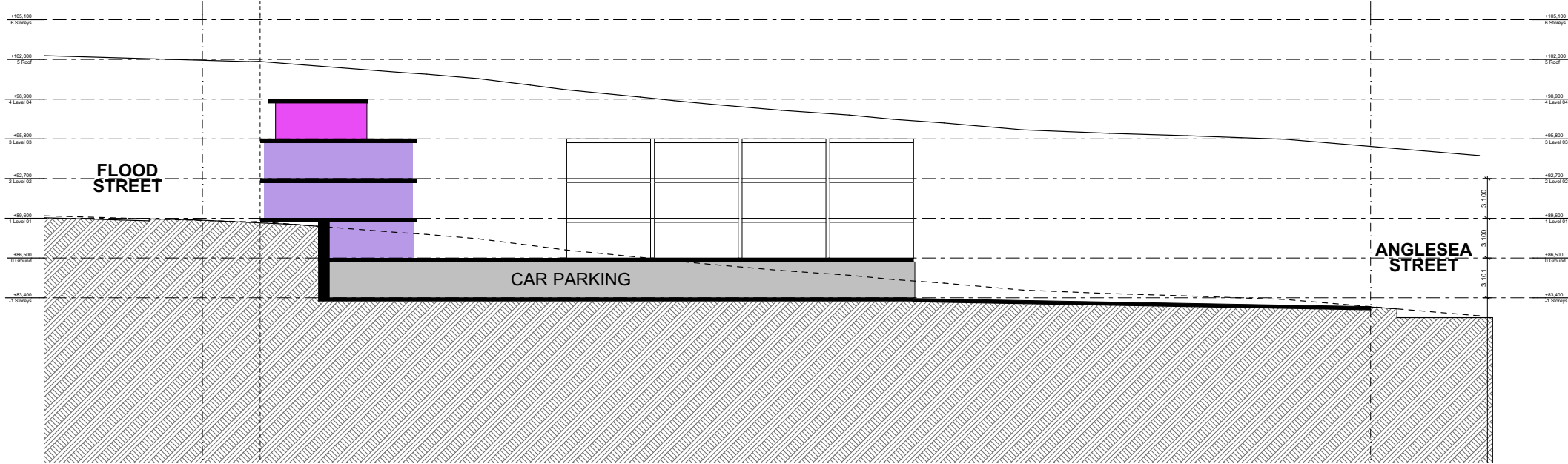
Application No: PP-1/2022

Date Received: 14/03/2022



Proposed					
Unit Type	Building A	Building B	TOTAL	Council	Car Spaces
4 Bed Terraces	4	0	4	2	8
4 Bed Terraces + S	4	0	4	2	8
TOTAL	8	0	8		16

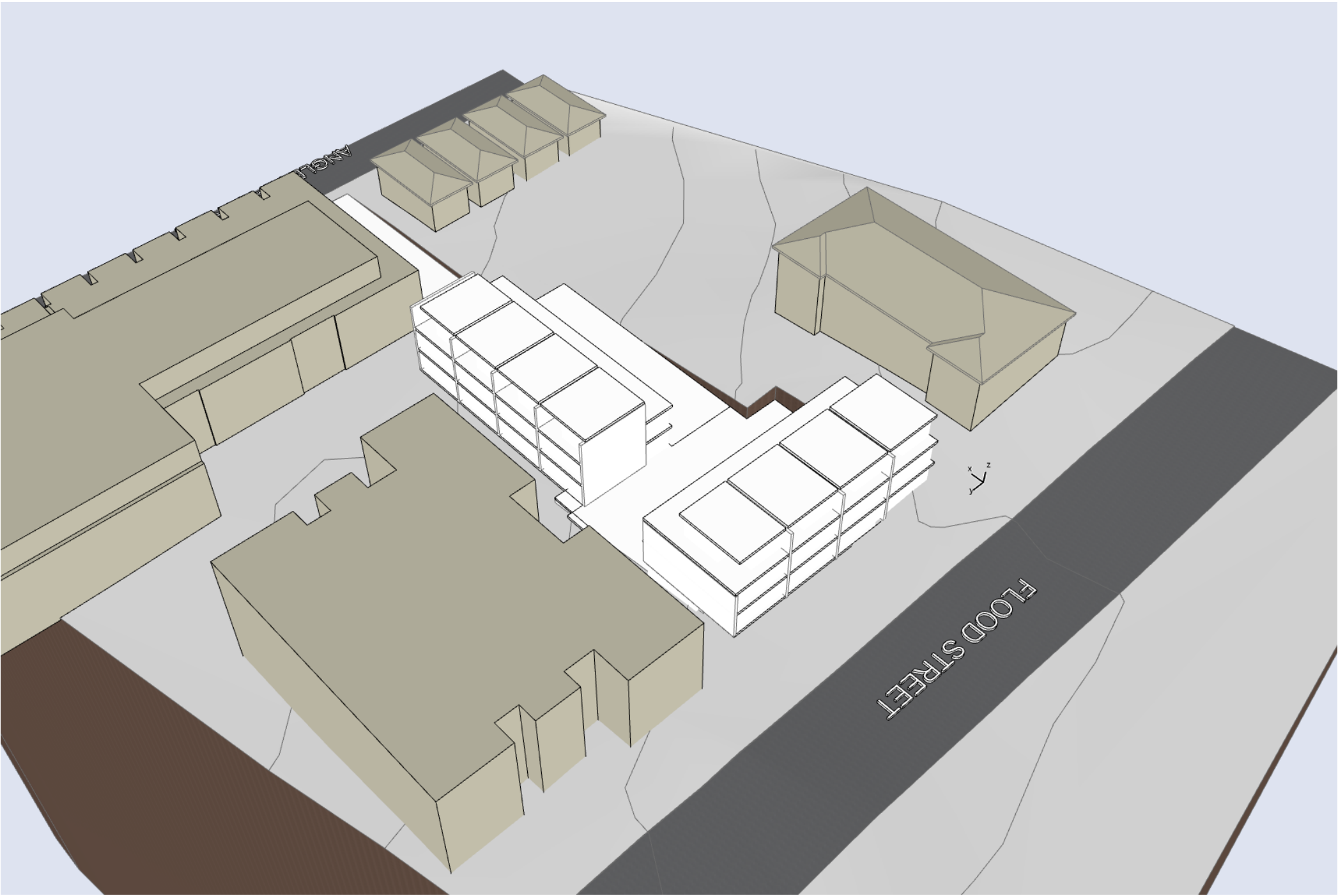
MAX GFA NOT ACHIEVED . SHORT 400 m²



Section
APARTMENT OPTION

RECEIVED
Waverley Council
Application No: PP-1/2022
Date Received: 14/03/2022



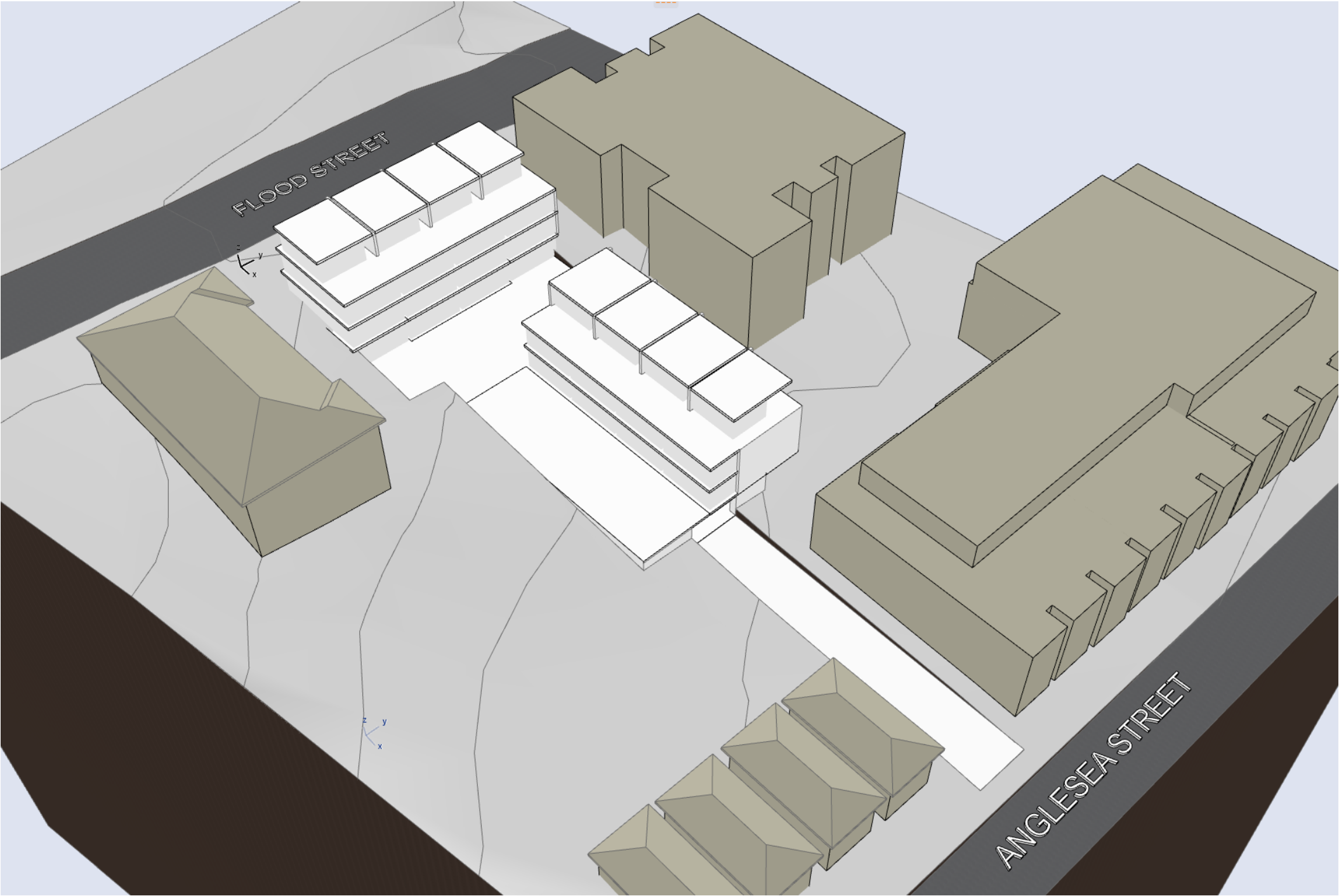


Perspective 1

APARTMENT OPTION

RECEIVED
Waverley Council
Application No: PP-1/2022
Date Received: 14/03/2022





Perspective 2

APARTMENT OPTION

RECEIVED
Waverley Council
Application No: PP-1/2022
Date Received: 14/03/2022



RECEIVED
Waverley Council

Application No: PP-1/2022

Date Received: 14/03/2022

From: [Jaime Hogan](#)
To: [Matthew Lennartz](#)
Cc: [George Bramis](#); [Tim Sneesby](#)
Subject: RE: [EXTERNAL]Meeting with Matt Lennartz
Date: Friday, 11 February 2022 3:22:50 PM
Attachments: [image001.png](#)

Hi Matthew,

Thank you for your email and notice regarding the upcoming planning proposal.
Could you please send us an email as well once you have uploaded to the Planning Portal.

I note that the LEP Making Guidelines identify this proposal as a Standard proposal: *To change the land use zone where the proposal is consistent with the objectives identified in the LEP for that proposed zone.* The Standard proposal aligns with our current 'Major' planning proposal fee. I will confirm this translation internally and provide an update upon lodgement.

Thanks, and have a great weekend.

Jaime Hogan

A/Executive Manager, Urban Planning, Policy and Strategy

Cnr Paul St and Bondi Rd, Bondi Junction NSW 2022

P: 02 9083 8057

E: jaime.hogan@waverley.nsw.gov.au

W: www.waverley.nsw.gov.au



WAVERLEY COUNCIL

Connect with us

[facebook](#) | [twitter](#) | [youtube](#)

Please consider the environment before printing this e-mail or any attachments.

Waverley Council acknowledges the Bidjigal and Gadigal people who traditionally occupied the Sydney Coast and we pay our respects to Elders past, present and future.

From: Matthew Lennartz <matthewl@meriton.com.au>
Sent: Friday, 11 February 2022 2:20 PM
To: Jaime Hogan <Jaime.Hogan@waverley.nsw.gov.au>
Cc: George Bramis <George.Bramis@waverley.nsw.gov.au>
Subject: [EXTERNAL]Meeting with Matt Lennartz

You don't often get email from matthewl@meriton.com.au. [Learn why this is important](#)

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hi Jaime,

I've had a quick chat with George this morning about Flood Street.

As per Council's advice, we are preparing a Planning Proposal that aligns with our submission on the broader LEP Review by Council (attached).

Subject to the attached submission, some phone discussions with George and our meeting on 14.12.21, we had sought a written response from Council responding to the submission and confirming the verbal advice received.

I understand that Council is very busy and given the new PP Guidelines require pre-lodgement meetings/advice, I have covered what we understood from Council to cover this requirement below.

- The proposed zoning change could not be facilitated through the broader LEP review process as it seeks a change that would create new residential land;
- Any change would require a site-specific planning proposal for 34 Flood Street;
- The PP will need to address the requirements of all state, regional and local strategic planning policies and relevant guidelines;
- The PP will need to demonstrate that the site can be reasonably developed under the proposed zoning change;
- Meriton to review Council's Planning Agreement Guidelines. We have done this and as we are not seeking an amendment to the density controls, it is not applicable.

Upon review by Meriton and our planning consultants, we did not see the requirement for any detailed technical assessments given the very minor nature of the planning proposal with all technical assessments to be undertaken in any future development application (Architectural, traffic, drainage, landscape etc).

Please note that we expect to lodge within 2 weeks so please give me a call if you need to discuss anything further. As per other recent PP's we have done in other LGA's, we will upload to the portal and wait for a response from Council on fees (we assume it would be minor).

Please call if you need to discuss and have a great weekend.

Regards

Matthew Lennartz

Executive Manager – Planning and Government



Direct +61 2 9287 2691 **Mobile** +61 478 473 297
matthewl@meriton.com.au | meriton.com.au

Meriton Group

Level 11, Meriton Tower, 528 Kent St, Sydney 2000

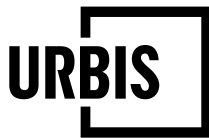
Tel +61 2 9287 2888 | **Fax** +61 2 9287 2777

Please consider the environment before printing this email

The information contained in this message and or attachments is intended only for the person or entity to which it is addressed and may contain confidential and/or privileged material. Any review, retransmission, dissemination or other use of, or taking of any action in reliance upon, this information by persons or entities other than the intended recipient is prohibited. If you received this in error, please contact the sender and delete the material from any system and destroy any copies.

This email has been scanned for viruses and malware by **Mimecast Ltd**

This email has been scanned for viruses and malware by **Mimecast Ltd**



**ANGEL PLACE
LEVEL 8, 123 PITT STREET
SYDNEY NSW 2000**

URBIS.COM.AU
Urbis Pty Ltd
ABN 50 105 256 228

21 October 2021

General Manager
Waverley Council
55 Spring St
Bondi Junction NSW 2022

Dear Sir/Madam,

SUBMISSION TO DRAFT WAVERLEY LOCAL ENVIRONMENTAL PLAN REVIEW YESHIVA COLLEGE - 34 AND 36A FLOOD STREET, BONDI

This submission has been prepared by Urbis on behalf of The Yeshiva Foundation, owners of the above site. Specifically, this submission requests that Council rezone part of the above site as part of Waverley Council's (Council) draft Local Environmental Plan (LEP) preparation process.

In response to the draft LEP, our client requests that Council rezone 34 Flood Street and thus apply a consistent R3 medium density zone across the entire site. Our logic and rationale are outlined as follows.

1. THE SITE

Yeshiva College (The site) is located at 34 and 36A Flood Street, Bondi, situated approximately 1km east of Bondi Junction (refer to Figure 1).

The site has an area of approximately 2,180m² and is legally described as Lot 1 DP1094020 and Lot A DP340445.

The site is currently occupied by Yeshiva College, which includes a synagogue; school; a centre based childcare centre (TBC) and a community facility ("Our Big Kitchen")

P0036938_Submission to Draft WLEP_Oct 21

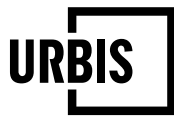


Figure 1 The site (site outlined in red)



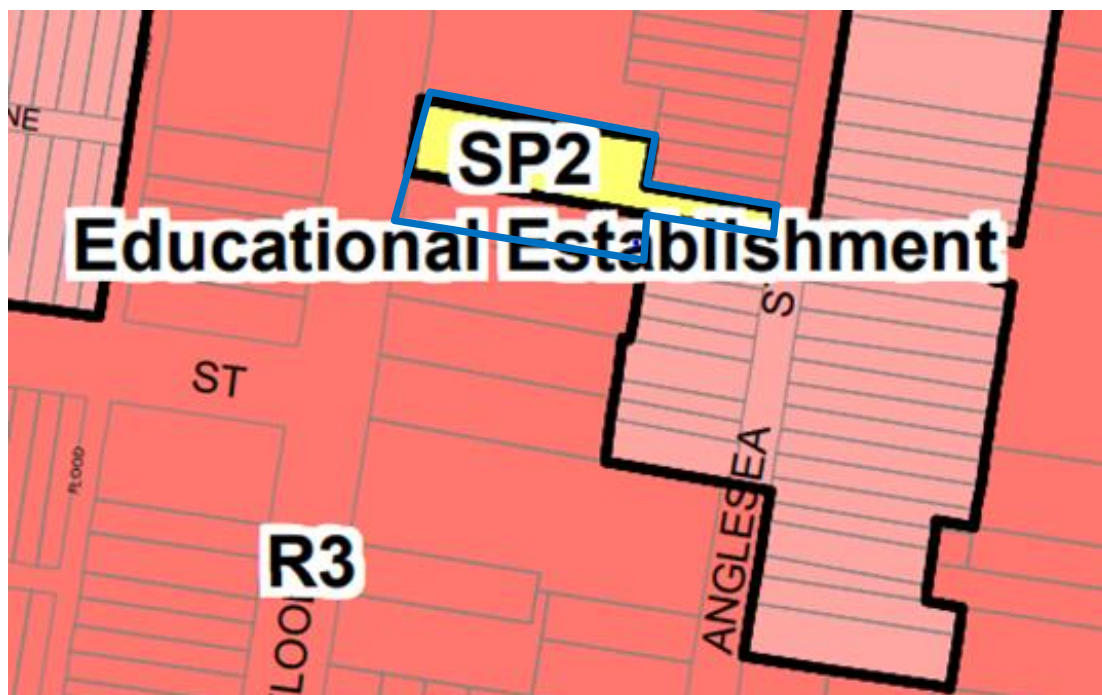
Source: Six Maps

The northern portion of the site (34 Flood Street) is zoned SP2 Education Establishment, and the southern portion of the site (36A Flood Street) is zoned R3 Medium Density Residential under the Waverley Local Environmental Plan 2012 (WLEP 2012) (refer to Figure 2).

The site is not identified as a heritage item and is not located within a heritage conservation area.



Figure 2 Zoning Map (site outlined in blue)



Source: Waverley LEP 2012

2. REZONING REQUEST AS PART OF THE LEP REVIEW

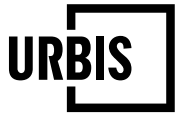
Following the endorsement of Waverley Local Strategic Planning Statement, and now in response to Council's exhibition of its Draft LEP, it is requested that 34 Flood Street is rezoned to enable a consistent R3 medium density zone (with consistent built form controls) across the site. It is considered reasonable planning response as in our opinion this appears to be a zoning anomaly.

The current split zoning is largely a function of historical circumstances and a more rational approach to land use zoning over the site could be achieved by applying a consistent underlying zone especially noting that the current built form and facilities do not necessarily align with underlying zone boundary.

Most notably, the existing synagogue (defined as a place of worship) sits within the SP2 (Educational Establishment) zone. Conversely the Yeshiva Collage (defined as an Educational Establishment) sits with the R3 zone.

Anecdotally, there is a possibility that land immediately to the north of the site (and now occupied by a relatively modern retirement village) may have originally formed part of a much larger Yeshiva College campus. We are currently undertaking research into the planning history of the site, via Council records, and Waverley Library and State Library Archives to confirm whether this is in fact the case. A supplementary submission may follow,

Irrespective of the outcomes of this research, there remain other sound planning reasons for zone rationalisation as follows:



- DPIE Practice Note PN 11-002 provides guidance on the application of standard zones, including Special Purpose Zones. The clear intent of the Note is to reduce reliance on use of Special Purpose zones across NSW. Included in the Note are the following statements that support that intent:

*"land uses or sites with special characteristics that cannot be accommodated in other zones";....
"highly unlikely to be used for a different purpose in the future, e.g cemeteries and sewage treatment plants"....."a small minority of schools across NSW may also be considered a strategic site".*

- The site could not be regarded as a "strategic site" in the context of broader education service delivery or locational qualities.
- Under the proposed R3 Medium Density Residential zone, the existing centre-based childcare facility and community facilities are permitted with development consent.
- The R3 zone is identified as a 'prescribed zone' under clause 33 and Part 4 of the *State Environmental Planning Policy (Educational Establishments And Child Care Facilities) 2017* (Education SEPP).
- Clause 35(1) of the Education SEPP permits development for the purpose of a school to be developed with consent within the prescribed R3 zone. In other words, the protections afforded by the current Special Purposes zone are not lost insofar as permissibility is concerned but rather have been superseded by the Education SEPP.
- Lastly a place of public worship (i.e. the synagogue) is permitted in the R3 zone.

Given this rezoning request is considered to be minor (almost "housekeeping" in nature), we would like Council to incorporate this change into its new LEP.

3. SUMMARY

In closing, we look forward to Council's positive review of this submission. If you have any immediate questions or queries, please do not hesitate to contact the undersigned.

Yours sincerely,

A handwritten signature in black ink, appearing to read "David Hoy", written over a light blue horizontal line.

David Hoy
Director
+61 2 8233 9925
dhoy@urbis.com.au

This is a Minute Extract from the Finance, Ethics & Strategic Planning Committee Meeting held on 6 March 2012

F-1203.6

Waverley Planning Review 2011 (A07/1581-04)

Report dated 20 February 2012 from the Director, Planning & Environmental Services regarding the public exhibition of the Waverley Planning Review including the Draft Waverley Local Environmental Plan (LEP) 2011 and Draft Waverley Development Control Plan (DCP) 2011. The report also recommends adoption of this plan, subject to certain amendments.

MOTION / RECOMMENDATION (Wakefield / Sloan)

That:

1. Council adopt the Draft Waverley Local Environmental Plan 2011 as exhibited, subject to the following minor amendments:
 - (a) Zone all Educational Establishments and Places of Public Worship SP2 Infrastructure.
 - (b) Amend objective (a) in Clause 1.2(2) to read "To promote and co-ordinate a range of commercial, retail, residential, tourism, entertainment, cultural and community uses to service the local and wider community".
 - (c) Amend objective (g) in Clause 1.2(2) to read "To identify and conserve the cultural, environmental, natural, aesthetic, social and built heritage of the Waverley local government area".
 - (d) Amend the fourth objective in the RE1 Public Recreation zone to read "To facilitate and manage public access to and along the coastline for all – the old, the young, the infirm and the disabled."
 - (e) Include the following objectives in the B1 Neighbourhood Centre zone:
 - To ensure that non-residential uses do not result in adverse impacts to the amenity of existing and future residential premises.
 - To strengthen the viability of Waverley's existing business centres as places of vitality for investment, employment and cultural activity.
 - (f) Amend objective (d) in Clause 4.3(1) Height of Buildings to read as follows:

"To ensure that buildings are compatible with the height, bulk and scale of the existing character of the locality and positively complement and contribute to the physical definition of the street network and public spaces".
 - (g) Amend objective (c) in Clause 4.4(1) Floor Space Ratio to read as follows:

TO ACTION/NOTE:

This is a Minute Extract from the Finance, Ethics & Strategic Planning Committee Meeting held on 6 March 2012

“To ensure that buildings are compatible with the bulk, scale, streetscape and existing character of the locality”.

- (h) Amend objective (d) in Clause 4.4(1) Floor Space Ratio to read as follows:

“To establish limitations on the overall scale of development to preserve the environmental amenity of neighbouring properties and minimise the adverse impacts on the amenity of the locality”.

- (i) That the road reserve at the intersection of Francis Street and Bondi Road be rezoned to RE1 Public Recreation and R3 Medium Density Residential to better align with the zoning of adjoining properties.
- (j) Adjust the boundaries of the E2 Environmental Conservation Zone running along the length of the coastline to exclude the sands of the beaches.
- (k) Zone the War Memorial Hospital site and the properties fronting Bronte Road SP2 Infrastructure – Health Service Facility.
- (l) Alter the zone boundary between the RE1 Public Recreation zone and SP2 Infrastructure – Water Supply Systems zone in Waverley Park to remove the encroachment on the Public Reserve in accordance with the boundary agreed to by Sydney Water.
- (m) Zone the site of Council’s Administration Building in Waverley Park SP2 Infrastructure – Public Administration Building with a floor space ratio of 2:1 and a maximum building height of 20m to reflect the existing situation.
- (n) Zone the electricity substation on Lot 69 in DP 591989 in Waverley Park adjacent to Paul Street SP2 Infrastructure (Electricity Distribution).
- (o) Zone the accessway between 55 and 57 Murray Street, which leads to the upper end of Bronte Park, RE1 Public Recreation.
- (p) Zone the accessway between 2 Wonderland Avenue and 31 Carlisle Street, which provides access from the intersection of Wonderland Avenue and Dellview Street to Tamarama Park, RE1 Public Recreation.
- (q) Zone the Diamond Bay Bowling Club RE1 Public Recreation.
- (r) Zone the Bondi Bowling Club RE1 Public Recreation.
- (s) Zone the site used for Community purposes – Youth Centre, Baby Clinic and Day Nursery – in Wairoa Avenue RE1 Public Recreation.

TO ACTION/NOTE:

**This is a Minute Extract from the Finance, Ethics &
Strategic Planning Committee Meeting held on
6 March 2012**

- (t) Remove the projected flood planning areas for the years 2050 and 2100 from the Flood Planning Maps and amend Clause 6.3 Flood Planning accordingly to delete reference to the projected flood planning areas.
- (u) Amend the description of Item I82 in Schedule 5 referring to Hotel Bondi to read 178A Campbell Parade, being Lot 1 DP 1130125.
- (v) Amend the size of a Secondary Dwelling expressed as a percentage of the Principal Dwelling in Clause 5.4(9) of the LEP to 30%.
- (w) List Exhibition Homes and Exhibition Villages as prohibited in zones B1 Neighbourhood Centre and B4 Mixed Use Developments in the Land Use Table.
- (x) List Warehouses or Distribution Centres as prohibited in zone B4 Mixed Use Development in the Land Use Table.
- (y) List Shop Top Housing as prohibited in zone R2 Low Density Residential in the Land Use Table.
- (z) List Depots as a use permissible with consent to the RE1 Public Recreation zone.
- (aa) Zone 145 Bronte Road B1 Neighbourhood Business and remove from the Land Reservation Map.
- (bb) Zone the whole of the site being 315-317 Bronte Road SP2 Infrastructure.
- (cc) Remove 30 Murray Street, Bronte from Schedule 5 and the Heritage Map.
- (dd) Amend the description of Item I178 in Schedule 5 being 67-69 Denison Street to read Lot 3 DP 1118259 Strata Plan 79674, and remove Lots 1 and 2 DP 1118259.
- (ee) Amend Subclause 4.4(3) to remove reference to the bold blue line and apply the provision to the R2, R3 and R4 Residential zones, and amend the Floor Space Ratio map accordingly.
- (ff) Amend Clause 4.4A to replace reference to "Area B" with the words "bold purple line" as the means of identifying application of Clause 4.4A.
- (gg) Zone the portion of the Scarba House site fronting Wellington Street, being Lot 2 DP 212809, R3 Medium Density Residential with a Floor Space Ratio of 1:1 and Maximum Building Height of 15m due to concerns expressed by the local community in relation to the impacts of a possible new development proposal on the site.
- (hh) Zone the site on the corner of Old South Head Road and Bondi Road R3 Medium Density Residential with a Floor Space Ratio of 0.9:1 and a Maximum Building

TO ACTION/NOTE:

This is a Minute Extract from the Finance, Ethics & Strategic Planning Committee Meeting held on 6 March 2012

Height of 12.5m in order to maintain the current planning controls for the site due to concerns expressed by the local community in relation to impacts caused by traffic congestion, overlooking, overshadowing, parking problems, loss of views and wind shearing generated by a future high density development on the site.

- (ii) Zone the land on the northern side of Macpherson Street and the northeastern side of Leichhardt Street R2 Low Density Residential with a Floor Space Ratio of 0.5:1 and Maximum Building Height of 8.5m, reflecting the existing situation, due to concerns expressed by the local community.
- 2. Council proceed with the making of the Draft Waverley Local Environmental Plan 2011 to effect the reclassification of the properties listed in Schedule 4 from Community to Operational land.
- 3. The Draft Waverley Local Environmental Plan 2011 be forwarded to the Minister for Planning in accordance with Section 68 of the Environmental Planning and Assessment Act 1979 with a request that the plan be made.
- 4. The Department of Planning and Infrastructure be advised that a Public Hearing in accordance with the provisions of Section 68 of the Act is not required as the matters raised in the submission are not of such significance as to warrant a Public Hearing.
- 5. Stakeholders be invited to enter into discussions to prepare site specific controls for the Bronte RSL Club Sub-branch site and War Memorial Hospital site.
- 6. The owners of the War Memorial Hospital site be invited to discuss the height and Floor Space Ratio controls for the site, and the matter be reported back to Council in the future.
- 7. The Heritage Inventory Sheet for Scarba House be reviewed to ensure that the curtilage around the heritage item and landscaped grounds is appropriate, and that any future development will not undermine the heritage significance of the site.
- 8. Council officers meet with officers of the Department of Planning & Infrastructure to investigate the opportunity to rezone roads in the future to either SP2 Infrastructure or that lower order zones take priority and that the outcomes of the meeting be reported to Council or incorporated into the first amendment of the gazetted Waverley LEP 2011.
- 9. Council officers commence, as soon as practical, the preparation of a set of Amendments to be submitted after gazettal of the changes to the Waverley LEP indicated herein.
- 10. The recently commissioned independent Urban Design Review of Bondi Junction be input into the Amendments indicated in Clause 9.
- 11. A heritage assessment be prepared for the Bronte Plateau (north) area.
- 12. All people who made submissions be advised of Council's decision.

TO ACTION/NOTE:

**This is a Minute Extract from the Finance, Ethics &
Strategic Planning Committee Meeting held on
6 March 2012**

13. Council staff involved in the preparation of the Waverley Planning Review 2011 be thanked for their efforts.

AMENDMENT (Cancian / Main)

That the Motion be adopted subject to Clause 1(m) be amended to now read as follows:

“Zone the site of Council’s Administration Building in Waverley Park RE1 Public Recreation zone.”

THE AMENDMENT WAS PUT AND DECLARED LOST.

THE MOTION WAS THEN PUT AND DECLARED CARRIED.

Division

For the Motion: Crs Betts, Kay, Main, Sloan, Strewe and Wakefield.

Against the Motion: Cr Cancian.

S Ibrahim, A Samuel, J Rudolph and Patrick Drummond addressed the meeting in relation to Specific Issue No. L1 – Zoning of Properties on the Corner of Bondi Road and Old South Head Road.

G Chapman addressed the meeting in relation to Specific Issue No. L2 – Zoning of Properties on Bondi Road between Waverley Crescent and Ben Eden Street.

K Bryant (Executive of the Benevolent Society), L Zeilic and K Bryers addressed the meeting in relation to Specific Issue No. L3 – Proposed Zoning of Scarba House Site.

B Nash and A Betros addressed the meeting in relation to Specific Issue No. L4 – Proposed Zoning of 117-133 Hall Street, Bondi Beach to R3 with an FSR of 0.6:1 and Height of 9.5m.

D Hynes addressed the meeting in relation to Specific Issue No. L6 – Bronte (including Bronte RSL Sub-Branch Site).

J Harrison addressed the meeting in relation to Specific Issue No. L7 – Zoning of Macpherson and Leichhardt Streets (including St Catherine’s School).

S McDonald and M Grayson addressed the meeting in relation to Specific Issue No. L8 – Bondi Junction Issues.

TO ACTION/NOTE:

REPORT
PD/5.2/22.07

Subject: Planning Agreement Policy 2014 (Amendment No. 4) - Adoption

TRIM No: SF21/4528

Author: Emma Rogerson, Acting Senior Strategic Planner

Director: Mitchell Reid, Acting Director, Planning, Sustainability and Compliance

RECOMMENDATION:

That Council adopts the Planning Agreement Policy 2014 (Amendment No. 4) and Public Benefit Register attached to the report.

1. Executive Summary

The draft Amendment 4 to the Planning Agreement Policy is largely a housekeeping amendment that proposes:

- Updates to the standardised residential benchmark rates applied to development applications in line with current market conditions.
- Housekeeping amendments relating to process improvement.
- The introduction of a Public Benefit Register, which provides further guidance on projects that voluntary planning agreement (VPA) contributions could fund.

The amendment also proposes that the General Manager be allowed to endorse planning agreements.

The Planning Agreement Policy 2014 has been successfully utilised to negotiate and draft planning agreements accompanying development applications seeking a clause 4.6 variation to clause 4.4 floor space ratio (FSR) of the *Waverley Local Environmental Plan 2012* (WLEP).

Where certain development proposes an FSR in excess of the maximum allowable under WLEP and can demonstrate that the objectives of the FSR development control are met regardless of the variation (as required by clause 4.6 of WLEP), development consent may be granted. The offer of a VPA is a relevant matter for consideration under the *Environmental Planning and Assessment Act 1979* (EP&A Act) so the offer of a VPA can be given some weight in the assessment process. VPAs are essentially a process by which the community can benefit rather than just the developer and can provide for a variety of improvements, upgrades and new infrastructure as well as funding for purposes such as affordable housing.

It is important to note that an offer of a VPA does not over-ride the normal requirement that a proposed development must be satisfactory by way of a merit assessment.

The value sharing method used in the Policy has been very successful in delivering community benefits. Over the past five years, close to \$22m has been obtained via VPAs, with \$19.8m for public domain works and \$2.2m for affordable housing. To place this number into context, the section 7.12 developer contributions provided by all development across Waverley local government area (LGA) for 2019/20 FY was \$3.75million.

Contributions have been dedicated towards several public domain upgrades including Waverley's Complete Streets program in Bondi Junction (for development relating to Bondi Junction) and several upgrades to local parks. There have been instances where parks directly adjacent to a subject development have been upgraded as a result of VPA contributions, e.g. Seven Ways at Glenayr Avenue.

Recently, the percentage of VPA funds dedicated towards Council's Affordable Housing Contributions Reserve was increased from 10% to 25%.

3. Relevant Council Resolutions

Meeting and date	Item No.	Resolution
Council 15 February 2022	CM/7.13/22.02	That Council: <ol style="list-style-type: none"> Publicly exhibits the draft Planning Agreement Policy 2014 (Amendment No. 4) and the draft Public Benefit Register attached to the report for a minimum period of 28 days. Officers prepare a report to Council following the exhibition period. Notes that the policy includes updated benchmark rates, housekeeping amendments and the introduction of a Public Benefit Register.
Strategic Planning and Development Committee 1 December 2020	PD/5.1/20.12	That Council: <ol style="list-style-type: none"> Notes the matters raised in the submissions made on the draft Planning Agreement Policy (Amendment No. 3) and the draft Affordable Housing Contributions Scheme during the exhibition period. Adopts the Planning Agreement Policy (Amendment 3) attached to the report (Attachment 1). Adopts the Affordable Housing Contributions Scheme attached to the report (Attachment 3). Notifies those people who made a submission of Council's decision. Submits a planning proposal to the Department of Planning, Industry and Environment seeking a Gateway Determination to incorporate the Affordable Housing Contributions Scheme into the Waverley Local Environment Plan 2012.

4. Discussion

Updated benchmarks

Standardised benchmark rates that provide a value of floor space dependent on location were introduced in Amendment 2 of the Policy and have been in place since August 2018. Since then, the benchmarks have been applied to at least 15 VPAs.

The benchmark rates were introduced on the basis that they were regularly updated to reflect current market conditions – and hence incorporate accurate value sharing as part of VPAs. Attachment 1 outlines the new rates, which vary from no change to a 4-15% increase from the previous benchmarks. Detailed market research was undertaken using Realestate.com, NSW Valuer General and the Housing NSW 'Rent and Sales Report'. Recent sales were taken from the 20/21 financial year time period. The methodology is the same as that used to update the benchmark rates actioned under Amendment 3 of the Policy.

Housekeeping amendments

Housekeeping amendments include:

- Incorporating changes in response to the latest draft Planning Agreement Practice Note (February 2021) published by NSW Department of Planning, Industry and Environment.
- Rewording clause 2.1 (a) from 'applications for development up to an additional area of 15% of the maximum gross floor area permitted under clause 4.4 of WLEP 2012' to 'applications for development exceeding the maximum gross floor area permitted under clause 4.4 of WLEP 2012.' The purpose of this alteration is to ensure the policy aligns with the wording and provisions of the EP&A Act 1979, *Environmental Planning and Assessment Regulation 2021* and Planning Agreement Practice Note (2021).
- Updating the residential benchmark rates in accordance with market trends.
- Clarifying how contributions towards affordable housing would be used.
- Clarifying how to apply pro rata benchmarks.
- Clarifying how to use the benchmark rates where an existing development already exceeds the maximum FSR permitted. A contribution is only charged for the additional gross floor area (GFA) over the existing GFA.
- Updating the General Manager's name.
- Introducing the Public Benefit Register.
- Clarifying processes around opportunity for assigning funding towards a public benefit that has not been adequately investigated and designed yet, allowing Council to assign funds to these pre-construction investigative and design tasks.
- Including a new letter of offer template as an appendix.

Public Benefit Register

A draft Public Benefit Register is proposed to provide a list of possible specific public benefits, which includes items presented by both members of the community and Council officers, subject to meeting listing criteria. The Public Benefit Register and the assessment of proposed items against the listing criteria is proposed to be managed by Council's Strategic Town Planning team. The Public Benefit Register is proposed to be available on Council's website and updated annually.

To assist in consideration of appropriate future public works near a development, Council officers would consider the Public Benefit Register at the time of Planning Agreement drafting.

The listing criteria includes items:

- Currently unfunded by the Long Term Financial Plan (LTFP) or grant funding.
- Not expected for short-medium term delivery due to investigation, design and funding issues.
- Provide a clear public benefit and/or response to a community need.
- Related to a Council-endorsed strategy or plan.

In essence, a public benefit that would otherwise not occur but for the funding that would become available by way of a VPA would occur.

When VPAs are exhibited, Council often receives suggestions for other public benefits that are not currently identified in a Council endorsed strategy, and these items may be worthy of further investigation by the Strategic Town Planning Team, and if appropriate also listed as potential public benefits which require additional information to deliver.

Endorsement of VPAs

VPAs that arise out of the DA assessment process are an agreement between the developer and Council that are only given effect following a DA approval. This approval will be by way of either a Planning Panel (local or state) or Land and Environment Court determination because Councillors have been removed from the DA process via State legislation.

While various parties may agree or disagree with the outcome of a DA process, once the DA has been determined, this decision cannot be revoked or retracted. If Council determined not to endorse the agreement, the DA would still be approved and the developer would benefit by not having to undertake any agreed public works or pay any agreed monetary amount.

Given this, there is really no utility in Council not endorsing any such agreement, as this action would only benefit the developer at the expense of the community.

The General Manager currently has the delegation to approve VPAs. However, this is subject to the Planning Agreement Policy 2014 (Amendment No. 3), which requires VPAs to be endorsed by the elected Council post-exhibition. For Amendment No. 4, officers are proposing that this requirement be removed, thereby allowing the General Manager to endorse VPAs. No change to the General Manager's instrument of delegation is required. Officers will regularly notify Councillors of endorsed VPAs by email, and details of each VPA will continue to appear on Council's online Planning Agreement Register. The Planning Agreement Policy is reviewed annually, allowing Council to reconsider this change if desired.

Post-exhibition changes

In response to community feedback and internal discussions throughout the consultation period a number of adjustments have been made to the draft *Planning Agreement Policy 2014 (Amendment 4)* and draft Public Benefit Register, including:

- Removing the proposed change to mandate the payment of VPA contributions associated with PP's prior to gazettal. While developers receive an uplift at the gazettal stage, this uplift is a paper profit until the development occurs when a developer has generated cash flow to fund the VPA payment. This will not impact on the receipt of contributions – simply move the timing to a more appropriate stage.
- Adjusting the Public Benefit Register to include suitable works in the Plan of Management for local parks and open spaces.
- Adding a clarification to say that contributions raised towards affordable housing would be used to primarily fund additional housing to expand the portfolio. The VPA Policy under s 2.5 (p. 13) states:

‘Some of this 25% could be used to go towards the Waverley Affordable Housing Program Reserve for the maintenance of properties.’

- Allowing provision for a VPA to be offered towards Council’s Affordable Housing Contribution Reserve to levy for the loss of existing affordable housing, in lieu of a payment to the NSW Government. Currently, the loss of existing affordable housing can be levied for a contribution under Part 3 ‘Retention of existing affordable rental housing’ of the Housing SEPP. These contributions go to the NSW Government and are not directed towards affordable housing provision in the Waverley LGA. This proposed amendment would allow these funds to be spent locally, with no associated increase in FSR.
- Clarifying how to use the benchmark rates where an existing development exceeds the maximum FSR permitted. A contribution is only charged for the additional GFA over the existing GFA.
- Adding that the VPA Policy does not apply to development applications (including modifications) for alterations and additions to a single strata subdivided property. This is in line with the intent of the Policy which is to capture value from development that is being undertaken for the purposes of generating financial profit. Works that primarily seek to increase amenity for residents do not fall under this category.

5. Financial impact statement/Time frame/Consultation

Financial impact

The funds allocated from VPA revenue in the next two years in the LTFP have been derived from funding that is already committed with existing VPAs. Accordingly, there will be no changes to public works funding in the next two years (to end of 2022–23 FY). Furthermore, any VPA is prospective funding that would be allocated against a project that is not yet funded or not fully funded. The purpose of a VPA is that it would fund new capital works over and above the LTFP.

If VPAs are used to levy for the loss of existing affordable housing, in lieu of a payment to the NSW Government, then this is expected to add significant revenue to the Affordable Housing Contributions Reserve. For example, in the past five years approximately \$2.5m has been levied for the loss of affordable housing and these funds have been directed to the NSW Government. It is expected that similar funds might be levied in future years.

Time frame and consultation

The draft Planning Agreement Policy 2014 (Amendment 4) (Attachment 1) and draft Public Benefit Register (Attachment 2) were placed on public exhibition between 14 March 2022 to 11 April 2022. Table 1 details the feedback received during consultation and an officer response to each. 3 submissions from individuals were received, and 1 submission from a Precinct Committee. Original submissions can be provided upon request.

Table 1. Community feedback.

Feedback	Response
The system is flawed; negotiations over the controls should not be permitted	<p>The Planning Agreement Policy 2014 (Amendment 4) does not encourage nor facilitate variations to development standards.</p> <p>Clause 4.6 of the WLEP 2012 is mandated by the Standard Instrument. It is set by the NSW Department of Planning and Environment, and is the tool for varying such standards.</p> <p>Where a development satisfies the Clause 4.6 test</p>

	<p>and is considered appropriate on its planning merits, having regard to the general heads of consideration set out in Section 4.15 of the Act a variation to a development standard may be permitted.</p> <p>Absent the VPA policy, increases in development yield would fully benefit the developer. This policy allows the community to also benefit.</p>
<p>Support for the affordable housing to 25%. I note that VPAs are a form of legalised bribery and pervert the community determined planning limits. Council should not provide a VPA option, and should do better on rezoning value capture.</p>	<p>The provision of a minimum 25% dedication of VPA contributions to affordable housing is being retained under Amendment 4.</p> <p>The submission of an offer to enter into a VPA by an applicant does not alter the determination. Council will not agree to an offer of a Planning Agreement unless it is satisfied that the proposed development is acceptable on planning grounds having regard to the general heads of consideration set out in Section 4.15 of the Act. Development that is unacceptable on planning grounds will not be given consent because of benefits offered by a VPA.</p>
<p>A number of Council's parks and open space areas have nominated PoMs with required work and aspirational work to be undertaken. I understand that not all works within these PoMs is fully funded by the LTFP or grants.</p> <p>With that in mind, it may be worthwhile to consider including works associated with the payment for, or delivery of, items nominated within Council endorsed PoMs being considered for VPA money and/or works in kind.</p> <p>It would align neatly with the fact that these areas (say Tamarama Park, Bondi Park, Waverley Oval, etc) are often bounded by R3 zones with sites that have development potential and they would be able to illustrate a direct nexus between a development standard breach on the site with a financial contribution to the improvement of an immediately adjoining/adjacent public asset.</p>	<p>The Public Benefit Register has been adjusted post-exhibition to include the works in the mentioned Plan of Management's.</p>
<p>The Committee has considered the Draft Voluntary Planning Agreement Policy and is concerned at the proposed change in Part 2 – Principles for Planning Agreements, 2.1 Purposes of Planning Agreements (a).</p> <p>This section deletes the ceiling of 15% on applications for development exceeding the maximum gross floor area permitted under Clause</p>	<p>The removal of the 15% floor space ratio variation ceiling does not encourage a greater variation of development standards.</p> <p>Instead, it reduces confusion when in the instance of a development application that exceeds FSR by greater than 15% (which can typically occur as part of court approved DAs), that a VPA no longer applies. Notwithstanding, this does not change the</p>

<p>4.4 of WLEP 2012.</p> <p>This appears to indicate that developers are entitled to seek any additional gross floor area without limit, thus giving developers an apparent benefit in starting negotiations.</p> <p>We believe that this change does not appear to be of benefit to the community.</p>	<p>fact that the submission of an offer to enter into a VPA by an applicant does not alter the determination. Council will not accept an offer to enter into a Planning Agreement unless it is satisfied that the proposed development is acceptable on planning grounds having regard to the general heads of consideration set out in Section 4.15 of the Act. Development that is unacceptable on planning grounds will not be given consent because of benefits offered by a developer.</p>
---	---

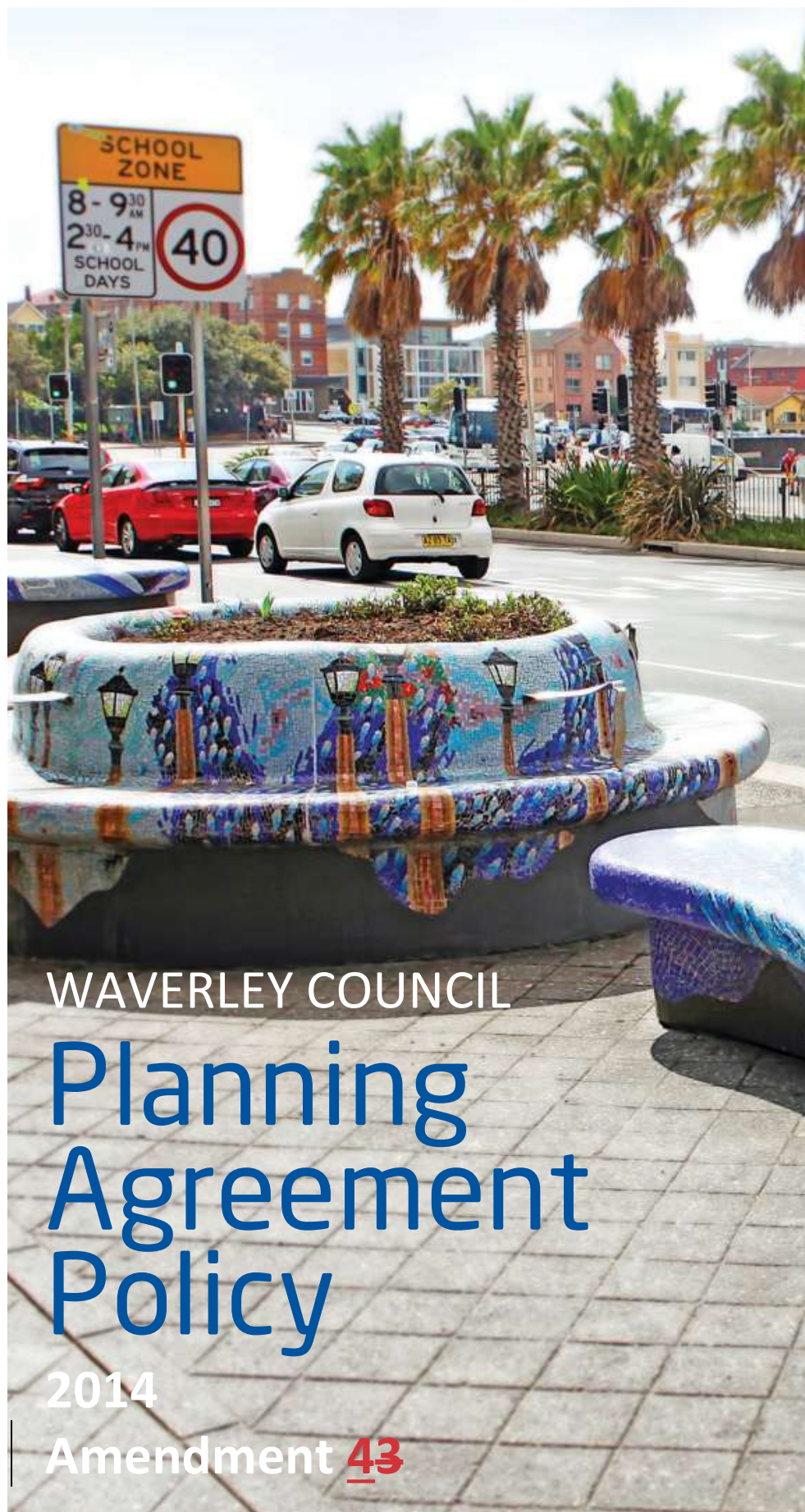
6. Conclusion

The Agreement Policy 2014 has been in place for eight years and has been drafted in accordance with the relevant legislation, and Council's policies, plans and strategies. Amendment 4 reflects a direction from Council to update benchmarks to reflect current housing market conditions and provide housekeeping amendments to ensure the policy remains up to date. A proposed change in endorsement responsibility will better align with the existing legislative protocol of Councillors not being directly involved in the DA assessment process and will assist to reduce the number of items being put to Council meetings and reduce processing times.

The introduction of the Public Benefit Register will assist to provide guidance on possible projects that VPA contributions could fund, with the intent of ensuring that the selected public benefits are as meaningful as possible to the community and would be unlikely to have been provided otherwise.

2. Attachments

1. Planning Agreement Policy 2014 (Amendment No. 4) [↓](#)
2. Public Benefit Register [↓](#) .



WAVERLEY
COUNCIL

Table of Contents

Contents

Table of Contents	2
Terms and definitions used in this Policy	4
Part 1 - Policy Framework	5
1.1 Name of this Policy	5
1.2 Application of the Policy and commencement	5
1.3 Objectives of this Policy	5
1.4 Statutory framework	7
1.5 Land use and strategic infrastructure planning	7
1.6 What are the mandatory requirements of a Planning Agreement?	8
1.7 Guiding principles	9
Part 2 - Principles for Planning Agreements	10
2.2 Principles underlying the use of Planning Agreements	11
2.3 What matters will the Council consider?	11
2.4 Strategic planning context	12
2.6 Recurrent charges	14
2.7 Pooling of development contributions	15
2.8 Do other development contributions apply?	15
Part 3 - Negotiation Procedures and Probity	16
3.1 Introduction	16
3.2 Steps in the negotiation process	16
3.3 Probity	17
Part 4 - Notification and Exhibition	20
4.1 Public notification of Planning Agreements	20
4.2 Re-notification	20
4.3 Public comment on Planning Agreements	20
Part 5 - Implementation and Conditions	21
5.1 Preparation of the Planning Agreement	21
5.2 When is a Planning Agreement required to be entered into?	21
5.3 When will planning obligations arise?	21
5.4 Implementation agreements	23
5.5 Monitoring and review of a Planning Agreement	23
5.6 Modification or discharge of obligations	23
5.7 Assignment and dealings by the developer/proponent	24
5.8 Provision of security under a Planning Agreement	24
5.9 Registration of Planning Agreements	24
5.10 Dispute resolution	24
5.11 Methodology for valuing public benefits under a Planning Agreement	24
5.12 How will the Council seek to determine the amount of Monetary Contribution that may be payable for Developments with FSR above clause 4.4 of WLEP (the WLEP Provisions)	25
5.13 How will the Council seek to determine the amount of Monetary Contribution that may be payable for an amendment to the Waverley Local Environmental Plan 2012	25



Planning Agreement Policy 2014
(Amendment No. ~~43~~)

Appendix 1 VPA payable rates

Appendix 2 Valuation Methodology for Planning Proposals

Appendix 3 Planning Agreement Template

Appendix 4 Explanatory Note Template

Appendix 5 Types of public benefits delivered by Planning Agreements

Appendix 6 Letter of Offer Template

Appendix ~~7~~ 6 Waverley Council Statement of Business Ethics

Document Control

Version	Adopted	Effective
Planning Agreement Policy 2014	7 October 2014	21 October 2014
Draft Amendment 1	20 October 2015	20 October 2015
Amendment 2	21 August 2018	21 August 2018
Amendment 3	1 December 2020	1 December 2020
<u>Draft Amendment 4</u>	<u>21 June 2022</u>	<u>21 June 2022</u>

Terms and definitions used in this Policy

In this Policy, the following terminology is used:

Act means the *Environmental Planning and Assessment Act 1979*.

Council means Waverley Council.

developer is a person who has sought a change to an environmental planning instrument (which includes the making, amendment or repeal of an instrument (s7.4(11)), or who has made or proposes to make a development application, or who has entered into an agreement with or is otherwise associated with such a person.

development application has the same meaning as in the Act.

development contribution means the kind of provision made by a developer under a Planning Agreement, being a monetary contribution, the dedication of land free of cost or the provision of any other material public benefit.

explanatory note means a written statement that provides details of the objectives, nature, effect and merits of a Planning Agreement, or an amendment to or revocation of a Planning Agreement.

instrument change means a change to an environmental planning instrument to facilitate a development the subject of a Planning Agreement.

planning benefit means a development contribution that confers a net public benefit.

public facilities means public infrastructure, facilities, amenities and services.

planning obligation means an obligation imposed by a Planning Agreement on a developer requiring the developer to make a development contribution.

planning proposal means an application to amend the Waverley Local Environmental Plan 2012

proponent means the party that is responsible for lodging a planning proposal with Council.

Practice Note means the ~~draft~~ *Planning Agreement Practice Note* (~~February~~April 2021~~10~~) published by the Department of Planning, Industry and Environment.

public includes a section of the public.

public benefit is the benefit enjoyed by the public as a consequence of a development contribution.

Regulation means the *Environmental Planning and Assessment Regulation 2000*.

WLEP 2012 means the *Waverley Local Environmental Plan 2012*.



Part 1 - Policy Framework

1.1 Name of this Policy

This Policy is known as the *Waverley Council Planning Agreement Policy 2014* (“**the Policy**”). It sets out Waverley Council’s policy and procedures relating to Planning Agreements under the *Environmental Planning and Assessment Act 1979*.

1.2 Application of the Policy and commencement

This Policy applies to development applications lodged pursuant to *Waverley Local Environmental Plan 2012* (“WLEP 2012”) and planning proposals seeking a change to WLEP 2012 for land and development within the local government area of Waverley Council (“Council”). This policy generally applies to all forms of development with the exception of dwelling houses (a building containing only one dwelling), ~~and~~ employment generating development only (i.e. retail and commercial floorspace) and alterations and additions to a single strata subdivided property. A VPA can be provided to offset the loss of affordable housing in lieu of a payment under Part 3 ‘Retention of existing affordable rental housing’ of the Housing SEPP.

This Policy was adopted by resolution of the Council on ~~1 December 2020~~ Update after adoption ~~21 June 2022~~. The Policy is effective from ~~1 December 2020~~ Update effective date ~~21 June 2022~~.

1.3 Objectives of this Policy

The objectives of this Policy are:

- (a) to establish a fair, transparent and accountable framework governing the use of Planning Agreements by the Council;
- (b) to explore the range and extent of development contributions made by development towards public facilities and other public benefits in the Council’s area;
- (c) to set out the Council’s specific policies and procedures relating to the use of Planning Agreements within the Council’s area;
- (d) to give all stakeholders in development greater involvement in determining the type, standard and location of public facilities and other public benefits; and
- (e) to facilitate public participation and to allow the community to gain an understanding of the benefits of appropriate Planning Agreements for the provision of public benefits.
- (f) to enhance the understanding within Council’s area as to possibilities for development and associated public benefits and planning benefits facilitated by Planning Agreements.

1.4 What does the Policy set out?

This Policy sets out the Council’s approach to the use of Planning Agreements through negotiation when considering development applications and planning proposals associated with changes to WLEP 2012 in the Waverley area. Council is guided by the policy approach set out in the Department of Planning’s Practice Note titled *Planning Agreements* (19 July 2005) (“the Practice Note”) and also considers



**Planning Agreement Policy 2014
(Amendment No. ~~43~~)**

the ~~draft~~ Planning Agreement Practice Note (~~April 2020~~ February 2021) ~~that was on exhibition at the time of this policy update.~~ It should be noted Council must give regard to the Practice Note but is not bound by it.

In particular, this Policy sets out

- timing considerations in respect to Planning Agreements and procedures for negotiating and entering into Planning Agreements,
- the circumstances in which the Council may consider entering into a Planning Agreement,
- the matters ordinarily covered by a Planning Agreement, the form of development contributions which may be sought under a Planning Agreement. Unless otherwise agreed in a particular case, development contributions negotiated as part of a development application or as part of a planning proposal will be valued or calculated as set out in in Appendix 1 and Appendix 2.
- examples of the kinds of public benefits which may be sought and, in relation to each kind of benefit, whether it involves a planning benefit,
- the method for determining the value of public benefits,
- whether money paid under different Planning Agreements is to be pooled and progressively applied towards the provision of public benefits to which the different agreements relate,
- when, how and where public benefits may be provided in line with strategic priorities as identified in Council's strategies and plans probity measures, and
- the Council's policies on other matters relating to Planning Agreements, such as their review and modification, the discharging of the developer's obligations under agreements, the circumstances, if any, in which refunds may be given, dispute resolution and enforcement mechanisms, and the payment of costs relating to the preparation, negotiation, execution, monitoring and other administration of agreements.

1.4 Statutory framework

The current legal and procedural framework for Planning Agreements is set in Subdivision 2 of Division 7.1 of the *Environmental Planning and Assessment Act 1979*. Council is also bound by the provisions of Division 1A of Part 4 of the *Environmental Planning and Assessment Regulation 2000*.

Section 7.4 sets out the circumstances under which a Planning Agreement may be entered into. It provides a Planning Agreement may be made between a planning authority (or two or more planning authorities) and a person (developer):

- a) who has sought a change to an environment planning instrument (such as a rezoning application); or
- b) who has made or proposes to make a development application; or
- c) who has entered into an agreement with or is otherwise associated with a person in one of the above two categories.

1.5 Land use and strategic infrastructure planning

Land use planning should occur concurrently with strategic infrastructure planning to ensure that built form provisions and infrastructure contributions deliver both appropriate urban forms and contributions related to the development. Strategic infrastructure planning should



be undertaken regularly and address expected growth, infrastructure demand resulting from this growth, and the apportioned cost of these infrastructure provisions. Planning Agreements should be used towards public benefits that are in accordance with the council's infrastructure planning and funding policies and strategies, including this Policy.

1.6 What are the mandatory requirements of a Planning Agreement?

Section 7.4(3) of the Act requires Planning Agreements to include provisions specifying:

- (a) a description of the land to which the agreement applies,
- (b) a description of:
 - (i) the change to the environmental planning instrument to which the agreement applies, or
 - (ii) the development to which the agreement applies,
- (c) the nature and extent of the provision to be made by the developer under the agreement, the time or times by which the provision is to be made and the manner by which the provision is to be made,
- (d) in the case of development, whether the agreement excludes (wholly or in part) or does not exclude the application of section 7.11 or 7.12 to the development,
- (e) if the agreement does not exclude the application of section 7.11 to the development, whether benefits under the agreement are or are not to be taken into consideration in determining a development contribution under section 7.11,
- (f) a mechanism for the resolution of disputes under the agreement,
- (g) the enforcement of the agreement by a suitable means, such as the provision of a bond or guarantee, in the event of a breach of the agreement by the developer

The Act does not preclude a Planning Agreement containing other provisions that may be necessary or desirable in particular cases, except as provided by law. However, Council has prepared a template agreement that will form the basis for a Planning Agreement and this may be used as the basis for any agreement. This is attached as Appendix 3.

Clause 25E(1) of the Regulation requires that an explanatory note must accompany a Planning Agreement that:

- summarises the objectives, nature and effect of the proposed agreement, amendment or revocation, and
- contains an assessment of the merits of the proposed agreement, amendment or revocation, including the impact (positive or negative) on the public or any relevant section of the public.



1.7 Guiding principles

The Practice Note sets out guidelines and safeguards in the application of Planning Agreements. These include determining the Planning Agreements acceptability and reasonableness. As such attention will be directed towards:

- a) proper or legitimate planning purposes, ordinarily ascertainable from the statutory planning controls and other adopted planning policies applying to development,
- b) providing for public benefits that bear a relationship to development that are not wholly unrelated to the development and are located in the vicinity of where the development is located.
- c) producing outcomes that meet the general values and expectations of the public and protect the overall public interest,
- d) providing for a reasonable means of achieving the relevant purposes and outcomes and securing the benefits, and
- e) protecting the community against planning harm.

Generally, negotiations of a Planning Agreement should commence before lodgment of a development application/submission of a planning proposal to the Gateway so as to ensure a practical outcome for public notification. In most cases, by way of safeguard, a Planning Agreement should be entered into before a planning proposal is submitted to the Gateway.

In addition, by way of safeguard, Council will seek to ensure probity of its processes involving Planning Agreements by ensuring applications involving Planning Agreements which involve Council land, or development applications made by or on behalf of Council, are independently assessed by an external planning consultant.

Part 2 - Principles for Planning Agreements

2.1 Purposes of Planning Agreements

Section 7.4(1) of the Act provides that a Planning Agreement is a voluntary agreement or other arrangement between one or more planning authorities and a developer under which the developer agrees to make development contributions towards a public purpose. Planning Agreements are negotiated between planning authorities and developers in the context of applications for changes to environmental planning instruments (planning proposals) or for consent to carry out development (development applications).

The Council's approach to the negotiation of Planning Agreements is based on the planning purpose of furthering the Council's planning vision for the area as set out in the Waverley Community Strategic Plan, Local Strategic Planning Statement (LSPS) and supporting environmental strategies (as amended from time to time). It is also informed by the mission and values of the Corporate Plan.

When negotiating planning obligations the Council will generally take into account Council's vision and mission statement, the Strategic Plan's general priorities set out in the programs to that Plan, the site circumstances and also the obligation preferences of the developer.

As an incentive towards the provision of development contributions to be applied towards public benefits and planning benefits, Council may consider, subject to its statutory obligations and other matters set out in this Policy or any other relevant Council policies, plans or procedures:

- a) **applications for development ~~up to an additional area of 15% of exceeding the maximum gross floor area permitted under clause 4.4 of WLEP 2012.~~**

~~Notwithstanding (a) above, Council will consider each proposed Planning Agreement on a case-by-case basis.~~ In circumstances where significant variation of applicable development standards is proposed consideration should be given to the preparation of a planning proposal to amend WLEP2012.

The Council may negotiate a Planning Agreement with a developer/proponent in connection with any proposed application by the developer/proponent for an instrument change (e.g. rezoning application) or for development consent relating to any land in the Council's area. The Council may also negotiate a Planning Agreement in association with another Council or another authority where relevant. The negotiation of a Planning Agreement is at the absolute discretion of the Council.

Council will not enter a Planning Agreement unless it is satisfied that the proposed development is acceptable on planning grounds having regard to the general heads of consideration set out in Section 4.15 of the Act. Development that is unacceptable on planning grounds will not be given consent because of benefits offered by a developer. It is noted that any exceptions to relevant development standards will be assessed in accordance with the provisions set out in cl.4.6 of WLEP 2012.

2.2 Principles underlying the use of Planning Agreements

The Council's use of Planning Agreements will be governed by the following principles:

- a) Planning decisions will not be bought or sold through Planning Agreements.
- b) The Council will not allow Planning Agreements to improperly fetter the exercise of its functions under the act, regulation or any other act or law.
- c) The Council will not use Planning Agreements for any purpose other than a proper planning purpose.
- d) Development that is unacceptable on planning grounds will not be permitted because of planning benefits offered by developers that do not make the development acceptable in planning terms.
- e) The Council will not seek benefits under a Planning Agreement that are wholly unrelated to particular development. Development contributions obtained from Planning Agreements in an area will be spent within the vicinity of the development it relates to.
- f) The Council will not take into consideration Planning Agreements that are wholly unrelated to an application, nor will the Council give undue weight to a Planning Agreement.
- g) The Council will not allow the interests of individuals or interest groups to outweigh the public interest when considering a proposed Planning Agreement.
- h) The Council will not improperly rely on its position in order to extract unreasonable public benefits from developers under Planning Agreements.
- i) Planning Agreements should not be used as a means of general revenue raising or to overcome revenue shortfalls.
- j) Planning Agreements must be underpinned by proper strategic land use and infrastructure planning carried out on a regular basis and must address expected growth and the associated infrastructure demand.
- k) Strategic planning should ensure that development is supported by the infrastructure needed to meet the needs of the growing population.

The progression of a planning proposal or the approval of a development application should never be contingent on entering into a Planning Agreement.

2.3 What matters will the Council consider?

The matters that the Council may consider in any such negotiation may include, but not be limited to, the following:

- (a) Whether the Planning Agreement(s) meets the demands created by the development for new public infrastructure, amenities and services.
- (b) If inclusions in the development meet specific planning objectives of the Council.



- (c) If compensation is required for the loss of, or damage to, a public amenity, service, resource or asset caused by the development through its replacement, substitution, repair or regeneration.
- (d) Rectification of an existing deficiency in the existing provision of public facilities in the Council's area is made.
- (e) Whether recurrent funding of public facilities and/or public benefit is required or provided.
- (f) The extent to which the Council needs to monitor the planning impacts of development.
- (g) Whether planning benefits for the wider community accrue from the Planning Agreement.

The most important factor in deciding what planning obligations might be required as part of a Planning Agreement is the size of the development or resulting increase in land value from an amendment to the Waverley Local Environmental Plan 2012. However, other factors such as the location or the resulting type of development may be relevant. These will establish core information such as likely increases in population and demand for particular public services.

This information will help Council with the determination of the development application/planning proposal and to prepare the Planning Agreement.

2.4 Strategic planning context

An important role for Planning Agreements is achieving specific land use planning outcomes with strategic and/or site-specific merit. A Planning Agreement should facilitate the provision of public facilities and amenity outcomes that advance the delivery of Council's corporate and strategic planning objectives and deliver valuable community benefits where appropriate. Long-term strategies including Waverley's Local Strategic Planning Statement (LSPS) and Waverley's Community Strategic Plan (2018-2029) (CSP) and delivery program are based on the outcomes of engagement with the community. The implementation of key aspects of some of these goals, the broader strategic directions and the delivery of key infrastructure areas can be directly or indirectly achieved through Planning Agreements.

The vision and goals established within Council's long-term strategic plans such as the CSP and LSPS flow through to supporting plans that guide Council's medium and short-term priorities:

- Long Term Financial Plan (10 years)
- Delivery Program (4 years)
- Operational Plan (Annual)

Council's Local Strategic Planning Statement, supported by a number of environmental strategies and considers planning for growth in Waverley, including relevant supporting strategies which seek to identify the communities needs for infrastructure such as community facilities, transport, open space, public domain and recreation infrastructure, capital works and infrastructure.



2.5 Types of public benefits to be delivered under Planning Agreements

Public benefits received through Planning Agreements contribute to Council's ability to deliver:

- a) infrastructure identified within existing development contributions plans (s7.12 contributions plan),
- b) infrastructure identified within Council's Strategic plans, e.g. commercial floor space in village centres, affordable housing, and open space acquisition,
- c) infrastructure required directly as a result of density increases experienced or expected from the redevelopment of a site. e.g. due to changes in development controls arising from a Planning Proposal, and
- d) Land identified in a strategic plan, policy, planning instrument, development control plan or contributions plan for a public purpose, dedication or acquisition.

Examples of public benefits described above are provided at Appendix 5. It is recognised that development contributions that facilitate works in addition to the works listed in Appendix 5 may be appropriate because negotiations for each proposed development will reflect the circumstances of each case and the needs created by the scale of proposed change. Consequently, Appendix 5 does not prevent development contributions being negotiated on a case by case basis, particularly where planning benefits are also involved.

In some instances, a particular public benefit may be considered most suitable and supported by the community during public exhibition, however, it may not have been adequately investigated or designed yet due to issues with resourcing and/or preliminary funding by Council. Generally, VPA contribution money cannot be dedicated towards preliminary investigative and design processes because these processes may find that the particular process cannot be delivered after all, and therefore would not actually deliver a public benefit. Despite this, there is opportunity for Council to dedicate funding from elsewhere for the preliminary and feasibility works. The VPA contribution can be held aside and quarantined for a specified period of time and used for the construction of that project if found to be suitable for delivery. If found to be unsuitable/unfeasible, the VPA contribution can be used towards a different project that has been adequately investigated and designed, determined at the same as the first idea is supported as a backup.

It is to be noted that at a minimum 25% of all Planning Agreement contributions will form a monetary contribution to generally go towards Waverley's Affordable Housing Program Contributions Reserve fund. These funds will be used for additional affordable housing to expand Council's affordable housing the portfolio. Some of this 25% could be used to go towards the Waverley Affordable Housing Program Reserve for the maintenance of properties. There may be some circumstances where Council will allocate up to 100% of the monetary contribution to Waverley's Affordable Housing Program fund.

This policy allows for in-kind contributions to be made to Council in lieu of monetary contributions provided that these are consistent with the calculation methods outlined in Appendix 1 and 2. In-kind contributions could include for example



***Planning Agreement Policy 2014
(Amendment No. 43)***

affordable housing, commercial floor space dedicated in perpetuity to Council or public domain upgrades.

2.6 Recurrent charges

The Council may request developers/proponents, through a Planning Agreement, to make development contributions towards the recurrent costs of public facilities. Where the public facility primarily serves the development to which the Planning Agreement relates or neighbouring development, the arrangement for recurrent funding may be in perpetuity.

Where the public facility or public benefit is intended to serve the wider community, the Planning Agreement may, where appropriate, only require the developer/proponent to make contributions towards the recurrent costs of the facility for a set period which will be negotiated according to the impact of the development.



2.7 Pooling of development contributions

Where a proposed Planning Agreement provides for a monetary contribution by the developer/proponent, the Council may seek to include a provision permitting money paid under the agreement to be pooled with money paid under other Planning Agreements and applied progressively for the different purposes under those agreements.

Pooling may be appropriate to allow public benefits, particularly essential infrastructure, to be provided in a fair and equitable way.

2.8 Do other development contributions apply?

Generally, the Council will not enter a Planning Agreement that excludes the application of s7.11 or s7.12 of the Act to development to which the agreement relates. This, however, is a matter for negotiation between the Council and a developer having regard to the particular circumstances of the case.

However, where the application of s7.11 of the Act to development is not excluded by a Planning Agreement, the Council will generally not agree to a provision allowing benefits under the agreement to be taken into consideration in determining a development contribution under section 7.11.

Part 3 - Negotiation Procedures and Probity

3.1 Introduction

The Council's negotiation system for Planning Agreements aims to be efficient, predictable, transparent and accountable. Council will seek to ensure that the final negotiation of Planning Agreements runs in parallel with applications for instrument changes or development applications so as not to unduly delay the approval.

Where possible Council will publicly notify a Planning Agreement in the same manner and at the same time as the application for the instrument change or the development application to which it relates.

Council's preference is therefore to have the Planning Agreement negotiated and documented before it is publicly notified as required by the Act and Regulation. It is also preferable that a Planning Agreement is negotiated before lodgement of the relevant application and that it accompanies the application on lodgement.

3.2 Steps in the negotiation process

The negotiation of a Planning Agreement will generally involve the following key steps which are outlined in Appendix 1 and 2:

Planning Proposals

1. Prior to the lodgement of the relevant planning proposal, the Council and proponent (and any other relevant person) will decide whether to negotiate a Planning Agreement.
2. The parties will decide whether to appoint an independent person to facilitate or otherwise participate in the negotiations or aspects of it, and appoint such person.
3. A timetable for negotiations and the protocols and work practices governing their negotiations will be agreed between the parties.
4. The key issues for negotiation will be identified by the parties, and the negotiations over these issues will take place.
5. If agreement is reached, the Council (and any other relevant party) will prepare the proposed Planning Agreement including the explanatory note, and provide a copy of it to the proponent.
6. The parties may undertake further negotiation on the specific terms of the proposed Planning Agreement as necessary.
7. Once agreement is reached on the terms of the proposed Planning Agreement, the proponent may then make the development application/planning proposal to the Council accompanied by an offer to enter into such an agreement with specifics of the agreement set out in detail.
8. The Council will publicly exhibit the planning proposal and Planning Agreement in accordance with the Act. The Council may approve the planning proposal and set



out the conditions for the agreement or, if an agreement has been executed, set out in the consent/determination the terms of the agreement.

Development applications

1. Prior to the lodgement of the relevant development application, the applicant will decide whether to offer a Planning Agreement. The applicant should contact Council about how the benchmark rates (Appendix 1) apply to the subject development.
2. The applicant submits the development application with a letter of offer to enter into a Planning Agreement.
3. Development assessment staff independently undertake their assessment of the application.
4. Should the development application be approved, Council officers will prepare the Planning Agreement for notification, reporting to [the General Manager](#), and execution.

The parties may be required to undertake further negotiations and, hence, a number of the abovementioned steps mentioned may need to be repeated as a result of the public notification process or its formal consideration by the [General Manager](#) in connection with the relevant application.

Note that all costs associated with the negotiation of a Planning Agreement, including the appointment of an independent person, are to be borne by the developer.

It is also noted that where the value of the development exceeds \$20 million the development application will be dealt with by the independent Sydney Planning Panel (SPP) or any other relevant planning authority.

3.3 Probity

Public probity is important to Waverley Council and it will ensure that the negotiation of any Planning Agreements is fair, transparent and is directed at achieving public benefits in an appropriate manner free of corruption.

In this regard, Council will:

- a) Inform any applicant about Council values and business ethics - specifically, about ethical behaviour appropriate to business dealings. A copy of Council's Statement of Ethics Policy (as amended from time to time) is attached at Appendix 8.
- b) Ensure that its communities understand the system and the Council's role – specifically, how the Planning Agreements system operates and how Council will deal with developments/ planning proposals objectively.
- c) Notify Planning Agreements to ensure they are open and transparent – specifically, achieving maximum public awareness of the matters contained in a Planning Agreement(s) and the potential benefits of an agreement.
- d) Ensure appropriate delegations and separation of responsibilities in considering development applications/planning proposals that involve Planning Agreements – specifically, the need to ensure processes adequately



address the level of risk of corruption of a process while at the same time being appropriate to the likely level of risk.

- e) Ensure that modifications to approved development should be subject to the same scrutiny as the original development application.
- f) Ensure that Councillors and Council staff understand their varied roles, some of which have potential to conflict.
- g) Complete negotiations via written correspondence, rather than face-to-face meetings, to ensure that all discussions are clearly documented to ensure the highest level of transparency, accountability and record-keeping. This also allows timely consideration and resolution of any issues raised and facilitates carefully considered decision making by all parties.
- h) Take every step to ensure that conflicts of interest are ameliorated to the greatest extent possible – specifically, independent assessment by third parties where Council has an interest and not entering into any contractual arrangement which purport to guarantee outcomes that are subject to separate regulatory processes.

Apart from the above procedures, further procedures that will be implemented to address these matters may also include, but not be limited by, the following procedures:

- a) The Councillors will not be involved in the ~~face to face~~ face-to-face negotiation of the agreement but ~~will ultimately execute~~ may endorse the Planning Agreement, where the General Manager decides not to exercise their delegation. ~~as part of their duties as Councillors.~~
- b) A Council officer with appropriate delegated authority will negotiate a Planning Agreement on behalf of the Council in accordance with this Policy.
- c) The Council will, in all cases, ensure that Council staff with key responsibility for providing advice on approvals, approving applications or ensuring compliance, do not have a role in the assessment of the commercial aspects of the agreement nor on the conditions of the Planning Agreement except where advice is required on matters relating to the conditions of consent for a particular proposal.
- d) The Council may involve an independent person(s) to facilitate or otherwise participate in the negotiations or aspects of it, particularly where this will lead to a better planning outcome.
- e) The Council will ensure that all negotiations with a developer/proponent and their consultants are sufficiently separated and documented.
- f) Where the Council has a commercial stake in development the subject of an agreement, it will take appropriate steps to ensure that it avoids a conflict of interest between its role as a planning authority and its commercial interest in the development.
- g) Where Council is the consent authority and an applicant has proposed to enter into a Planning Agreement, the development application must be



***Planning Agreement Policy 2014
(Amendment No. 43)***

determined by the Waverley Local Planning Panel (WLPP), the Sydney Planning Panel, or any other relevant planning authority.

- h) The General Manager with appropriate delegated authority will have the responsibility to endorse Planning Agreements on behalf of the Council in accordance with this Policy.

Part 4 - Notification and Exhibition

4.1 Public notification of Planning Agreements

In accordance with the Act, a Planning Agreement must be publicly notified and available for public inspection for a minimum period of 28 days. Notification generally involves a public notice in the Wentworth Courier, online at <https://haveyoursay.waverley.nsw.gov.au/> and directly to the relevant precinct committee. The Council may decide to notify a Planning Agreement for a longer period or shorter period as permitted by the Act.

The Council will also notify the application to which a Planning Agreement relates in accordance with the Act.

4.2 Re-notification

The Council may publicly re-notify and make available for public inspection a proposed Planning Agreement and the application to which it relates if, in the Council's opinion, a material change is made to the terms of the agreement or the application after it has been previously publicly notified and inspected. Such a change may arise as a consequence of public submissions made in respect of the previous public notification and inspection of the agreement or the application, or their formal consideration by the Council, or for any other reason.

4.3 Public comment on Planning Agreements

The Council encourages the public to make submissions on Planning Agreements. This will allow the Council to better understand local needs and permit fine tuning of the planning obligations set out in any Planning Agreement.

In the case of development applications, whilst Council aims to advertise the Planning Agreement at the same time as the development application it may be advertised separately to the development application depending upon when an outcome is reached following negotiation.

In the case of planning proposals, it would be expected that the proponent would provide a detailed offer which would incorporate specifics as to the public benefit and an undertaking to pursue and enter into a negotiated Planning Agreement prior to gazettal notification.

Part 5 - Implementation and Conditions

5.1 Preparation of the Planning Agreement

The Council will prepare a Planning Agreement relating to a particular application for an instrument change or development application. The Council uses a standard form of Planning Agreement on which every Planning Agreement is based which reflects the policies and procedures set out in this document (refer Appendix 3). This Planning Agreement will include an explanatory note (refer Appendix 4).

The Council will require a Planning Agreement to make provision for payment by the developer of the Council's costs of and incidental to negotiating, preparing and entering into the agreement as well as administering and enforcing the agreement.

5.2 When is a Planning Agreement required to be entered into?

A Planning Agreement is entered into when it is signed by all of the parties. The Council will usually require a Planning Agreement to be entered into as a condition of granting development consent to the development to which the agreement relates or as part of the Gateway process for a planning proposal. However, a Planning Agreement can be entered into at any time after the agreement is publicly notified in accordance with the Act and Regulation.

5.3 When will planning obligations arise?

5.3.1 Development Applications

The Council will generally require a Planning Agreement to provide that the developer's obligations in relation to securing the delivery of development contributions must be met prior to the issuing of any construction certificate related to the subject development application. Delivery of the development contribution may be prior to occupation certificate.

5.3.2 Planning Proposals

There are a number of possible scenarios which are to be detailed in the terms of the Planning Agreement to ensure that the obligations of the agreement are fulfilled by the proponent of the planning proposal.

a) Generally, the developer's obligations in relation to the execution of a Planning Agreement must be met as soon as possible after gateway determination and prior to gazettal notice. A clause is to be included within the Planning Agreement indicating that the obligations under the Planning Agreement are only required to be met in the event of the associated Planning Proposal being successfully gazetted. The caveat, registration, and the bank guarantee of the Planning Agreement must be delivered to Council upon gazettal notice and the delivery of the contribution (e.g. payment of any monetary contribution) must be delivered within an agreed timeframe after the gazettal notice. The Letter of Offer issued by the developer in relation to a Planning Proposal should reflect the above process.

b) Generally, the developer's obligations in relation to the execution of a Planning Agreement associated with a Planning Proposal should not be linked to any current or future Development Application for the site.

~~a) Generally, the developer's obligations in relation to caveat and registration of the PA~~



WAVERLEY COUNCIL

**Planning Agreement Policy 2014
(Amendment No. 43)**

~~must be met as soon as possible after gateway determination and prior to gazettal notice, bank guarantee must be delivered to Council upon gazettal notice and delivery of the contribution (e.g. payment of monetary contribution), prior to the issuing of any construction certificate related to the subject development application otherwise, generally the delivery of the contribution will be upon gazettal notice.~~

~~Note: there may be a significant time gap between the gazettal of the planning proposal and the issuing of a construction certificate for any subsequent development of the subject site. Timing must be a key consideration during the negotiation of the Planning Agreement terms.~~

b)c) If the proponent of the planning proposal intends to sell the site it must immediately notify Council in writing. Generally, the proponent must meet the obligations of the Planning Agreement, particularly the delivery of

developer contributions (e.g. payment of [any](#) monetary contribution), on or before settlement of the sale of the land. Generally, this is to be secured through registration of the Planning Agreement, caveat against the title of the land and provision of bank guarantee as required under (a).

5.4 Implementation agreements

The Council may require an implementation agreement that provides for matters such as:

- (a) The timetable for provision of planning obligations under the Planning Agreement.
- (b) The design, technical specification and standard of any work required by the Planning Agreement to be undertaken by the developer.
- (c) The manner in which a work is to be handed over to the council. The manner in which a material public benefit is to be made available for its public purpose in accordance with the Planning Agreement.

5.5 Monitoring and review of a Planning Agreement

The Council will continuously monitor the performance of the developer's/proponent's obligations under a Planning Agreement and report them in accordance with the Act.

5.6 Modification or discharge of obligations

The Council may agree to a provision in a Planning Agreement permitting the developer's/proponent's obligations under the agreement to be modified or discharged in the following circumstances:

- a) The developer's/proponent's obligations have been fully carried out in accordance with the agreement, or
- b) The development consent to which the agreement relates has lapsed, or
- c) The development consent to which the agreement relates has been modified to such an extent that the planning obligations may not be appropriate, or
- d) The performance of the Planning Agreement has been frustrated by an event or events beyond the reasonable control of the parties, or
- e) The developer/proponent has fully and completely assigned the developer's/proponent's interest under the agreement in accordance with its terms, or
- f) Other material changes affecting the operation of the Planning Agreement have occurred, or
- g) The Council and the developer/proponent otherwise agree to the modification or discharge of the agreement.

Such a provision will require the modification or revocation of the Planning Agreement in accordance with the Act and Regulation.

5.7 Assignment and dealings by the developer/proponent

The Council will not generally permit the assignment of any or all of the developer's/proponent's rights or obligations under the agreement, nor will the Council permit any dealing in relation to any part or the whole of the land the subject of the agreement. However the Council may agree to an assignment when:

- a) The developer/proponent has, at no cost to the Council, first procured the execution by the person with whom it is dealing of all necessary documents in favour of the Council by which that person agrees to be bound by the agreement as if they were a party to the original agreement, and
- b) If the proposed dealing involves a mortgage, charge or other encumbrance in relation to the party's right, title and interest in the land, such documents provide for an agreement by the person to the effect that they, and any receiver appointed by them, will not enjoy rights greater than those of that party, and
- c) The party is not in breach of the Agreement.

This does not affect the operation of any of other requirements of the agreement.

5.8 Provision of security under a Planning Agreement

The Council will generally require a Planning Agreement to make provision for security to cover the developer's/proponent's obligations under the agreement. A form of security will generally be an unconditional bank guarantee from an Australian Bank in favour of the Council to the full value of the developer's/proponent's obligations under the Agreement and on terms otherwise acceptable to the Council. An insurance bond may also be deemed acceptable. Other security will generally be required.

5.9 Registration of Planning Agreements

The Council may require a Planning Agreement to contain a provision requiring the developer/proponent to agree to registration of the agreement pursuant to s93H of the Act if the requirements of that section are satisfied.

5.10 Dispute resolution

The Council will require a Planning Agreement to provide for mediation of disputes between the parties to the agreement before the parties may exercise any other legal rights in relation to the dispute.

5.11 Methodology for valuing public benefits under a Planning Agreement

Subject to section 2.4, unless otherwise agreed in a particular case, public benefits will be valued as follows:

5.11.1 Provision of land or units for a public purpose

Where the benefit under a Planning Agreement is the provision of land for a public purpose, or units given to Council in perpetuity, the value of the benefit will be determined by an independent valuer who is experienced in valuing land in New South Wales (and who is acceptable to Council), on the basis of a scope of work which is prepared by Council. All costs of the independent valuer in carrying out such a valuation will be borne by the developer/proponent.



5.11.2 Carrying out of works for a public purpose

Where the benefit under a Planning Agreement is the carrying out of works for a public purpose, the value of the benefit will be determined by an independent quantity surveyor (who is acceptable to Council), on the basis of the estimated value of the completed works being determined using the method that would ordinarily be adopted by a quantity surveyor. Council will prepare the scope of work for the independent quantity surveyor. All costs of the independent quantity surveyor in carrying out the work will be borne by the developer/proponent.

5.11.3 Other public benefit

Where the benefit under a Planning Agreement is the provision of public benefit other than under 5.11.1 or 5.11.2, Council and the Developer/proponent will negotiate the manner in which the benefit is to be valued for the purposes of the agreement.

5.12 How will the Council seek to determine the amount of Monetary Contribution that may be payable for Developments with FSR above clause 4.4 of WLEP (the WLEP Provisions)

Generally, the value of 50% of the increase in net value to the development arising from an increase in FSR beyond WLEP 2012 provisions in clause 4.4 may be considered an appropriate contribution. A series of standardised development contribution rates have been developed to streamline negotiations and provide fairness, predictability and certainty to the community, Council and developers. These pre-scheduled development contribution rates apply to different suburbs in the Waverley LGA. These rates are located in Appendix 1 and will be applied to Development Applications. These rates will be updated annually.

5.13 How will the Council seek to determine the amount of Monetary Contribution that may be payable for an amendment to the Waverley Local Environmental Plan 2012

Generally, the value of 50% of the net value from the planning proposal may be considered an appropriate contribution. The net value will be determined by an independent valuer who is experienced in valuing land in New South Wales (and who is acceptable to Council). All costs of the independent valuer in carrying out such a valuation will be borne by the proponent. The methodology used to determine the net value will generally be calculated by determining the Residual Land Value resulting from the planning proposal less the Base Case.

APPENDIX 1

VPA payable rates

The VPA payable rates per square metre for residential floor space are outlined in the following table. VPA payable rates have not been calculated for Bronte, Tamarama, Waverley or Queens Park as there have been few VPAs offered in these areas. If a VPA is offered in these suburbs, then it should be calculated based on the 'Average LGA' rate. For mixed use developments commercial office and retail benchmark rates should be used.

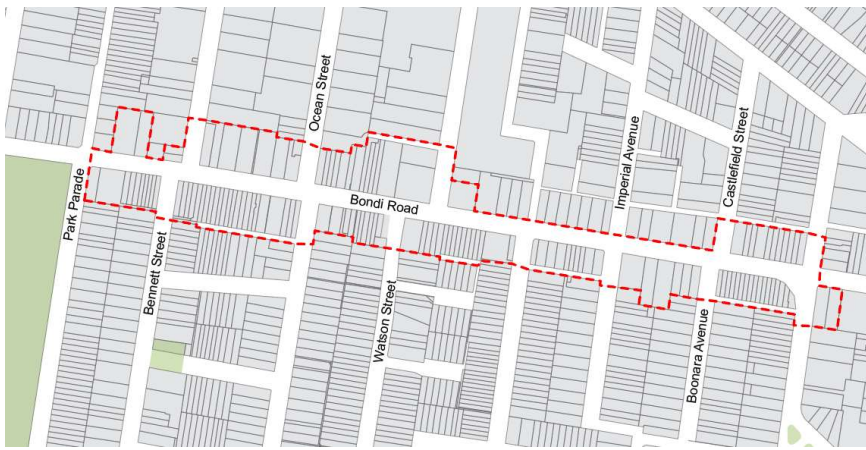
If the existing building already exceeds the maximum FSR permitted on the site, the VPA will be calculated using the additional GFA above the existing non-compliance. For example, for a site with a max FSR of 0.9:1, an existing FSR of 1:1 and a proposed FSR of 1.2:1, the VPA will only be calculated on the GFA between 1:1 and 1.2:1.

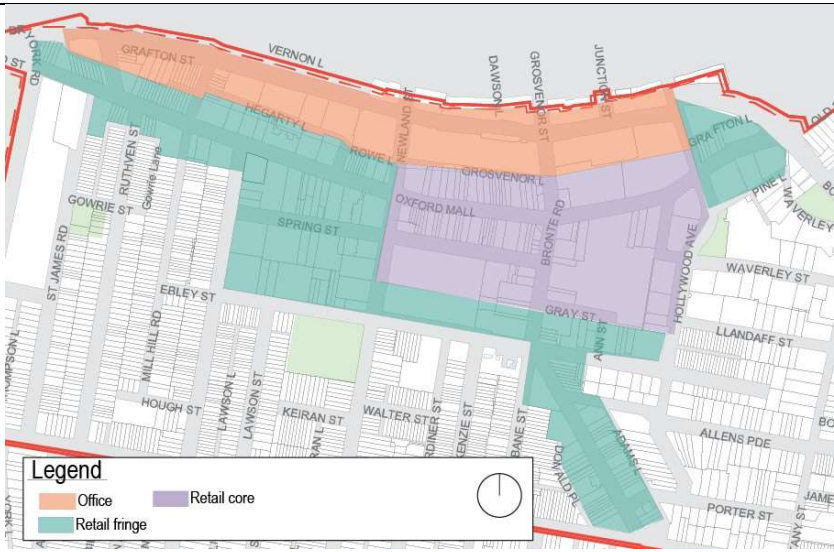
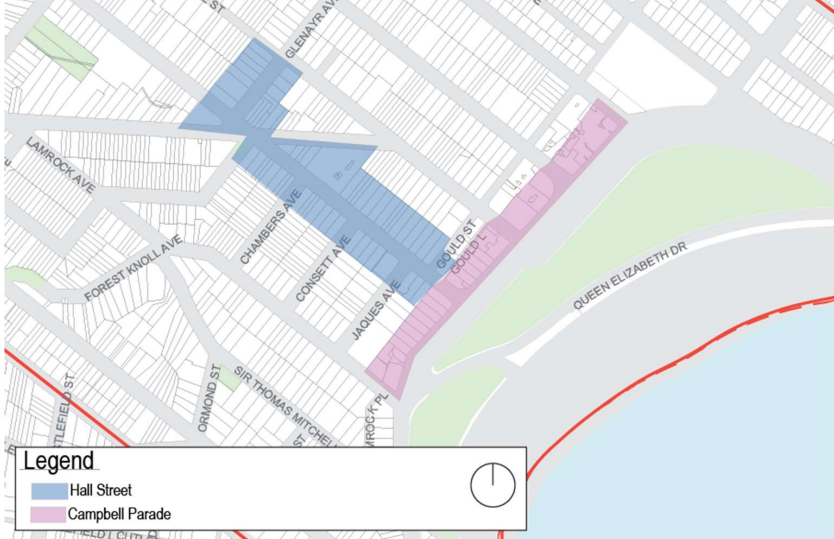
n.b. Note: These rates will be updated on an annual basis based on sales prices.

RESIDENTIAL BENCHMARK RATES FOR RESIDENTIAL

Area and type	Rate \$/sqm
Bondi Junction	\$3,700 4,000
Bondi	\$3,700 4,000
Bondi Beach	\$4,300 000
North Bondi	\$4,400 200
Dover Heights	\$2,800 3,200
Rose Bay	\$2,800 3,300
Vaucluse	\$2,800 3,100
<u>Average</u>	<u>\$3,800</u>

BENCHMARK RATES FOR OFFICE AND RETAIL IN MIXED-USE DEVELOPMENTS FOR NON-RESIDENTIAL

Area and type	Rate \$/sqm	Location it applies
Bondi Road Centre	\$2,400	
Bondi Junction retail core	\$2,800	

Bondi Junction retail fringe	\$2,600	
Bondi Junction office	\$2,600	
Campbell Pde, Bondi	\$4,100	
Hall Street, Bondi	\$3,600	
Fringe	\$3,000	All other areas for <u>non-residential</u> development not specified in this table.

PRO RATA BENCHMARKS

Where a Development Application including any modification or amendment offering a Voluntary Planning Agreement contains both residential and non-residential floor space, generally a pro rata approach is to be taken and both benchmark rates should be used proportionately to their percentage of gross floor area within the entire development.

For example, if 20% of the total gross floor area of a development is non-residential and 80% of a total gross floor area of a development is residential, then the non-residential benchmark rate should be used for 20% of the gross floor area exceedance above the maximum permitted under the maximum Floor Space Ratio, and the residential benchmark rate for 80%. If the gross floor area exceedance were 50 square metres, then 40sqm would be multiplied by the residential rate and 10sqm against the non-residential rate.

This approach may be varied where additions to an existing building (which contains both residential and non-residential uses) are proposed, and the new works only add gross floor area of one of the

uses. For example, an additional floor containing residential floor space only is being added above a shoptop housing development and the ground floor commercial space is not being reduced or increased. In this instance it would be appropriate to use only the residential benchmark rate.

Where a modification is sought to a development application to increase the floorspace in a mixed use development, the proportionate percentage of the commercial and residential floorspace in the overall development may be applied pro rata to calculating the monetary contribution.

For any other development type that is not residential or retail or office the following methodology should be used:

METHODOLOGY APPLYING TO OTHER DEVELOPMENT TYPES**ALTERNATE VALUATION METHODOLOGY**

There are two components that will make up the valuation. These are:

1. The valuation (end sale value) of the bonus (marginal) floor space; and
2. Assessment of the marginal costs (to be deducted from the marginal revenue in order to calculate marginal profit);

Component 1 must be done by fully qualified Valuers. It is recommended that two Valuers are appointed, one on behalf of Council and the other on behalf of the applicant. The adopted valuation figures is to be the average of the two valuations, where these valuations are reasonably close.

Component 2 must be done by fully qualified quantity surveyors (QS). It is recommended that two consultants are appointed, one on behalf of Council and the other on behalf of the applicant. The adopted cost estimates is to be the average of the two QS estimates, where these valuations are reasonably close.

The principles of valuation of the two components are detailed below:

1. Component 1 – Value of Floor Space Bonus

- 1.1. The Valuer is to provide the end sale value of the bonus floor space. This refers to the additional apartments plus their ancillary car parking spaces.
- 1.2. Where there was a bonus on the height of the building then the bonus apartments will be on the upper most levels of the building. Alternatively it may be on the levels immediately below the penthouse and sub-penthouse levels (given that a premium may be attached to the penthouse and sub-penthouse levels – refer to example in Paragraph 1.6 below).
- 1.3. The marginal value (or value of the bonus floor space measured in dollars per square metre) should not be less than average value (the building's total value divided by total floor area).
- 1.4. The bonus floor space does not necessarily have to be identified in "whole" apartments. It can be identified in fractions of apartments or even in square metres.
- 1.5. The valuation is to take into consideration the specification and quality of finish of the bonus apartments.
- 1.6. An acceptable method of measure is the difference between the total value of the apartments without the bonus floor space and the total value of the apartments with the bonus floor space.

In the example below a bonus floor space provides an additional increase in the internal leasable area of 14.9% through an increase of building height (one additional floor) plus a slight widening of the building. The result is an increase in the end value by 15.8%.

Building Without Bonus Floor Space					Building With Bonus Floor Space					
Level	Sqm	\$/sqm	\$m		Level	Sqm	\$/sqm	\$m		
						12		300	12,000	3.6
	11		300	12,000	3.6		11	425	11,000	4.7
	10		400	11,000	4.4		10	525	10,200	5.4
	9		500	10,000	5.0		9	525	10,000	5.3
	8		500	9,800	4.9		8	525	9,800	5.1
	7		500	9,600	4.8		7	525	9,600	5.0
	6		500	9,400	4.7		6	525	9,400	4.9
	5		500	9,200	4.6		5	525	9,200	4.8
	4		500	9,000	4.5		4	525	9,000	4.7
	3		500	8,500	4.3		3	525	8,500	4.5
	2		500	8,000	4.0		2	525	8,000	4.2
	1		500	7,500	3.8		1	525	7,500	3.9
	TOTAL		5,200	48.5		TOTAL		5,975	56.2	
						Margin		775	7.7	
						% Increase		14.9%	15.8%	

- 1.7. The marginal value shall be the actual price exchanged. Where the apartments have not been exchanged then the market value should be the listed or asking price. If there are no listed or asking prices then the value shall be estimated by the Valuer based on market evidence.
- 1.8. Market evidence should include any pre-sales in the building and/or recent sales and pre-sales of comparable apartments in other buildings in the locality.
- 1.9. The Valuer shall deduct (from the end value of the bonus floor space) GST at one eleventh of the gross end sale value and any other costs on sale such as sales commission and legal costs. Generally these costs will be no more than 3.0% of gross end sale value.
- 1.10. The result is the expected marginal net sale proceeds from the bonus floor space.

2. Component 2 – Marginal Cost to Design and Construct

- 2.1. The QS shall provide an estimate of the marginal cost of construction relating to the bonus floor space and bonus car parking spaces. Generally, Council will not accept exaggerated costs that are significantly higher than the development cost indicated on the submitted DA.
- 2.2. This simplest method to calculate marginal cost is the pro-rata of the total building cost based on bonus floor space divided by total GFA plus a pro-rata of the car parking cost based on number of parking spaces allocated to the bonus units divided by total car parking spaces.
- 2.3. Various site costs including, but not limited to, landscaping, driveways, fencing and external works shall be excluded since these costs are not marginal.
- 2.4. The QS and/or Valuer shall then add the marginal design costs, application fees, marketing and advertising costs and other ancillary costs. Again this would be a pro-rata of total costs. Evidence of these costs should be provided.

- 2.5. The QS and/or Valuer shall then add the monetary contributions under Section 94A in relation to the bonus floorspace (if paid or is to be paid).
- 2.6. The QS and/or Valuer can then add finance and interest costs again using the pro-rata method. The method for showing interest calculation must be provided using cash flow or other appropriate method of calculation.
- 2.7. Land cost and profit margins are not to be included as these are not marginal costs.
- 2.8. GST on costs is to be excluded since this will be returned to the developer in the form of input credits.
- 2.9. The result is the total estimated cost in delivering the marginal floor space.

The formula for calculating the profit from the bonus floor space is:

Marginal net sale proceeds less Marginal cost to Construct

50% of the profit from the bonus floor space is to be provided as a negotiated form of public benefit through a Planning Agreement.

APPENDIX 2

Valuation Methodology for Planning Proposals under Waverley Council's Planning Agreement Policy 2014

There are two components that will make up the valuation. These are:

1. The Base Case; and
2. Residual Land Value.

Both components must be done by suitably qualified Valuers. It is recommended that two Valuers are appointed, one on behalf of Council and the other on behalf of the applicant. The costs of commissioning the Valuers should be shared between Council and the applicant. The adopted valuation figure is to be the average of the two valuations.

The principles of valuation of the two components are detailed below:

1. Component 1 – Base Case

- 1.1. The Base Case is the value of the land under the current zoning (assuming in perpetuity). The value under the base case should be assessed on the site's highest and best use permissible under the current zoning. The highest and best use may, or may not be, the current use of the land.
- 1.2. The Valuer is required to test and determine the highest and best use of the land. The base case is to assume that the current zoning on the land and the development standards under the current instruments will remain in perpetuity. The planning proposal itself must not affect the base case.
- 1.3. Standard valuation practices shall apply and at least two methods of valuation should be used. Comparable sales should be one of the methods applied unless there is insufficient evidence. When using comparable sales evidence the Valuer must ensure that the sale prices are not affected by planning proposals or draft instruments that are not related to the base case – or at least make reasonable allowances / adjustments.
- 1.4. If the subject site was sold recently then the purchase price can be adopted provided that the price was not inflated as a result of the planning proposal.

2. Component 2 – Residual Land Value

- 2.1. The Valuer shall estimate the value of the land under the planning proposal using the residual land valuation (RLV) method. The preferred method for calculating the RLV is discounted cash flow modelling using proprietary software like Estate Master DF or similar. A simple developer's profit model may be acceptable for small-scale single-staged developments.
- 2.2. The assumptions in the RLV calculations must be reasonable and based on industry averages.
- 2.3. If there are no listed or asking prices then the end sale values shall be estimated by the Valuer based on comparable market evidence.

- 2.4. Market evidence should include any recent pre-sales in the building and/or recent sales and pre-sales of comparable apartments in other buildings in the locality.
- 2.5. Estimated construction costs must be supported by a Quantity Surveyor's report. Construction contingency should be no greater than 5%. Soft costs may be included such as design costs, application fees, authority fees, development management, marketing and advertising and finance establishment costs.
- 2.6. In calculating the RLV the project start date should assume the land is zoned appropriately (i.e. the zone that is being proposed).
- 2.7. The RLV should exclude any discounting during the rezoning period as the payment under the VPA will not be made until occupation certificate. A typical development program should be assumed that allows reasonable time for development approval, certification and construction. Council will not accept a program that appears conservative or pessimistic. The table below provides a suggested range of project lives for a single stage project. Any significant departure in project life requires supporting evidence.

Construction Cost	Approvals and Documentation (months)	Construction (months)
Under \$20m	8-9	10-14
\$20m to \$40m	9-11	14-17
Above \$40m	10-12	18-20

- 2.8. It is recognised that these timeframes can vary and are impacted by building height and number of basement levels.
- 2.9. For a short single staged development a developer's profit or "back of envelope" method rather than a cash flow model may be acceptable. Using this method the RLV will be derived from the target profit/risk margin. If this method is used the interest should be calculated as follows:
- $$\text{Interest Cost} = (\text{Total Project Costs excluding land \& GST}) \times (\text{Interest Rate} / 12) \times (\text{Months of Construction}) \times 50\%.$$
- 2.10. The RLV model should preferably show both the development margin and Project Internal Rate of Return (IRR) on the cash flow before interest. Reasonable industry standard hurdle rates should be applied. Generally a target margin (on project costs) of 15% to 25% and a target IRR of 16% to 20% should apply but this depends upon the levels of market risk and other project risks.

The formula for calculating the net value from the planning proposal is:
Residual Land Value minus the Base Case

50% of the net value from the planning proposal is to be provided as a negotiated form of public benefit through a Planning Agreement.

APPENDIX 3 (Clause 1.6)
Planning Agreement Template

PLANNING AGREEMENT NO. _____

Section 7.4 of the Environmental Planning and Assessment Act, 1979

THIS AGREEMENT is made on

2021

PARTIES

WAVERLEY COUNCIL of Cnr Paul Street and Bondi- Road, Bondi Junction NSW 2022
ABN 12 502 583 608 ("Council")

AND

DEVELOPER NAME (ACN #) of Address ("**Developer**")

BACKGROUND/RECITALS

- A.** The Developer is the registered proprietor of the Land.
- B.** The Council is the local authority constituted under the Local Government Act 1993 and the planning and consent authority constituted under the Act.
- C.** On DATE the Developer made (or caused to be made) the Development Application to Council for Development Consent to carry out the Development on the Land.
- D.** The Development Application was accompanied by an offer dated DATE by the Developer to enter into this Agreement to make the Development Contribution to be applied towards a public purpose in accordance with Council's Planning Agreement Policy if development consent was granted.
- E.** The Development Consent was granted on DATE.

- F. This Agreement is consistent with the Developer's offer referred to in Recital D.

OPERATIVE PROVISIONS:

1 PLANNING AGREEMENT UNDER THE ACT

The parties agree that this Agreement is a Planning Agreement governed by Section 7.4 and Subdivision 2 of Division 7.1 of Part 7 of the Act.

2 APPLICATION OF THIS AGREEMENT

This Agreement applies to the Land and to the Development proposed in the Development Application, as may be modified.

3 OPERATION OF THIS AGREEMENT

This Agreement shall take effect on and from the date of this Agreement. The parties must execute and enter into this Agreement as soon as possible after the Development Consent is granted and prior to any Construction Certificate issuing for the Development.

4 DEFINITIONS AND INTERPRETATION

4.1 Definitions

In this Agreement unless the context otherwise requires:

"Act" means the *Environmental Planning and Assessment Act 1979* (NSW);

"Agreement" means this agreement;

"Bank Guarantee" means an irrevocable and unconditional undertaking by a trading bank approved by the Council to pay the Development Contribution amount on demand without an expiry or end date and containing terms and conditions acceptable to Council and in accordance with clause 9 of this Agreement;

"Business Day" means a day that is not a Saturday, Sunday or public holiday, on which banks are open for general services in Sydney, New South Wales;

"Caveat Form" means an irrevocable authority to Waverley Council to register and maintain a caveat on the Land, in a form acceptable to Council and executed by the owner of the Land, or such other form of owner's consent to caveat as may be required by Council;

"Certifying Authority" means any accredited private certifier including where appropriate, a Principal Certifying Authority (PCA) appointed or to be appointed to certify the Development or any aspect of it;

“Council” means Waverley Council and herein includes any local government authority with which that Waverley Council may merge or any other local government authority responsible for a local government area that the Land is located within;

“Construction Certificate” means any construction certificate as referred to in s 6.4 of the Act in respect of the Development Consent;

“Development” means the development the subject of the Development Application described in item 4 of the Schedule;

“Development Application” means the development application referred to in item 3 of the Schedule;

“Development Consent” means the development consent granted in respect of the Development Application described in item 3 of the Schedule;

“Development Contribution” means the amount of money referred to in item 5 of the Schedule; [NOTE: For monetary contributions]

“Development Contribution Date” means the time the Development Contribution is to be paid as specified to in item 7 of the Schedule; [NOTE: For monetary contributions]

“GST” has the same meaning as in the GST Law;

“GST Law” has the meaning given to that term in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any other Act or regulation relating to the imposition or administration of the GST;

“Land” means the land described in item 2 of the Schedule;

“Occupation Certificate” means any occupation certificate as referred to in s 6.4 of the Act in respect of the Development Consent;

“Party” means a party to this Agreement including their successors and assigns;

“Public Purpose” for the purpose of this Agreement means the public purpose described in item 6 of the Schedule;

“Registration Application” means an application for registration of this Agreement as a Planning Agreement on the title of the Land pursuant to Section 7.6 of the Act in a form approved by the Registrar General;

“Schedule” means the schedule to this Agreement.

4.2 Interpretation

In the interpretation of this Agreement, the following provisions apply unless the context otherwise requires:

- (a) Headings are inserted for convenience only and do not affect the interpretation of this Agreement;
- (b) A reference in this Agreement to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Sydney, New South Wales;
- (c) If the day on which any act, matter or thing is to be done under this Agreement

is not a business day, the act, matter or thing must be done on the next business day;

- (d) A reference in this Agreement to dollars or \$ means Australian dollars and all amounts payable under this Agreement are payable in Australian dollars;
- (e) A reference in this Agreement to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision;
- (f) A reference in this Agreement to any agreement, Agreement or document is to that agreement, Agreement or document as amended, novated, supplemented or replaced;
- (g) A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Agreement;
- (h) An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency;
- (i) Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning;
- (j) A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders;
- (k) References to the word 'include' or 'including' are to be construed without limitation;
- (l) A reference to this Agreement includes the agreement recorded in this Agreement;
- (m) A reference to a party to this Agreement includes a reference to the servants, agents and contractors of the party, and the party's successors and assigns; and
- (n) Any schedules and attachments form part of this Agreement.

5 DEVELOPMENT CONTRIBUTION TO BE MADE UNDER THIS AGREEMENT

- 5.1 The Developer agrees to make, and the Council agrees to accept, the Development Contribution to be applied for the Public Purpose.
- 5.2 The Developer must pay the Development Contribution to the Council by bank cheque on or before the Development Contribution Date and time is essential in this respect.
[NOTE: For monetary contributions]

6 APPLICATION OF THE DEVELOPMENT CONTRIBUTION

- 6.1 The Council will apply the Development Contribution towards the Public Purpose as soon as practicable.

7 APPLICATION OF S7.11 AND S7.12 OF THE ACT TO THE DEVELOPMENT

- 7.1 This Agreement does not exclude the application of Sections 7.11, 7.12 or 7.24 of the Act to the Development.
- 7.2 The Development Contribution provided by the Developer will not be taken into consideration in determining any development contribution under Section 7.11 or 7.12 of the Act.

8 REGISTRATION OF THIS AGREEMENT

- 8.1 The Parties agree this Agreement is to be registered by the Registrar-General as provided for in section 7.6 of the Act.
- 8.2 The Developer warrants that they have done everything necessary to enable this Agreement to be registered under section 7.6 of the Act.
- 8.3 Without limiting clause 8.2, the Developer warrants that they have obtained the express written consent to the registration of this Agreement under section 7.6 of the Act from:
- (a) If this Agreement relates to land under the *Real Property Act 1900*, each person who has an estate or interest in the Land registered under that Act; or
 - (b) If this Agreement relates to land not under the *Real Property Act 1900*, each person who is seized or in possession of an estate or interest in the Land.
- 8.4 As soon as possible after entering into this Agreement and in any event prior to the issue of a Construction Certificate, the Developer will at their cost arrange and effect registration of this Agreement under s7.6 upon the title to the Land and as soon as possible will:
- (a) deliver to the Council the Registration Application in registrable form noting the Council as applicant and executed by the owner of the Land and any other person the subject of the warranty in clause 8.3;
 - (b) produce or cause to be produced the title deed with NSW Land Registry Services and advise Council of the production number or provide a copy of the CoRD Holder Consent as may be applicable;
 - (c) provide the Council with a cheque in favour of NSW Land Registry Services, NSW for the registration fees for registration of this Agreement, or deliver funds electronically as Council may direct; and
 - (d) provide the Council with a cheque in favour of the Council for its reasonable costs, expenses and fees incurred or to be incurred in connection with the preparation of this Agreement and any documents, form or instrument created or to be created in accordance with the provisions of this Agreement.
 - (e) and take any other necessary action so as to ensure this Agreement is registered

- on the title to the Land prior to the issue of any Construction Certificate.
- 8.5 Upon compliance with clause 8.4 by the Developer the Council will promptly lodge the Registration Application with the Registrar General.
- 8.6 The Parties will co-operate with each other to ensure that the Agreement is registered by the Registrar General.
- 8.7 Upon payment of the Development Contribution or surrender of the Development Consent, the Developer may request in writing the removal of the dealing created by registration of the Agreement from the title to the Land. The Council will not withhold its consent to such removal, provided the Developer pays all reasonable costs, expenses and fees of the Council relating to such removal.
- 8.8 Should payment of the Development Contribution or surrender of the Development Consent occur upon the date of this Agreement and prior to issue of a Construction Certificate, then there will be no obligation to register this Agreement in accordance with this clause nor provide the Bank Guarantee in accordance with clause 9.1.
- 8.9 Upon registration of this Agreement by the Registrar General, this Agreement is binding on, and is enforceable against the owner of the Land from time to time as if each owner for the time being had entered into this Agreement.

9 BANK GUARANTEE

9.1 Provision of Bank Guarantee

- (a) Subject to clause 8.8, prior to the issue of a Construction Certificate, the Developer must deliver to the Council a Bank Guarantee, which must be:
- (i) in a form and from an institution approved by the Council;
 - (ii) irrevocable and unconditional;
 - (iii) with no expiry date;
 - (iv) issued in favour of the Council;
 - (v) for an amount equivalent to the Development Contribution set out in Item 6 of the Schedule;
 - (vi) drafted to cover all of the Developer's obligations under this Agreement; and
 - (vii) on the terms otherwise satisfactory to the Council.
- (b) The Developer acknowledges that the Council enters into this Agreement in consideration of the Developer providing the Bank Guarantee as a security for the performance of all of the Developer's obligations under this Agreement, including without limitation the delivery of the Development Contribution to Council in accordance with this Agreement.

9.2 Calling on Bank Guarantee

- (a) The Council may call on the Bank Guarantee in the event that the Developer:
- (i) fails to make a payment of any part of the Development Contribution in accordance with this Agreement or any other amount payable under this Agreement by its due date for payment; or
 - (ii) breaches any other term or condition of this Agreement,
- and fails to remedy the relevant failure or breach within 7 days after the Council's notice.
- (b) If the Council calls on the Bank Guarantee as a result of the Developer's failure to pay any amount due under this Agreement, then the Council will apply the amount received pursuant to its claim on the Bank Guarantee towards the Developer's obligation to pay the relevant amount and will deduct that amount from the total amount payable under this Agreement. In those circumstances, the Developer will be required to pay to the Council any outstanding balance of the Development Contribution and other amounts payable under this Agreement.

9.3 Return of Bank Guarantee

Subject to clause 9.2, provided that the Developer has complied with its obligations under this Agreement, to pay the Development Contribution or any other amount payable under this Agreement, the Council will return the Bank Guarantee to the Developer.

10 REVIEW OF THE AGREEMENT

Any amendment or review of this Agreement shall be by agreement in writing and in compliance with section 7.5 of the Act.

11 DISPUTE RESOLUTION**11.1 Notice of dispute**

If a Party claims that a dispute has arisen under this Agreement ("Claimant"), it must give written notice to the other Party ("Respondent") stating the matters in dispute and designating as its representative a person to negotiate the dispute ("Claim Notice"). No Party may start Court proceedings (except for proceedings seeking interlocutory relief) in respect of a dispute unless it has first complied with this clause.

11.2 Response to notice

Within ten business days of receiving the Claim Notice, the Respondent must notify the Claimant of its representative to negotiate the dispute.

11.3 The nominated representative must:

- (i) Meet to discuss the matter in good faith within five business days after services by the Respondent of notice of its representatives;
- (ii) Use reasonable endeavours to settle or resolve the dispute within 15 business days after they have met.

11.4 Further notice if not settled

If the dispute is not resolved within 15 business days after the nominated representatives have met, either Party may give to the other a written notice calling for determination of the dispute ("Dispute Notice") by mediation under clause 11.5 or by expert determination under clause 11.6.

11.5 Mediation

If a Party gives a Dispute Notice calling for the dispute to be mediated:

- (i) The Parties must agree to the terms of reference of the mediation within five business days of the receipt of the Dispute Notice (the terms shall include a requirement that the mediation rules and the Institute of Arbitrators and Mediators Australia (NSW Chapter) apply);
- (ii) The mediator will be agreed between the Parties, or failing agreement within five business days of receipt of the Dispute Notice, either Party may request the President of the Institute of Arbitrators and Mediators Australia (NSW Chapter) to appoint a mediator;
- (iii) The mediator appointed pursuant to this Clause 11.5 must;
 - (a) Have reasonable qualifications and practical experience in the area of disputes; and
 - (b) Have no interest or duty which conflicts or may conflict with his function as mediator, he being required to fully disclose any such interest or duty before his appointment;
- (iv) The mediator shall be required to undertake to keep confidential all matters coming to his knowledge by reason of his appointment and performance of his duties;
- (v) The Parties must within five business days of receipt of the Dispute Notice notify each other of their representatives who will be involved in the mediation.
- (vi) The Parties agree to be bound by a mediation settlement and may only initiate judicial proceedings in respect of a dispute which is the subject of a mediation settlement for the purpose of enforcing that mediation settlement.
- (vii) In relation to costs and expenses
 - (a) Each Party will bear their own professional and expert costs incurred in connection with the mediation; and
 - (b) The cost for the mediator will be shared equally by the Parties unless the

mediator determines a Party has engaged in vexatious or unconscionable behaviour in which case the mediator may require the full cost of the mediation to be borne by that Party.

11.6 Expert Determination

If the dispute is not resolved under clause 11.3 or 11.5 the dispute may, by agreement between the Parties, both acting reasonably having regard to the nature of the dispute, be resolved by expert determination, in which event:

- (i) The dispute must be determined by an independent expert in the relevant field:
 - (a) Agreed upon and appointed jointly by the Council and the Developer; or
 - (b) In the event that no agreement is reached or appointment made within 30 business days, appointed on application of a Party by the then current President of the Law Society of New South Wales;
- (ii) The expert must be appointed in writing and terms of the appointment must not be inconsistent with this clause;
- (iii) The determination of the dispute by such expert will be made as an expert and not as an arbitrator and will be in writing and containing reasons for the determination;
- (iv) The expert will determine the rules of the conduct for the process, but must conduct the process in accordance with the rules of natural justice;
- (v) Each Party will bear its own costs in connection with the process and the determination by the expert together with an equal proportion of the expert's fees and costs; and
- (vi) Any determination made by an expert pursuant to this clause is final and binding upon the Parties except where the determination is in respect of, or relates to, termination or purported termination of this Agreement by any Party, in which event the expert is deemed to be giving a non-binding appraisal and any Party may commence litigation in relation to the dispute if it has not been resolved within 20 business days of the expert giving his or her decision.

11.7 Litigation

If the dispute is not finally resolved in accordance with this clause 11, either Party is at liberty to litigate the dispute.

11.8 Continue to Perform Obligations

Each Party must continue to perform its obligations under this Agreement, notwithstanding the existence of a dispute.

12 ENFORCEMENT

- 12.1 Nothing in this Agreement prevents the Council from exercising any function under the Act

or any other Act or law relating to the enforcement of any aspect of this Agreement (including the breach of this Agreement by the Developer) or any matter to which this Agreement relates.

- 12.2 Until such time as the Development Contribution has been paid in full, an Occupation Certificate must not be issued and the Developer must:
- (a) notify the Council in writing of the name and contact details of any Certifying Authority to which it has applied for an Occupation Certificate at the same time that such application is made;
 - (b) at the time it lodges any application for an Occupation Certificate notify the Certifying Authority in writing of the existence and terms of this Agreement; and
 - (c) procure and provide to Council a written acknowledgement from the Certifying Authority addressed to Council confirming that the Certifying Authority will not issue an Occupation Certificate until Council provides written confirmation that the Development Contribution has been paid;
 - (d) not rely on any Occupation Certificate in respect to the Development.
- 12.3 The Developer acknowledges and agrees that:
- (a) the Land is charged with the payment to Council of the Development Contribution until the Development Contribution is paid in full to Council; [NOTE for monetary contributions]
 - (b) Council has a caveatable interest in the Land from the later of the date of the Development Consent and this Agreement until the Development Contribution and any other monies due to Council under this Agreement are paid in full to Council;
 - (c) Council has the right to lodge and maintain a caveat against the title to the Land to notify of and protect its interest created by this Agreement (including the charge in (a), until the Development Contribution and any other monies due to Council under this Agreement are paid in full to Council;
 - (d) unless the Development Contribution is paid to Council by the Developer upon entering into this Agreement, the Developer shall provide Council with the Caveat Form; and
 - (e) Upon payment of the Development Contribution or surrender of the Development Consent, the Developer may request in writing the removal of the caveat from the title to the Land. The Council will not withhold its consent to such removal, provided the Developer pays all reasonable costs, expenses and fees of the Council relating to such removal and has complied with all its obligations under this Agreement.

13 NOTICES

- 13.1 Any notice, consent, information, application or request that must or may be given or made to a Party under this Agreement is only given or made if it is in writing and sent in one of the following ways:
- (a) delivered or posted to that Party at its address set out below in Item 8 of the Schedule;
 - (b) faxed to that Party at its fax number set out below in Item 8 of the Schedule;
 - (c) emailed to that Party at its email address set out below in Item 8 of the Schedule.
- 13.2 If a Party gives the other Party 3 business days' notice of a change of its address or fax number, any notice, consent, information, application or request is only given or made by that other Party if it is delivered, posted or faxed to the latest address or fax number.
- 13.3 Any notice, consent, information, application or request is to be treated as given or made at the following time:
- (a) If it is delivered, when it is left at the relevant address.
 - (b) If it is sent by post, 2 business days after it is posted.
 - (c) If it is sent by fax, as soon as the sender receives from the sender's fax machine a report of an error free transmission to the correct fax number.
- 13.4 If any notice, consent, information, application or request is delivered, or an error free transmission report in relation to it is received, on a day that is not a business day, or if on a business day, after 5pm on that day in the place of the Party to whom it is sent, it is to be treated as having been given or made at the beginning of the next business day.

14 APPROVALS AND CONSENT

Except as otherwise set out in this Agreement, and subject to any statutory obligations, a Party may give or withhold an approval or consent to be given under this Agreement in that Party's absolute discretion and subject to any conditions determined by the Party. A Party is not obliged to give its reasons for giving or withholding consent or for giving consent subject to conditions.

15 ASSIGNMENT AND DEALINGS

Until the Development Contribution is paid in full, the Developer cannot sell, transfer, assign, novate, charge, encumber or otherwise deal with the Land or attempt or purport to do so.

16 COSTS

Council's costs of and incidental to the preparation and execution of this Agreement and any related documents and registration of same shall be borne by the Developer. The Developer shall be responsible to pay its own costs and any stamp duty arising from this Agreement or its preparation.

17 ENTIRE AGREEMENT

This Agreement contains everything to which the Parties have agreed in relation to the matters it deals with. No Party can rely on an earlier document, or anything said or done by another Party, or by a director, officer, agent or employee of that Party, before this Agreement was executed, except as permitted by law.

18 FURTHER ACTS

Each Party must promptly execute all documents and do all things that another Party from time to time reasonably requests to affect, perfect or complete this Agreement and all transactions incidental to it.

19 GOVERNING LAW AND JURISDICTION

This Agreement is governed by the law of New South Wales. The Parties submit to the nonexclusive jurisdiction of its courts and courts of appeal from them. The Parties will not object to the exercise of jurisdiction by those courts on any basis.

20 JOINT AND INDIVIDUAL LIABILITY AND BENEFITS

Except as otherwise set out in this Agreement, any agreement, covenant, representation or warranty under this Agreement by 2 or more persons binds them jointly and each of them individually, and any benefit in favour of 2 or more persons is for the benefit of them jointly and each of them individually.

21 NON FETTER

The Developer acknowledges and agrees that:

- (a) in addition to its obligations under this Agreement the Council is also responsible for the conduct and administration of local government in the Waverley Local Government Area;
- (b) this Agreement in no way affects Council's statutory obligations, functions or powers, including without limitation, its obligations, functions or powers in respect of the Development Application, Development Consent and any other approvals required in respect of the works to be carried out under the Development Consent;
- (c) nothing which the Council does or fails to do under this Agreement will limit or otherwise affect the Developer's obligations under the Development Consent;

and

- (d) nothing which the Council does, fails to do or purports to do in performing the Council's statutory functions or powers will constitute or amount to a breach of this Agreement.

22 REPRESENTATIONS AND WARRANTIES

The Parties represent and warrant that they have power to enter into this Agreement and comply with their obligations under the Agreement and that entry into this Agreement will not result in the breach of any law.

23 SEVERABILITY

If a clause or part of a clause of this Agreement can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this Agreement, but the rest of this Agreement is not affected.

24 MODIFICATION

No modification of this Agreement will be of any force or effect unless it is in writing and signed by the Parties to this Agreement.

25 WAIVER

The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Agreement, does not amount to a waiver of any obligation of, or breach of obligation by, another Party. A waiver by a Party is only effective if it is in writing. A written waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

26 GOODS & SERVICES TAX

- 26.1 The Parties agree and acknowledge, all amounts payable by one party to the other party in relation to a supply under this Agreement have been calculated exclusive of GST which may be imposed on the supply.
- 26.2 If any supply made under this Agreement is, or becomes, subject to GST, the party to whom the supply is made ("**Recipient**") must pay to the party making the supply

(**"Supplier"**), as consideration, in addition to any consideration payable or to be provided elsewhere in this Agreement, subject to issuing a Valid Tax Invoice, an additional amount on account of GST, such amount to be calculated by multiplying the consideration by the applicable rate of GST.

26.3 Any amount in respect of GST payable under clause 26.2 must be paid to the Supplier immediately on receipt of the Valid Tax Invoice.

26.4 If any party is required to reimburse or indemnify the other party for a cost or expense (**"Cost"**) incurred by the other party, the amount of that Cost for the purpose of this Agreement is the amount of the Cost incurred, less the amount of any credit for, or refund of, GST, which the party incurring the Cost is entitled to claim in respect of the Cost.

27 EXECUTION IN TRIPLICATE

The Parties shall execute this Agreement in triplicate so as to provide one original signed by both parties and a further copy for registration of the Agreement under s7.6 of the Act. This Agreement will be dated on the day of execution by all Parties.

SCHEDULE

<u>Item Number</u>	<u>Particulars</u>	<u>Description</u>
1	Developer	NAME (ACN #)
2	Land	Street Address (Lot & DP)
3	Development Application	DA #
4	Development (description)	
5	Development Contribution	
6	Public Purpose	
7	Development Contribution Date (Payment date for the Development Contribution)	
8	Developer Address	
	Developer Fax	
	Developer Email	
	Council Address	CORNER PAUL STREET AND BONDI ROAD, BONDI JUNCTION NSW 2022
	Council Fax	(02) 9387 1820
	Council Email	info@waverley.nsw.gov.au

**EXECUTED by WAVERLEY COUNCIL with Common Seal of Waverley Council
affixed pursuant to a resolution of Waverley Council on**

ROSS MCLEODEMILY SCOTT

General Manager

CLR PAULA MASSELOS

Mayor

EXECUTED by

NAME

(ACN #)

In accordance with section 127 of the
Corporations Act 2001

NAME

Director/Secretary

NAME

Director

APPENDIX 4 Explanatory Note Template

Explanatory Note

(Clause 25E of the Environmental Planning and Assessment Regulation 2000)

Draft Planning Agreement

The purpose of this explanatory note is to provide a summary of the proposed Planning Agreement (PA) prepared jointly between Waverley Council and the Developer *under s7.4 of the Environmental Planning and Assessment Act 1979* (the Act).

This explanatory note has been prepared as required by clause 25E of the *Environmental Planning and Assessment Regulation 2000*.

This explanatory note is not to be used to assist in construing the Planning Agreement

1 Parties:

Waverley Council (Council) and

Developer (ACN #) of Address (Developer)

2 Description of subject land:

3 Description of Development:

4 Background:

5 Summary of Objectives, Nature and Effect of the Draft Planning Agreement:

6 Assessment of the merits of the Draft Planning Agreement:

The Planning Purposes served by the Draft Planning Agreement

How the Draft Planning Agreement promotes the Public Interest

How the Draft Planning Agreement Promotes the Objects of the Environmental Planning and Assessment Act, 1979 (EP&A Act)

How the Draft Planning Agreement promotes elements of the Council's charter under section 8 of the Local Government Act, 1993

Conformity with the Council's Capital Works Program

Whether the Agreement specifies that certain requirements of the Agreement must be complied with before a construction certificate, occupation certificate or subdivision certificate is issued

~~This explanatory note is not to be used to assist in construing the~~ Planning Agreement

APPENDIX 56

Types of public benefits delivered by Planning Agreements

Public benefits delivered by Planning Agreements must be consistent with the *Planning Agreement Practice Note (February 2021)* publication and Part 2 of this *Waverley Planning Agreement Policy 2014*.

Examples of public benefits include, but are not limited to:

- Affordable housing
- Transfer of land identified on the WLEP 2012 Land Reservation Acquisition Map to Council at no cost to Council for a public purpose
- Dedicated land or floorspace for a public purpose
- Publicly accessible through site links
- Amenity upgrades in parks
- Public E-bike infrastructure (parking hubs/ev charging points)
- Publicly accessible recreation (e.g. tennis courts, indoor play, swimming) and youth facilities
- Publicly accessible Playful-play space
- Cultural Infrastructure - music performance space / gallery / exhibition space / artist run initiative (ARI) space / spaces for artist residencies
- Open space acquisition opportunities identified in the Open Space and Recreation Strategy
- Temporary or permanent creative urban interventions

To assist in delivering public benefits that are expected to be most useful at the time of Planning Agreement drafting, Council officers will consider the *Waverley Public Benefit Register* available for public viewing on Council's website.

The *Waverley Public Benefit Register* is an iterative and non-exhaustive list of possible specific public benefits which includes items presented by both members of the community and Council officers, subject to meeting listing criteria. The *Waverley Public Benefit Register* and the assessment of proposed items against the listing criteria is managed by Waverley Council's Strategic Town Planning team. The *Waverley Public Benefit Register* is available on Council's website.

The listing criteria includes, but is not limited to items:

- Currently unfunded by the Long Term Financial Plan (LTFP) or grant funding;
- Provides a clear public benefit and/or response to a community need; and
- Related to a Council-endorsed strategy or plan

Possible requirements:

The following is a list of possible requirements that the Council may have for Planning Agreements. They are not exhaustive and developers are encouraged to discuss these or other requirements that may be included in a Planning Agreement.

Council Requirement	Project Cost Estimate
Bondi Junction Public Domain and Transport Infrastructure Improvements	\$21,000,000

Contributions to the Waverley Affordable Housing Program	On-going
--	----------

Other examples of public benefits

Detailed requirements for these public benefits can be found in Council’s suite of environmental studies.

- Affordable housing
- Dedicated land or floorspace for a public purpose
- Publicly accessible through site links
- Amenity upgrades in parks
- E-bike infrastructure (parking hubs/ev charging points)
- Publicly accessible recreation (e.g. tennis courts, indoor play, swimming) and youth facilities
- Playful spaces
- Cultural Infrastructure – music performance space / gallery / exhibition space / artist run initiative (ARI) space / spaces for artist residencies
- Open space acquisition opportunities identified in the Open Space and Recreation Strategy

APPENDIX 6
Letter of Offer Template

Developer letterhead

The General Manager
Waverley Council
Cnr Bondi Road & Paul Street
BONDI JUNCTION NSW 2125

Dear General Manager

Development Application No. _____ for
Property and full title particulars: _____

_____ Pty Limited ("Developer") has made the above development application in respect of the above property.

This letter constitutes an offer by the Developer to enter into a voluntary Planning Agreement (VPA) with Waverley Council in connection with the above development application ("DA") which has been made by the Developer.

The Developer offers the following to be implemented by way of voluntary Planning Agreement:

1. The parties to the VPA will be the Developer, the registered owner of the Land and the Council.
2. The VPA will apply to the above property and will be registered on title within 14 days of the VPA being executed by all parties.
3. The VPA will apply to the development the subject of any consent granted to the DA including any modification, alteration, or extension to that development whether it be via a construction certificate, a modification to the consent or consent to a further development application ("Development").
4. The provision to be made under the VPA will be the payment of a monetary contribution to Council at the rate of \$ _____ per sqm of gross floor area proposed by the Development which exceeds the specified floor space ratio for the property under Waverley LEP 2012.
5. For the avoidance of doubt the Development proposes an additional _____ sqm of gross floor area which equates to a contribution of _____.
6. The monetary contribution would be payable prior to the issue of any occupation certificate in respect of the Development.

7. (a) In the event that the gross floor area of the Development increases from that in the DA consent via any construction certificate, then an additional monetary contribution shall be made to the Council calculated at the rate of \$_____ per sqm of gross floor area which exceeds the gross floor area of the DA consent and such contribution will be payable on or before the issue of any occupation certificate in respect of the Development.

(b) In the event that the gross floor area of the Development increases from that in the DA consent via any modification to the DA consent or a consent to amend the DA consent, then the Developer further offers in accordance with this paragraph 7(b), to enter into a new Planning Agreement in accordance with Council's Planning Agreement Policy 2014 Amendment No. 4 and make an additional monetary contribution to the Council calculated at the rate of \$_____ per sqm of gross floor area which exceeds the gross floor area of the DA consent. Such contribution will be payable on or before the issue of any occupation certificate in respect of the Development. The Developer will repeat the offer in accordance with this paragraph 7(b) in writing at the time it lodges any application for modification or amendment of the DA consent which would result in an increase in the gross floor area.
8. The VPA shall not exclude the application of section 7.11, 7.12 or 7.24 of the EP&A Act.
9. The monetary contribution shall not be taken into consideration in determining a development contribution under section 7.11.
10. The monetary contribution shall be used for the provision of (or the recoupment of the cost of providing) affordable housing or any other public purpose agreed by the Developer and Waverley Council.
11. The VPA will provide for security in the form of the provision to Council prior to the issue of any construction certificate for the Development of a Bank Guarantee to secure the payment of the Monetary Contribution prior to the issue of any Construction Certificate for the Development which is:
 - In a form acceptable to Council and from an institution acceptable to Council,
 - Irrevocable,
 - Unconditional, and
 - With no end date.
12. The VPA will be otherwise in accordance with Council's Planning Agreement Policy 2014 Amendment No. 4.

Yours faithfully



Statement of Business Ethics

LINKS TO COMMUNITY STRATEGIC PLAN & DELIVERY PROGRAM

Direction G1 – Inspiring community leadership is achieved through decision making processes that are open, transparent, corruption resistant and based on sound integrated planning.

Strategy G1a – Develop and maintain a framework of plans and policies that ensures open and transparent operations that facilitate equitable benefit sharing and progress towards sustainability.

AUTHOR: **Michael Simmons**

DEPARTMENT: **Governance & Integrated Planning**

DATE CREATED: **August 2006**

DATE REVISED: **April 2014**

DATE APPROVED BY EXECUTIVE TEAM:

DATE ADOPTED BY COUNCIL: **6 May 2014**

NEXT REVIEW DATE: **April 2016**

TRIM FILE REF: **A06/1397**

Statement of Business Ethics

How we do business at Waverley

Our community expects high ethical standards in the provision of Council services and in everything else we do. How we manage our relationships is key to maintaining the community's trust and confidence. Council has set out an ethical framework in which it operates and what we expect from staff.

Our Statement of Business Ethics provides clear guidelines on what to expect from Waverley Council, our obligations and expected behaviours. These standards comply with the NSW Government guidelines for procurement and contracting.

Our principles and policies are an integral part of good business practice.

If at any time you feel that Council is not meeting its standards, please contact my office.

I encourage you to become familiar with our policies, and trust that this Statement helps you in your interactions with Council.



Athanasios (Arthur) Kyron
General Manager

1. Who does this Business Ethics Statement refer to?

We, us, our	Council's staff, councillors, contractors, subcontractors, consultants, delegates and (to the extent practicable) volunteers, as appropriate to the context
Council's staff	Council's staff, contractors, subcontractors, consultants, delegates and (to the extent practicable) volunteers
You, your	People or organisations that deal or wish to deal with Council in business matters
Code of Conduct	Council's <i>Code of Conduct</i> and the <i>Code of Conduct Procedure for Councillors & General Manager</i> and the <i>Code of Conduct Procedure for Staff, Delegates & Volunteers</i> as it applies to Councillors, council staff, consultants, delegates and volunteers

2. Why comply with a Business Ethics Statement?

When you comply with this Statement, you will find that doing business with Council is easier and more effective. You can be sure that you are not disadvantaged because we require others who deal with us to do the same.

By doing business ethically, you will also find it easier to deal with other government bodies because they have similar policies. Ethical practice makes good business sense.

On the other hand, corrupt or unethical behaviour can lead to significant legal, financial and reputational consequences for yourself and Council.

3. What are our Values?

Our values are set out in our Delivery Program and Operational Plan and apply to everything we do. We pride ourselves on bringing the following values alive in our daily activities:

Great Leadership

Great leadership is having the courage to make difficult decisions when they are for the benefit of the whole community and having the skills to engage our teams in providing quality service.

Great Customer Service

Great Customer Service is the willingness and ability to give priority to customers, delivering high quality services which meet their needs.

Respect for All

Respect for all is; treating each other and all members of the community in a friendly, fair and equitable way.

Working Ethically

Ethical behaviour is acting in ways that are consistent with the expectation of the organisation to be corruption free and transparent.

Working Together

Working Together is about everyone working in partnership (internally and with the community) to achieve common or shared goals.

Getting the Job Done Safely, Sustainably and On Time

Getting the job done means providing a service efficiently, effectively and in the safest possible manner within agreed timeframes and due regard for the environment.

4. What are our Key Business Principles?

Our Key Business Principles overlap with our Values, and target our relationships with suppliers.

Ethics

We have to comply with Council's *Code of Conduct*. This means we need to uphold high standards of conduct and ethics in everything we do for Council. We expect the private sector to apply similarly high standards when dealing with Council.

We will:

- act with integrity;
- avoid personal and professional conflicts;
- respect and follow the letter and spirit of Council's policies and procedures;
- use public resources effectively and efficiently;
- make decisions solely on merit; and
- give reasons for decisions (where appropriate).

Value for Money

We will always try to obtain the best possible value for money in any business arrangement. This does not simply mean the lowest or highest price.

Apart from initial and ongoing costs, we will normally consider other aspects such as your ability to provide suitable goods or services, quality, safety, environmental sustainability, reliability and timely performance.

The lowest or highest bid may be the 'best value' if it meets the requirements we believe are needed.

Fairness

We will be fair by being objective, reasonable and even-handed. This does not mean that we will always ask for competitive bids or that we will ask for bids from suppliers that have performed poorly in the past.

On the other hand, we will rarely deal exclusively with a particular supplier, and then only where we have strong reasons to do so.

Sometimes our decision will have a negative effect on a person or organisation, but that does not necessarily mean it is unfair.

We will only request business proposals (by tender or any other method) if we intend to award a contract. If we make a change to our request, we will advise all the affected bidders so that they can respond before a decision is made.

All of our business dealings are open and transparent, where legally appropriate, including the surrounding process. The exception is where we need to maintain confidentiality or protect privacy.

5. What should you expect from Council?

Council will ensure that all policies, procedures and practices related to approvals, tendering, contracting and the procurement of goods and services are consistent with best practice and the highest standards of ethical conduct. You should expect Council's staff and councillors to:

- act honestly, openly, fairly and ethically in all their dealings with you;
- be friendly, courteous, respectful and professional in their dealings with you;
- respect confidentiality of commercial information and privacy of individuals;
- prevent actual, potential or perceived conflicts of interest;
- comply with the law including legislation and regulations;
- comply with Council's policies and procedures including the Code of Conduct and purchasing policies;

- assess all business proposals objectively by considering only relevant factors;
- seek value for money;
- promote fair and open competition;
- protect privilege, confidentiality and privacy;
- respond promptly to reasonable requests for information;
- never request gifts or other benefits;
- decline gifts or other benefits for doing their job unless the gifts or benefits are nominal or token, or otherwise allowed under the Council's *Code of Conduct*. Please note that Waverley Council staff who have a financial delegation are prohibited from receiving gifts of any value; and
- clear probity standards are established.

6. What does Council expect from you?

We expect you to:

- act honestly, openly, fairly and ethically in all your dealings with Council and in all your dealings on behalf of Council;
- treat our customers in a friendly, courteous, respectful and professional way in all your dealings on behalf of Council;
- ensure that environmental sustainability is a key element of your business practice;
- respect confidentiality of commercial and Council information and privacy of individuals;
- prevent actual, potential or perceived conflicts of interest and declare these as soon as possible if they occur;
- comply with the law including legislation and regulations;
- provide working conditions for your employees that comply with industrial relations laws and regulations;
- not be involved in the exploitation of child labour;
- uphold Equal Employment Opportunity principals;
- comply with this Statement and Council's other policies and procedures including the *Code of Conduct*, purchasing policies, secondary employment and post-separation employment policies;
- provide value for money;
- protect privilege, confidentiality and privacy;
- respond promptly to reasonable requests for information;

- respect the fact that Council's staff and councillors must comply with this Statement and Council's other policies and procedures;
- ensure that you do not offer, and refuse requests for, gifts or benefits to Council's staff or councillors for doing their job, unless you are offering gifts or benefits that are nominal or token or otherwise allowed under the *Code of Conduct*;
- ensure that you do not lobby or seek to influence Council's staff or councillors while business proposals are being considered;
- ensure that you are not involved in collusive practices including attempting to influence or pressure Council's staff or councillors to perform their public duties improperly;
- obtain Council's consent before discussing Council's business with the media;
- assist Council to prevent unethical practices in our business relationships;
- advise the General Manager if you believe any person has breached the law, this Statement or Council's other policies and procedures.

If you are employed/contracted by us, you must ensure that in your dealings with members of the public, you:

- comply with the values and meet the standards set out in this Statement and in council's codes and policies;
- act reasonably and professionally at all times;
- provide information about how they can make a complaint about you or your operations and how their complaint will be dealt with including how we will be advised of the complaint and its resolution.

7. Why you need to comply

All of Council's providers of goods and services are required to comply with this statement. The principles of this Statement are consistent with the ethical requirements of other public sector agencies. Therefore you must be careful when you deal with us, because we are public officials.

Council will not tolerate corrupt conduct in any form, such as trying to influence the outcome of a tender. Council's standard tendering invitations, for example, state that any action or contact that may be considered as an attempt to

influence a decision of Council's staff or councillors will automatically disqualify the relevant tender.

People and businesses who engage in corrupt conduct are committing a crime. Penalties for certain acts under the *Independent Commission Against Corruption Act 1988* and the *Crimes Act 1900* can include imprisonment.

Non-compliance with the requirements of this Statement resulting in demonstrated corrupt or unethical conduct could lead to:

- Termination of contracts
- Loss of future work
- Loss of reputation
- Investigation for corruption
- Matters being referred for criminal investigation
- Disqualification of tender

8. Additional information to assist you

Gifts or other benefits

Council awards contracts and determines applications based solely on merit. Gifts must NOT be given in connection with any prospective business dealings and Council officials are not permitted to ask for any reward or incentive for doing their job.

The acceptance of gifts of a token value by Councillors and staff is permitted in certain circumstances. All gifts accepted and all offers of gifts whether token or not are required to be disclosed and are required to be recorded in Council's Gift Register. Waverley Council staff that have a financial delegation are prohibited from receiving gifts of any value.

References to 'gifts' normally include other benefits or cash. Gifts or benefits to Council's staff and Councillors that have a nominal or token value and do not create a sense of obligation, may be acceptable. Cash is never acceptable. All gifts must be declared and entered in Council's gift register.

Council's *Code of Conduct* contains further information.

Communication

You must communicate with us clearly and directly at all times, and account for all communications. This will ensure

that there is a minimal risk of appearing to influence Council's staff or councillors inappropriately.

Confidentiality

All Council information is considered confidential and cannot be disclosed unless Council has agreed otherwise in writing, or the information is public knowledge, or the law requires it to be disclosed.

Conflict of Interest

Council's staff and councillors must disclose any actual, potential or perceived conflict between their personal interests and their professional duties. This includes both pecuniary and non-pecuniary interests and is equally important.

Sponsorship

From time to time, Council seeks financial or in-kind sponsorship from the private sector to support Council's activities or events. Council also regularly provides sponsorships or grants to community organisations for their activities or events.

Council has a *Sponsorships, Grants and Donations Policy* that sets out the procedures and considerations that apply in these situations. Sponsorships, grants or donations must not interfere with Council's ability to carry out its functions, and the process of seeking and providing sponsorships, grants and donations must be open and transparent.

Contractors, Sub-Contractors, Consultants and Delegates

You must ensure that any person who is engaged in your work for Council complies with this Statement. This applies to all delegates including your staff, contractors, sub-contractors, consultants and any other persons or organisations. We must ensure that any person who acts for Council complies with this Statement.

All delegates of Council must also comply with Council's Code of Conduct for Staff, Delegates and Volunteers.

Secondary and Post-Separation Employment

Council's staff members have a duty to maintain public trust.

If a Council staff member works as an employee outside Council, this is called 'secondary employment'. Running a business or acting as a consultant is also considered 'secondary employment', even if the staff member is not strictly an employee in the other business.

The General Manager can prohibit Council's staff from secondary employment where there is, or might be, a conflict of interest.

Council's staff must apply for the General Manager's approval of secondary employment if there is a risk of conflict of interest.

Council's staff must not use their access to commercially sensitive information they gain at Council to assist them into secondary employment or into new employment, business or consultancy after they leave Council. This includes detailed knowledge of Council policies, procedures, practices and information unless these are public knowledge.

Council's staff must also not allow themselves or their work to be influenced by plans for, or offers of, new employment, business or consultancy.

Council's *Code of Conduct* contains further information.

Intellectual Property

You must respect Council's intellectual property and Council must respect your intellectual property. Access, licence or use must be agreed in writing.

Use of Resources

Council's resources must only be used for official purposes.

Council's *Code of Conduct* contains further information.

Political Donations

The law requires that persons who have a financial interest in, or have made a submission in relation to a Development application or a planning instrument, must disclose certain information about political donations and other gifts. This is a mandatory requirement if a donation or gift has been made to a Councillor or council employee within the previous two years of the application or submission.

Reporting Unethical Behaviour

Council is committed to promoting ethical behaviour. Reports of unethical behaviour, fraud, corruption, maladministration or waste can be made to the General Manager or Council's Public Officer on 02 9369 8000.

External reports can be made to the:

Independent Commission Against Corruption	02 8281 5999
NSW Ombudsman	02 9286 1000
NSW Department of Local Government	02 4428 4100

Public officials, including Council's staff and councillors, who report corrupt conduct, maladministration or serious waste of public funds can be protected by the *Protected Disclosures Act 1994*. This Act protects public officials disclosing corruption related matters from reprisal or detrimental action and ensures that disclosures are properly investigated and dealt with.

9. Who should you contact?

If you have questions or comments concerning this Statement, or have information on suspected corruption, maladministration or serious waste of funds, please contact the General Manager's office by letter, phone, fax or email. The details are below.

If you would like a copy of Council's *Code of Conduct for Staff*, *Code of Conduct for Councillors* or *Sponsorships, Grants and Donations Policy*, visit www.waverley.nsw.gov.au or contact our Public Officer.

FOR MORE INFORMATION OR TO OBTAIN COUNCIL POLICIES...	TO REPORT CORRUPTION, MALADMINISTRATION OR WASTE...
CONTACT The Public Officer, Waverley Council	CONTACT The General Manager, Waverley Council
PHONE 9369 8000	PHONE 9369 8000
FAX 9369 1820	FAX 9369 1820
ONLINE www.waverley.nsw.gov.au	ADDRESS PO BOX 9, BONDI JUNCTION NSW 1355
EMAIL info@waverley.nsw.gov.au	EMAIL info@waverley.nsw.gov.au

WAVERLEY PUBLIC BENEFIT REGISTER



What is the *Waverley Public Benefit Register*?

The *Waverley Public Benefit Register* (“the Register”) is an iterative and non-exhaustive list of possible specific public benefits that Voluntary Planning Agreement (VPA) contribution funding can be dedicated to. To assist in delivering public benefits that are expected to be most useful at the time of Planning Agreement instrument drafting, Council officers will consider this Register available for public viewing on Council’s website. Public benefits delivered by VPA funding are by no means limited to items on this Register. The Register is merely a starting point for idea generation purposes, if needed.

This Register includes items presented by both members of the community and Council officers, subject to meeting listing criteria. The Register and the assessment of proposed items against the listing criteria is managed by Waverley Council’s Strategic Town Planning team. When a VPA is received by Council, the draft VPA is placed on public exhibition with a suggested public purpose. The submissions received are used to guide the final public purpose allocation which is determined by the Council.

This Register will be updated quarterly.

Listing Criteria

The listing criteria includes items:

- Currently unfunded by the Long-Term Financial Plan (LTFP) or grant funding;
- Not expected for short-medium term delivery due to investigation, design and/or funding issues;
- Provide a clear public benefit and/or response to a community need;
- Related to a Council-endorsed strategy or plan; and are
- Consistent with the *Environmental Planning and Assessment Act 1979*, the *Environmental Planning and Assessment Regulation 2000*, the *Planning Agreement Practice Note (February 2021)* publication and the *Waverley Planning Agreement Policy 2014*.

Estimated Cost

Estimated cost excludes the cost of pre-construction design, investigative and feasibility stage. This is because VPA funding is only able to be used for the delivery of projects. As pre-construction, investigation and feasibility stage tasks can find a project unable to be delivered, VPA contributions cannot fund this.

VPA funding can, however, be “quarantined” for a period to allow for the pre-construction tasks to be undertaken and funded elsewhere. If these tasks find the project to be able to proceed, then the quarantined VPA funding can go towards its construction. If these tasks find the project to not be suitable, then the quarantined money can go towards an identified back-up project which has been identified as suitable to proceed.

Register Items

LGA Wide

Item	Strategy/Plan	Project Location	Estimated Cost
Affordable Housing	Waverley Affordable Housing Program	LGA wide	Unlimited
Dedicated land or floorspace for a public purpose	Our Liveable Places Centres Strategy 2020-2036 and Waverley Affordable Housing Program	LGA wide	Unlimited
Temporary or permanent creative urban interventions including public art	Waverley Public Art Masterplan and Public Art Policy	LGA wide	Unlimited
Smart lighting in public domain infrastructure and Council assets	Waverley Local Strategic Planning Statement 2036	LGA wide	TBA
Electric vehicle charging infrastructure	Our Liveable Places Centres Strategy 2020-2036 (page 29) and Environmental Action Plan 2018 -2030	LGA wide	\$5K – \$80K per charge point
Transfer of land identified on the WLEP 2012 Land Reservation Acquisition (LRA) Map to Council at no cost to Council for a public purpose	Waverley Local Environmental Plan 2012	Areas marked on the LRA map	Unlimited
Street tree plantings	Waverley Open Space and Recreation Strategy 2021-2031 (page 86)	Key pedestrian and cycling routes that align with ecological corridors connecting parks and reserves	\$2K - \$25K per tree
Heritage interpretation works: signage, artwork, storytelling, landscape design or improvements to amenity	Waverley Open Space and Recreation Strategy 2021-2031 (page 90)	Historic or heritage listed open space including parks and reserves listed on page 90 of the strategy.	TBA
Bicycle path infrastructure	Waverley Bike Plan 2013 and Waverley's People, Movement and Places plan	Waverley Bicycle Network Map	TBA

Bondi Junction

Item	Strategy/Plan	Project Location	Estimated Cost*
Outdoor dining activation	Our Liveable Places Centres Strategy 2020-2036	Centres	TBA
Bondi Junction and Bondi Beach tier 2 (amenity lighting) and tier 3 (lighting interventions) lighting	Waverley Creative Lighting Strategy 2018 – 2028	Bondi Junction and Bondi Beach	Unlimited
Open space acquisition for 'urban park' - Urban parks can include community indoor recreation space, rooftop courts for basketball or tennis, and indoor public pools.	Waverley Open Space and Recreation Strategy 2021-2031 (page 80)	15 Adelaide Street, Bondi Junction or under viaduct along Syd Enfield Drive	TBA
Provide additional turn-up and play facilities such as basketball and netball hoops, tennis rebound walls,	Waverley Open Space and Recreation Strategy 2021-2031 (page 78)	Bondi Junction, Waverley Park and northern part of LGA in North Bondi, Rose Bay and	TBA

and outdoor activity stations.		Vaucluse	
Improve footbridge connection with Woollahra	Waverley Local Strategic Planning Statement 2036 (page 90)	Bondi Junction	TBA
Improve connectivity within Bondi Junction, including between the Transport Interchange and Oxford Street Mall	Waverley Local Strategic Planning Statement 2036 (page 90)	Bondi Junction	TBA
Sustainability and public domain improvements	Our Liveable Places Centres Strategy 2020-2036 (page 24)	All centres	TBA
Rain gardens, kerb planting, green walls, hanging planting and general greenery	Our Liveable Places Centres Strategy 2020-2036 (page 39)	Closest centre where the OLP has identified this	TBA
Functional and well designed public furniture	Our Liveable Places Centres Strategy 2020-2036 (page 39)	Closest centre where the OLP has identified this	TBA
Activate laneways	Our Liveable Places Centres Strategy 2020-2036 (page 49) and the Bondi Junction Evening, Culture and Entertainment Strategy 2018 – 2028 (page 23)	Charing Cross, and Gray/Ann Street laneways in BJ	TBA
Activation of blank walls with public wall art	Our Liveable Places Centres Strategy 2020-2036 (page 92)	Closest centre where the OLP has identified this	TBA
Public bathrooms	Bondi Junction Evening, Culture and Entertainment Strategy 2018 – 2028	Oxford Street Mall, Bondi Junction	TBA
Gateway artwork	Bondi Junction Evening, Culture and Entertainment Strategy 2018 – 2028 (page 21)	West Oxford Street, Bondi Junction	TBA

Other Centres

Item	Strategy/Plan	Project Location	Estimated Cost*
Outdoor dining activation	Our Liveable Places Centres Strategy 2020-2036	Centres	TBA
Publicly accessible through site links	Our Liveable Places Centres Strategy 2020-2036	Centres	Unlimited
Bondi Junction and Bondi Beach tier 2 (amenity lighting) and tier 3 (lighting interventions) lighting	Waverley Creative Lighting Strategy 2018 – 2028	Bondi Junction and Bondi Beach	Unlimited
Activate Charing Cross with placemaking initiatives, including improving the quality and safety of laneways and providing urban open space	Waverley Local Strategic Planning Statement 2036 (page 90)	Charing Cross	TBA
Sustainability and public domain improvements	Our Liveable Places Centres Strategy 2020-2036 (page 24)	All centres	TBA
Bike paths and footpath upgrades	Our Liveable Places Centres	Curlewis Street	TBA

	Strategy 2020-2036 (page 29)		
Rain gardens, kerb planting, green walls, hanging planting and general greenery	Our Liveable Places Centres Strategy 2020-2036 (page 39)	Closest centre where the OLP has identified this	TBA
Functional and well designed public furniture	Our Liveable Places Centres Strategy 2020-2036 (page 39)	Closest centre where the OLP has identified this	TBA
Activate laneways	Our Liveable Places Centres Strategy 2020-2036 (page 49) and the Bondi Junction Evening, Culture and Entertainment Strategy 2018 – 2028 (page 23)	Charing Cross, and Gray/Ann Street laneways in BJ	TBA
Pocket parks/parklets	Our Liveable Places Centres Strategy 2020-2036 and the Bondi Junction Evening, Culture and Entertainment Strategy 2018 – 2028	Hall Street, Bronte Road and Brighton Boulevard	TBA
Solar chargers for bikes, vehicles and streetlights	Our Liveable Places Centres Strategy 2020-2036 (page 67)	Bronte Beach and Bondi Beach centres	TBA
Underground powerlines and smart poles	Our Liveable Places Centres Strategy 2020-2036 (page 72)	Closest centre where the OLP has identified this	TBA
Activation of blank walls with public wall art	Our Liveable Places Centres Strategy 2020-2036 (page 92)	Closest centre where the OLP has identified this	TBA
Heritage artwork: tram celebration	Our Liveable Places Centres Strategy 2020-2036 (pages 129 and 137)	Bondi Road, Wairoa Avenue and Fletcher Street centres	TBA
Creative lighting	Our Liveable Places Centres Strategy 2020-2036 (pages 141 and 148) and Bondi Junction Evening, Culture and Entertainment Strategy 2018 – 2028 (page 19)	Bondi Beach and Seven Ways centres, and Waverley Street Mall	TBA

Other Site-Specific

Item	Strategy/Plan	Project Location	Estimated Cost*
Provide park amenities (shade, seating, toilets, and water bubbler's)	Waverley Open Space and Recreation Strategy 2021-2031 (page 82)	Waverley Park Barracluff Park, Rodney Reserve and Hugh Bamford Reserve	TBA
Open space acquisition for community hubs with co-located community services.	Waverley Open Space and Recreation Strategy 2021-2031 (page 80)	Wairoa Avenue, North Bondi, and Varna Park, Clovelly	TBA
Improving turf and support facilities such as signage, water bubblers and bins at dog off-leash parks.	Waverley Open Space and Recreation Strategy 2021-2031 (page 77)	North Bondi and Bondi Beach	TBA
Provide additional turn-up and play facilities such as basketball and	Waverley Open Space and Recreation Strategy 2021-	Bondi Junction, Waverley Park and northern part of LGA in	TBA

netball hoops, tennis rebound walls, and outdoor activity stations.	2031 (page 78)	North Bondi, Rose Bay and Vaucluse	
Signage and way finding at popular open spaces	Waverley Open Space and Recreation Strategy 2021-2031 (page 84)	Bondi Beach and Park	TBA
Create safe lookouts along the Coastal Walk	Waverley Local Strategic Planning Statement 2036 (page 84)	Vaucluse, Dover Heights and Rose Bay	TBA
Improvements to North Bondi ocean pool	Waverley Local Strategic Planning Statement 2036 (page 86)	North Bondi	TBA
Make existing playgrounds accessible for all	Waverley Local Strategic Planning Statement 2036 (page 88)	Bondi, Tamarama and Bronte	TBA
Provide playground amenities (shade and additional playground equipment)	Waverley Open Space and Recreation Strategy 2021-2031 (page 82)	Dudley Page Reserve	TBA
Provide additional fitness equipment at outdoor gyms	Waverley Open Space and Recreation Strategy 2021-2031 (page 82)	Dudley Page Reserve	TBA
Bronte Gully ecological restoration	Bronte Gully Ecological Restoration Action Plan 2015 – 2045	Bronte	\$35K (\$100K needed, \$65K already funded)
Remnant bushland protection and improvement	Environmental Action Plan 2018 – 2030 (page 13) and, Biodiversity Action Plans – Remnant Sites 2014 – 2020, and the Draft Biodiversity Action Plan – Remnant Sites: 2021-2030	Williams Park, North Bondi	\$20 - \$90K per year
Stormwater quality improvement devices (SQIDs) to remove sediment and pollutants	Environmental Action Plan 2018 – 2030 (page 20)	Rose Bay catchment, Bondi catchment and Double Bay catchment (Bondi Junction).	\$40K - \$300K per site
Bondi Park, Beach and Pavilion works	Bondi Park, Beach and Pavilion Plan of Management	Bondi Park, Beach and Pavilion	TBA
Waverley Park works	Waverley Park Plan of Management and Masterplan	Waverley Park	TBA
Tamarama Park works	Tamarama Park and Beach Plan of Management	Tamarama Park and Beach	TBA

REPORT
PD/5.3/22.07

Subject: Sustainability Expert Advisory Panel - Community Membership

TRIM No: A10/0022

Author: Sam McGuinness, Executive Manager, Environmental Sustainability

Director: Mitchell Reid, Acting Director, Planning, Sustainability and Compliance

RECOMMENDATION:

That Council:

1. Appoints the following community members to the Sustainability Expert Advisory Panel (SEAP) until the end of the Council term in September 2024:
 - (a) Danny Cameron.
 - (b) Stephanie Carrick.
 - (c) Anthea Fawcett.
 - (d) Corinne Mullet.
 - (e) Robin Mellon.
 - (f) Charles Scarf.
2. Writes to the unsuccessful applicants thanking them for their application.

1. Executive Summary

This report proposes that seven community members be appointed to the Sustainability Expert Advisory Panel for the period of this Council term.

2. Introduction/Background

The role of the Sustainability Expert Advisory Panel (SEAP) as outlined in the Terms of Reference is to:

- Work with Council to promote sustainable practices, focusing on the Waverley Community Strategic Plan and Environmental Action Plan.
- Assist Council and the community to implement and achieve the environmental targets of the EAP.
- Assist Council to integrate environmental sustainability into Council policy, plans and operations.

The Panel is proposed to convene to workshop environmental problems and solutions to improve the environmental sustainability of Council and the Waverley community more broadly.

Following an open application process in May and June 2022, Council received 10 applications from the community to be members of the Sustainability Expert Advisory Panel (SEAP). All members of the previous ESAC were informed of the new panel. Three Council officers reviewed the applications.

Based on the evaluation criteria, Council officers evaluated and recommended the following candidates to be appointed:

- Danny Cameron.
- Stephanie Carrick.
- Anthea Fawcett.
- Corinne Mullet.
- Robin Mellon.
- Charles Scarf.

These applicants have extensive and diverse applied expertise in relevant environmental fields as well as a deep understanding of the local community and government work. They are independent and will be able to contribute expertise that Council does not currently have. As such, the proposed Panel members will help guide Council's work towards achieving its environmental targets as specified in Council's new Community Strategic Plan and Environmental Action Plan. This report proposes that the community members be appointed for the period of this Council term so that this Panel will continue until September 2024.

3. Relevant Council Resolutions

Meeting and date	Item No.	Resolution
Strategic Planning and Development Committee 5 April 2022	PD/5.4/22.04	That Council: <ol style="list-style-type: none"> 1. Changes the name of the Environmental Sustainability Advisory Committee to the Sustainability Expert Advisory Panel. 2. Adopts the terms of reference for the Sustainability Expert Advisory Panel attached to the report. 3. Invites expressions of interest for the appointment of community sustainability experts to take place in April 2022.
Council 15 February 2022	CM/7.1/22.02	EXTRACT That Council: ... <ol style="list-style-type: none"> 3. Appoints Councillors/delegates to the following committees/organisations until the next mayoral election on 19 September 2023: Environmental Sustainability Advisory Committee Crs Keenan (Chair), Masselos (Deputy Chair), Fabiano and Nemes.

4. Discussion

Expressions of interest for the SEAP were advertised through Council's environmental newsletters, emails to local community groups, the Mayor's Column in the Wentworth Courier and Council's Have Your Say webpage. The original date for submissions was extended as there were some website issues. Applications

were reviewed by three Council officers from the Environmental Sustainability team. The criteria below were used to evaluate applications:

- Live or work in the Waverley local government area.
- Have the capacity to contribute views and perspectives that represent, as far as is possible, a diverse range of environmental issues.
- Have significant professional experience in environmental sustainability.
- Have specific expertise relevant to Waverley Council such as in the areas of climate resilience, water, biodiversity or waste.
- Be available to attend meetings out of business hours.

Council received 10 applications. The seven local professionals listed in the table below were selected as the candidates that best fit the evaluation criteria for the committee.

Table 1. Recommended community members.

Name	Background/expertise
Danny Cameron	Sustainability professional with a focus and experience in running very large events and ensuring that they are sustainable across all areas of sustainability.
Stephanie Carrick	Sustainability professional with advanced digital communication skills and involvement with local environment groups.
Anthea Fawcett	Extensive professional experience with sustainability in the built environment, solar and food systems and corporate communication.
Corinne Mullet	Detailed technical experience with the built environment, energy rating tools and government which is very relevant to Council's net zero targets.
Robin Mellon	Extensive experience in sustainability with detailed understanding of supply chains, built environment, environmental funding and urban sustainability.
Charles Scarf	Trained and accredited sustainability professional with a focus on major infrastructure projects.

The selected applicants all met the criteria as outlined in the terms of reference.

5. Financial impact statement/Time frame/Consultation

Financial impact

Officer involvement in facilitating and supporting the SEAP is covered through operational budgets. Recommendations from the SEAP may be considered by Council on a case-by-case basis to determine resource allocations.

Time frame

The appointment of community members will take effect upon adoption by Council. The first SEAP meeting of the year will be scheduled following this Council meeting, with two meetings in to be held in 2022 followed by three in 2023 and 2024.

6. Conclusion

The Sustainability Expert Advisory Panel and its predecessor, the Environmental Sustainability Advisory Committee, has been operating since 2008. Following an open application process, Council received 10

applications from the community to be members of the SEAP. This report recommends that Council appoints seven community members to the Panel.

7. Attachments

Nil.