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Plan finalisation report – PP_2019_WAVER_003_00 / PP-2020-447

Waverley LEP 2012 – Waverley War Memorial
Hospital Campus

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1 Introduction

1.1 Overview

1.1.1 Name of draft LEP

Waverley Local Environmental Plan (LEP) 2012 (Amendment No. 22).

The LEP seeks to enable redevelopment of the Waverley War Memorial Hospital Campus site by including new additional permitted uses, creating incentive provisions for increased maximum building heights and floor space ratio (FSR), and applying new site-specific provisions.

1.1.2 Site description

Table 1 Site description

Site Description	The planning proposal (Attachment A) applies to land at the Waverley War Memorial Hospital campus site, at 97C, 119-121 and 125 Birrell Street, 2-6 Church Street and 124-164 Bronte Road, Waverley.
Type	Site
Council name	Waverley Council
LGA	Waverley

The site (**Figure 1**) is bound by Carrington and Bronte Roads, and Birrell and Church Streets and has a total site area of approximately 31,670 sqm. It currently accommodates the War Memorial Hospital and supporting buildings, a residential aged care facility and independent living units.

The subject site takes up most of the block, except for the properties at 99-117 Birrell Street which are subject to a separate but complimentary planning proposal (PP-2021-4641), which was given a conditional Gateway determination on 17 September 2021. The entire urban block is referred to as the 'Edina Estate'.

There is a habitat corridor through the site identified in the Waverley Development Control Plan (DCP) 2012 with significant trees, as well as two large Norfolk Island Pine trees which are part of the local heritage listed War Memorial Hospital landscape. The site is well located within walking distance of the Bondi Junction strategic centre, which is 800m to the north west, and the Charing Cross local centre to the south.



Figure 1 Aerial view of the subject site (outlined in red) (Source: Planning proposal)

1.1.3 Purpose of plan

The planning proposal seeks to enable the redevelopment of the site to provide for additional seniors housing and social infrastructure including publicly accessible open space, supporting health related community uses and a child-care centre.

The table below outlines the current and proposed controls for the LEP.

Table 2 Current and proposed controls

Control	Current	Proposed
Maximum height of the building	Part 9.5m and 12.5m	Part 15m and 21m (incentivised)
Floor space ratio (FSR)	Part 0.6:1 and 0.9:1	1.2:1 (incentivised)
Additional permitted uses on land zoned SP2 Health Services Facility	N/A	Seniors housing, community facilities and centre-based child care facility

The proposal also seeks to:

1. Include the site on the Key Sites Map so that:

- a site-specific provision (outlined below) applies to future development
 - Clause 6.9 Design excellence applies to the site
2. Introduce a site-specific provision in Part 6 Additional local provisions which:
- provides objectives for the clause
 - applies Clause 6.9 Design excellence to the site
 - requires a site-specific Development Control Plan (DCP) to be prepared
 - provides an incentive to increase building heights from part 9.5m and 12.5m, to part 15m and 21m (as shown on the Alternative Height of Buildings Map) and to increase the FSR from part 0.6:1 and 0.9:1, to 1.2:1 (as shown on the Alternative FSR Map) where the following site-specific requirements are met:
 - a minimum of 30% of the site area is to be provided as deep soil with the layout as indicated in the site-specific DCP
 - minimum building sustainability index (BASIX) water and energy targets set above current BASIX requirements, and a minimum Nationwide House Energy Rating Scheme (NaHERS) rating for thermal comfort for BASIX affected development
 - minimum National Australian Built Environment Rating System (NABERS) energy and water rating stars for any commercial development.

The proposal estimates it could provide up to 226 jobs and across the whole Edina Estate, facilitate 216 independent living units (ILUs), 48 residential aged care beds and 44 hospital beds.

Council prepared a draft site-specific DCP to accompany the planning proposal that will guide future development. However, the DCP will be revised, re-exhibited and finalised with the Birrell Street planning proposal.

1.1.4 State electorate and local member

The site falls within the Coogee state electorate. Dr Marjorie O'Neill MP is the State Member.

The site falls within the Wentworth federal electorate. Mr Dave Sharma MP is the Federal Member.

To the team's knowledge, neither MP has made any written representations regarding the proposal.

There are no donations or gifts to disclose, and a political donation disclosure is not required.

There have been no meetings or communications with registered lobbyists with respect to this proposal.

2 Gateway determination and post-Gateway changes

The Gateway determination issued on 8/07/2020 (**Attachment B**) determined that the proposal should proceed subject to conditions.

On 28 April 2021, Council provided an updated planning proposal package in response to the Gateway conditions. On 12 May 2021, the Department advised Council that the revised planning proposal satisfies Condition 1 of the Gateway determination which requires various revisions and additional information in the proposal, subject to further minor editing in some areas (**Attachment D**). On 19 May 2021, Council sent the Department a copy of the public exhibition version of the planning proposal.

Council has met all the Gateway determination conditions, except for adhering to the timeframe to complete the LEP.

In accordance with the Gateway determination the proposal was due to be finalised on 8/07/2021.

3 Public exhibition and post-exhibition changes

In accordance with the Gateway determination, the proposal was publicly exhibited by Council from 20/05/2021 to 4/07/2021.

Council concurrently exhibited a draft site-specific DCP for the entire Edina Estate (including the Birrell Street site, which is subject to an additional planning proposal). Council has advised that the submissions received for the draft DCP will be addressed in a further Council report and the DCP will be re-exhibited with the Birrell Street planning proposal.

A total of 48 community submissions were received, comprising of 33 objections (69%) and 5 submissions supporting the proposal (10%), 10 submissions were not explicit in objection or support (21%) (**Attachment E**).

3.1 Submissions during exhibition

3.1.1 Submissions supporting the proposal

The five submissions of support identified the following key aspects of the proposal:

- the provision of seniors housing, and retention and upgrade of community and health services
- the retention and conservation of heritage on the site
- the environmental significance of the site will be maintained

3.1.2 Submissions objecting to and/or raising issues about the proposal

There were 48 submissions received from individuals and organisations on the proposal, including the Bronte Beach Precinct Committee, Charing Cross Precinct Village and Queens Park Precinct Committee, and a submission from Council's environmental sustainability team.

Table 3 Summary of Key Issues

Issue raised	Submissions (%)	Council response and Department assessment of adequacy of response
Concerns for future living arrangements of residents currently on-site	22 subs (46%)	<p>Council Response:</p> <p>Council stated this is a matter which should be addressed by the Proponent. Council advised residents to direct their concerns to the Proponent, however also indicated it would bring these submissions to the Proponent's attention.</p> <p>Department Response:</p> <p>The Department concurs with Council's response. These are matters for the Proponent to consider and are discussed further in the report at Section 4.1.5.</p>
Excessive building heights	20 subs (42%)	<p>Council Response:</p> <p>An assessment of the appropriateness of the heights was undertaken which considered the site's heritage context, surrounding streetscapes, local character and public domain views. The assessment deemed that with appropriate setbacks and building interface controls in the site-specific DCP, the proposed heights are suitable. The proposed maximum heights were</p>

Issue raised	Submissions (%)	Council response and Department assessment of adequacy of response
		<p>supported by elected members of Council and independent planning experts via the Waverley Local Planning Panel (LPP).</p> <p>Department Response:</p> <p>The Department concurs with Council's response. The proposed maximum building heights have been assessed by Council and by the Department as part of the Gateway assessment and are considered to remain reasonable.</p>
Potential overshadowing	10 subs (21%)	<p>Council Response:</p> <p>Shadow diagrams were provided for the indicative masterplan which show that most overshadowing would occur within the site itself. The stepped building heights and retention of the Church Street heritage cottages minimise overshadowing to surrounding properties.</p> <p>Department Response:</p> <p>The Department concurs with Council's response. According to the concept masterplan, the potential mid-winter overshadowing does not extend into any of the surrounding developments and/or their private open space for any significant amount of time. Based on the shadow diagrams in the Urban Design Report (Attachment F), the concept scheme will result in some morning mid-winter overshadowing to the 3 to 4-storey residential flat building on the western side of Bronte Road, however the shadows would shift away after 10am. There would also be some overshadowing to properties on the southern side of Church Street, however the shadows would shift away after 9.30am.</p>
Potential wind tunnels	9 subs (19%)	<p>Council Response:</p> <p>The stepped building heights and requirement for building articulation and mature tree planning around the periphery as well as within the site, are measures that will reduce potential wind tunnels. This is a site-specific DCP matter and will be considered further during the review and finalising of the DCP.</p> <p>Department Response:</p> <p>The Department concurs with Council's response and notes these issues have been considered in the draft site-specific DCP and can be evaluated in more detail during the finalisation of the DCP and at the development application (DA) stage.</p>
Impact on heritage items on the site	9 subs (19%)	<p>Council Response:</p> <p>The proposed maximum building heights are the same height as the parapet of the Vickery building tower. The site also slopes from east to west and setbacks will be required for the tallest part of any building on site as part of the site-specific DCP. Separation from the heritage items located on the eastern portion of the site will be provided by the proposed through-site link and landscaped area.</p>

Issue raised	Submissions (%)	Council response and Department assessment of adequacy of response
		<p>Council states it will review the heritage impacts further when reviewing and finalising the site-specific DCP. Council notes that Heritage NSW did not object to the proposal.</p> <p>Department Response: The Department is satisfied with Council's response.</p>
Excessive bulk and scale	7 subs (15%)	<p>Council Response: The impacts of the proposed height and bulk have been assessed by Council officers and considered to be appropriate in its context and in consideration of the existing character of the area. Council notes the additional height is setback from the street and a four-storey frontage to Birrell Street and Bronte Road is proposed.</p> <p>Department Response: The Department concurs with Council's response and notes the urban design and impacts of the indicative concept scheme have been assessed and considered reasonable.</p>
<p>Site-specific DCP matters</p> <ul style="list-style-type: none"> - Building layouts (17)(35%) - Impact on habitat corridor (15)(31%) - Loss of mature trees (13) (27%) 		<p>Council Response: Overall, Council noted these concerns and advised that matters such as proposed building layouts are largely relevant to the site-specific DCP. All feedback on these items will be reviewed and considered prior to finalising and reporting the site-specific DCP to Council for adoption.</p> <p>Department Response: The Department notes the requests to consider or revisit specific DCP matters are for Council to work through prior to adoption of the DCP.</p>

Issue raised	Submissions (%)	Council response and Department assessment of adequacy of response
Floor space ratio (FSR)	5 subs (10%)	<p>Council Response:</p> <p>The additional FSR is only available if the requirements for providing open space and high-performance building standards are met. This is to balance open space provision, heritage and character concerns. Council does not recommend any additional FSR bonus that the Proponent could access via other mechanisms such as the State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 and requests that the site is excluded from any additional bonuses.</p> <p>Department Response:</p> <p>Council's post-exhibition change recommended as a result of concern over the proposed bonus FSR is discussed and considered in Section 4.1.4 below. The Department does not support the exclusion of bonus provisions under the SEPP (Housing for Seniors or People with a Disability) 2004 , or the proposed upcoming Housing SEPP.</p>

3.1.3 Other issues raised

Other matters of concern raised by submissions included an internal submission from Council's Environmental Sustainability team that largely related to the site-specific DCP. The submission did however recommend a change to the proposed National Australian Built Environment Rating System (NABERS) target in the site-specific provision. The submission suggested to reduce the proposed 5.5 star NABERS energy target for commercial buildings to a 5 star target due to recent changes to section J of the National Construction Code, which increased baseline performances of buildings. Council officers considered this and decided not to amend the proposed target as a high-performance building outcome is sought and given the scale of the site, the project should achieve a higher star rating.

Following submission of the planning proposal to the Department for finalisation, Council provided clarification that the NABERS target is also intended to apply to the residential care facility component of the development and common areas of independent living units. Council considers a 5-star NABERS rating would be adequate for the common areas of independent living units.

3.2 Advice from agencies

In accordance with the Gateway determination, Council was required to consult with agencies listed below in Table 4 who have provided the following feedback.

Table 4 Advice from public authorities

Agency	Advice raised	Council response
Heritage NSW	Heritage NSW note the proposal represents an improved outcome for the heritage items on site than previous iterations. Further work is encouraged at the detailed design stage to relate to the heritage items on site and Council is to be satisfied that impacts are addressed.	Council acknowledge the submission and concluded that no issues were raised which would impact the amendments being sought as part of the proposal.

Agency	Advice raised	Council response
Transport for NSW (TfNSW)	TfNSW commented on aspects of the Transport Impact Assessment including re-locating of bus stops, and a new vehicular access point on the eastern side of Bronte Road. It provided considerations for the site-specific DCP and matters that should be considered prior to lodgement of a masterplan development application (DA) and during the DA stage.	Council considers these points are relevant to the further review of the site-specific DCP and matters which should be considered during any future DA. Council concluded that no issues were raised which would impact the amendments being sought as part of the proposal.
Ausgrid	Ausgrid advised on matters to be further addressed at the development application (DA) stage.	Council did not provide a response to Ausgrid's comments on the proposal.
Sydney Water	Sydney Water advised that detailed servicing requirements will be provided when the development proposal is referred to Sydney Water as part of a Section 73 application.	Council did not provide a response to Sydney Water's comments on the proposal.

The Department considers Council has adequately addressed matters raised in submissions from public authorities.

3.3 Post-exhibition changes

3.3.1 Council resolved changes

At Council's Ordinary Meeting on 17/08/2021, Council resolved to proceed with the planning proposal with the following post-exhibition changes to introduce site-specific clauses to:

- exclude the application of 'Part 6 Development of Vertical Villages' in the *State Environmental Planning Policy (Housing for Seniors and People with a Disability)* ('Seniors SEPP') from the R3 Medium Density Residential portion of the land
- ensure the provision of a minimum amount of floor space for the purposes of a residential aged care facility

Council has proposed an additional objective in the site-specific provision which seeks *'to ensure the continuation of the delivery of vital health and social infrastructure on the site.'*

Council also requested that the Department consider *'options for rehousing existing residents in a sensitive and considered way, including giving preference to existing residents in the future development.'*

The post-exhibition changes have not previously been presented to or agreed upon by the Department.

Council resolved that several matters in the site-specific DCP be reviewed and updated prior to it being adopted for re-exhibition.

3.3.2 Proponent's submission

On 9 and 30 September 2021, the Proponent provided submissions to the Department on Council's post-exhibition changes (**Attachments G1 and G2**). On 15 October 2021, the Proponent provided further details relating to the floor space of the indicative master plan (**Attachment G3**).

These have been outlined and considered where relevant in the Department's assessment of the post-exhibition changes below.

4 Department's assessment

The proposal has been subject to detailed review and assessment through the Department's Gateway determination (**Attachment B**) and subsequent planning proposal processes. It has also been subject to an adequate level of public consultation and engagement.

The following reassesses the proposal against relevant Section 9.1 Directions, SEPPs, Regional and District Plans and Council's Local Strategic Planning Statement. It also reassesses any potential key impacts associated with the proposal (as modified).

As outlined in the Gateway determination report (**Attachment C**), the planning proposal submitted to the Department for finalisation:

- Remains consistent with the regional and district plans relating to the site.
- Remains consistent with the Council's Local Strategic Planning Statement.
- Remains consistent with all relevant Section 9.1 Directions, with any inconsistency appropriately justified.
- Remains consistent with all relevant SEPPs.

The following tables identify whether the proposal is consistent with the assessment undertaken at the Gateway determination stage. Where the proposal is inconsistent with this assessment, requires further analysis or requires reconsideration of any unresolved matters these are addressed in Section 4.1.

Table 5 Summary of strategic assessment

	Consistent with Gateway determination report Assessment	
Regional Plan	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1
Eastern City District Plan	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1
Local Strategic Planning Statement	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1
Section 9.1 Ministerial Directions	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No, refer to section 4.1
State Environmental Planning Policies (SEPPs)	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No, refer to section 4.1

Table 6 Summary of site-specific assessment

Site-specific assessment	Consistent with Gateway determination report Assessment	
Social and economic impacts	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1
Environmental impacts	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1
Infrastructure	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1

4.1 Detailed assessment

The following section provides details of the Department's assessment of key matters and any recommended revisions to the planning proposal to make it suitable.

4.1.1 Section 9.1 Ministerial Directions

Consistency with the following section 9.1 Ministerial Directions has been resolved since the Gateway determination report assessment by amendments to the proposal and/or provision of additional information prior to public exhibition as follows:

- Amendments were made to the proposal, and further information was provided around the minimum deep soil area provision, design excellence, and high performance building standards to justify and address any inconsistency with Direction 6.3 Site Specific Provisions.
- The findings and conclusion of the Phase 1 Environmental Site Assessment regarding site contamination were included in the planning proposal to address consistency with Direction 2.6 Remediation of Contaminated Land.

4.1.2 State Environmental Planning Policies (SEPPs)

Consistency with the following SEPPs has been resolved prior to public exhibition:

- SEPP (Building Sustainability Index: BASIX) 2004
Prior to public exhibition and in line with the Gateway determination conditions, the proposed high performance building standard provision was revised as an incentive provision for additional height and floor space, rather than a requirement, to avoid potential inconsistency with clause 8 of the BASIX SEPP. The Department is satisfied the proposal is consistent with the BASIX SEPP.
- SEPP 70 – Affordable Rental Housing (Revised Schemes)
Prior to public exhibition and in line with the Gateway determination conditions, the proposed affordable housing provision was removed from the planning proposal as Council does not have an endorsed affordable housing contribution scheme. The Department is satisfied the proposal is consistent with SEPP 70.

4.1.3 Exclusion from the Seniors SEPP

Council seeks a post exhibition change to exclude the application of 'Part 6 Development of Vertical Villages' in *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004* ('Seniors SEPP') from being applicable in the instance that any development seeks to utilise the incentivised Alternative Building Height and Alternative FSR.

Clause 45 (Part 6 Development of Vertical Villages) of the Seniors SEPP allows a bonus FSR of up to 0.5:1 for vertical village development on land where residential flat buildings are permitted and where certain requirements are met. On the site, this clause would apply to the R3 Medium Density Residential zoned land. The site has two areas of R3 zoned land, one fronting Bronte Road and Church Street, and the other area fronting Birrell Street (**Figure 2**).

Council is seeking the exclusion due to the following reasons:

- the site has received significant uplift with the incentive height and FSR controls.
- the incentive height and FSR in the proposal are appropriate for the heritage and environmental significance of the site and have been supported by the Waverley LPP, Sydney Eastern City Planning Panel (as part of a previous rezoning review for the site) and Waverley Council elected members.

- some community submissions opposed the incentive controls. Rather than seeking to reduce these, Council resolved to proceed with the controls as exhibited, however seeks this exclusion to better respond to heritage and tree canopy on the site.
- the maximum proposed controls should not be exceeded, even when using floor space bonus under a SEPP.

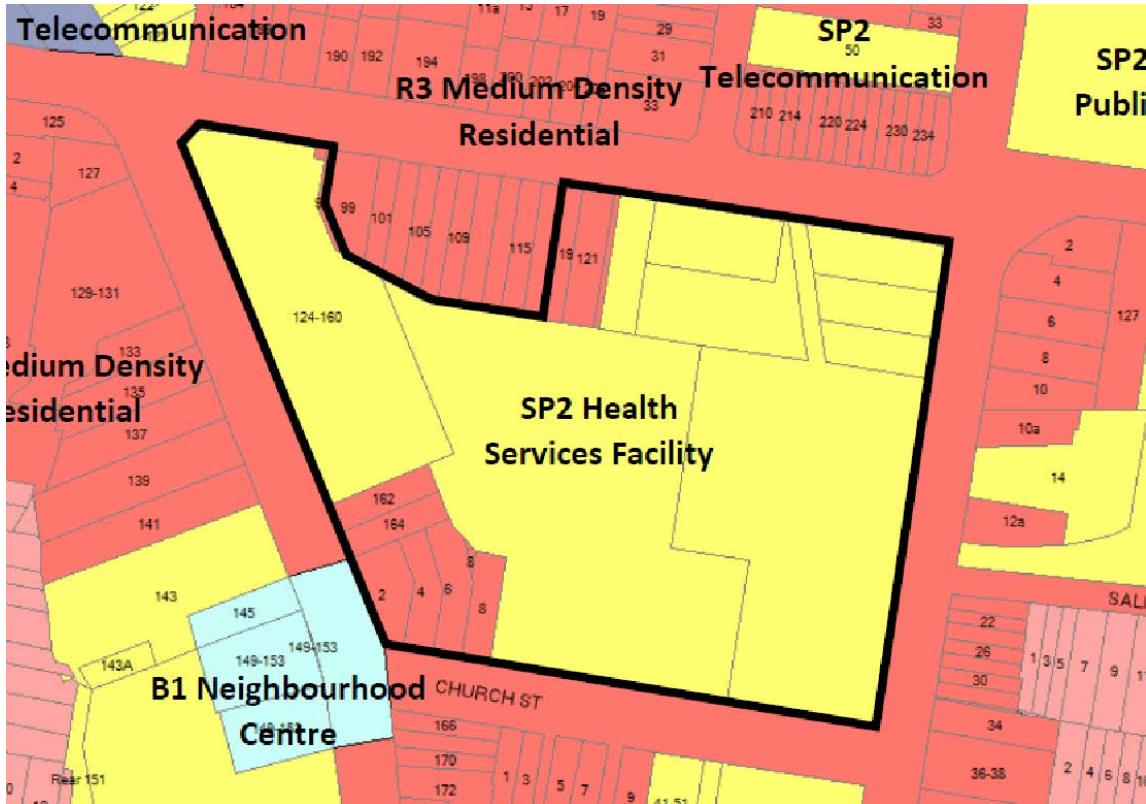


Figure 2 Land use zoning map (site outlined in black)

Proponent's submission

The Proponent objects to this post-exhibition change and considers that the proposed exclusion from vertical village bonuses:

- are counterintuitive to State and Council policies and strategies that seek to promote seniors housing and aged care services.
- would set a dangerous precedent for the State.
- further impact on an industry which is already challenged to meet the growing needs of an ageing population.
- contradicts objectives in the current Seniors SEPP and draft Housing SEPP, as well as Council's LSPPS and Region and District Plans.
- is not appropriate and potentially not legally possible for Council to seek as it would exclude certain aspects of a state-wide planning policy.
- has not been supported or justified by Council with any proper planning basis in its post-exhibition report.

Department's assessment

The Department has considered all information provided and does not consider the exclusion from the vertical village SEPP bonuses to be adequately justified or required to support the proposal. This is explored below.

4.1.3.1 Application and impact of the bonuses

Council did not provide detailed information to explain the impact that access to any Seniors SEPP FSR bonuses would provide. The actual amount of R3 Medium Density Residential zoned land, where the bonus could apply on the site, is limited. This is acknowledged by Council itself in the planning proposal and it is stated that *'the portion of the site that is zoned R3 Medium Density Residential has two heritage items, and is unlikely to be redeveloped to a higher density.'* The majority of the R3 zoned land on the site contains local heritage listed cottages that are identified in the indicative concept plan and draft site-specific DCP as being retained, albeit with alterations and additions. Council has advised the total area of land zoned R3 on the site is approximately 3,362 sqm. This equates to 10.6% of the total site area, with the rest zoned SP2 Health Services Facility (the bonus does not apply to the SP2 zone).

The Department has considered the bonuses available to future development under the current Seniors SEPP and the draft Housing SEPP. The Seniors SEPP allows for a bonus FSR of 0.5:1 in addition to the FSR under the applicable LEP, which in this proposal could allow a total FSR of up to 1.7:1 (0.5 bonus + 1.2 incentive FSR).

A new draft Housing SEPP has been prepared which includes changes to seniors housing provisions and will replace the Seniors SEPP. A consultation draft was exhibited from 31 July to 29 August 2021 and the SEPP is intended to be finalised in October 2021. The Department has considered the impact of the proposed Housing SEPP on the planning proposal, namely in relation to vertical village bonuses, which provide for bonus FSR and height (up to 3.8m). Bonus FSR is proposed to be 15% for independent living units (ILUs), 20% for residential care facilities, and 25% for both ILUs and residential care facilities. For this site, the maximum FSR bonus available under the draft Housing SEPP (0.3:1 – see table below), would be less than the bonus available under the existing Seniors SEPP (0.5:1), resulting in a maximum FSR of 1.5:1. Table 7 below provides an outline of the existing and proposed incentive height and FSR controls, and the various bonuses under the vertical village provisions of the existing Seniors SEPP and proposed draft Housing SEPP.

Table 7 Controls and vertical village senior's development bonuses on R3 land

	Current control	Proposed incentive control	Bonus under existing Seniors SEPP	Bonus under draft Housing SEPP
Height	9.5m	Part 15m / 21m	No height bonus	+ 3.8m = Part 18.5m / 24.8m*
FSR	0.6:1	1.2:1	0.5:1 = 1.7:1**	15% bonus for ILU (i.e. 15% x 1.2) = 0.18:1 = 1.38:1** 20% for RCF (i.e. 20% x 1.2) = 0.24:1 = 1.44:1** 25% for ILU and RCF (i.e. 25% x 1.2) = 0.3:1 = 1.5:1**

* Total height control adding the bonus onto the proposed incentive heights

** Total FSR control adding the bonus onto the proposed incentive FSR

The Proponent provided high-level floor space breakdowns for the entire Edina Estate based on the concept masterplan, which indicated an FSR of 1.39:1 for the Campus and Birrell Street sites combined (**Attachment G3**) (as compared to 1.2:1 for both the subject Campus site planning proposal, and the Birrell Street site proposal which has been given Gateway). On this basis, the Department understands that the Seniors SEPP bonus has at least in part been factored into the concept scheme as exhibited.

To access any bonuses under the existing Seniors SEPP or proposed draft Housing SEPP, certain requirements must be met and would be considered by the consent authority at the DA stage. The DA process will examine and address the potential impacts of the bonus floor space and/or height further, particularly bearing in mind that:

- The R3 portion of the site contains local heritage items and heritage impacts would be assessed in detail.
- The Apartment Design Guide (ADG) will continue to apply to Independent Living Units to ensure good amenity.
- The design standards in the SEPP and *Seniors Living Policy: Urban design guideline for infill development* will continue to apply.

Both the existing Seniors SEPP and proposed draft Housing SEPP contain design principles that the development must give adequate regard to that would mitigate the bulk and scale of future development. These relate to principles around neighbourhood amenity and streetscape, visual and acoustic privacy, solar access and design for climate.

4.1.3.2 Excluding the operation of a SEPP

The draft Housing SEPP seeks to provide a state-wide approach to seniors housing with incentive provisions. Switching off the incentive provisions for this planning proposal appears to contradict and undermine the Department's policy intent to incentivise vertical village seniors housing development.

Seniors housing is a key aspect of this planning proposal. The planning proposal has always acknowledged that the Seniors SEPP would continue to be an applicable instrument when considering any future DA. Both the previous and the current versions of the planning proposal acknowledge that there are bonuses for vertical villages, and as such did not include residential flat buildings as an additional permitted use in the SP2 zone. As previously indicated, there is limited land available for the application of the bonuses on the site. Council has not provided an adequate explanation of why an exemption is now deemed necessary to manage the potential impacts of the future development.

4.1.4 Floor space for a residential care facility

Council seeks to impose a minimum floor space requirement (5,500 sqm) for the purposes of a residential aged care facility, as part of the incentive provision. Council's post-exhibition report outlines that this was as *'the community raised concerns of the certainty of the provision of residential aged care as a use on the site'*.

Council also states that the Proponent has indicated throughout the planning proposal process, that a residential care facility is to be provided on the site. The indicative masterplan illustrates a residential care facility of up to 120 beds in household configuration, and 15 beds in apartment configuration.

Proponent's submissions

On 30 September 2021, the Proponent provided information to the Department on its position on this post-exhibition change. A summary of the Proponent's key points is included below.

- Aged care services are intended to continue to be provided on the site.

- The measure is prescriptive and fails to recognise the changing nature of aged care services and could lead to unintended outcomes for the community in future.
- Since the 2011 Productivity Commission Report and 2013 *Living Longer Living Better Reforms*, the Federal Government's policy framework has sought to restructure the funding and focus for aged care services to respond to the individual's preferences for how and where they receive support. This has pushed the supply of services away from an institutional setting (such as a residential care facility) and into the individuals' accommodation of choice (such as their own home or a purpose-built retirement living apartment co-located with other services).
- There is a trend where residential care facilities are becoming progressively redundant, except in the case of dementia and palliative care.
- Uniting continues to evolve its services from the traditional, institutional aged care model to a person-centered model of care.

Department's assessment

The Department does not consider the requirement to impose a floor space requirement for a residential aged care facility to be adequately justified or required to support the proposal.

Council's recommended threshold of 5,500 sqm for a residential care facility, while coming from the indicative masterplan floorplate, does not have a direct nexus to, or evidence of, a specific needs-based analysis for this use. Furthermore, the master plan only represents one possible outcome enabled by the proposed controls.

A requirement such as this would not necessarily contribute to better services or amenity for the residents and may stifle innovation in the aged care sector. It is acknowledged that the aged care sector, and models for care and service delivery have been changing and are expected to continue to do so. The Proponent highlighted that more frequently, aged care is being provided to the individuals' accommodation and there is a move away from high care institutional settings like residential care facilities. The Seniors SEPP and proposed Housing SEPP also regulate aged care accommodation and have standards around location and access to facilities and services for seniors housing forms, such as independent living units and residential care facilities.

Council has also proposed an additional objective to be included in the site-specific provision which seeks *'to ensure the continuation of the delivery of vital health and social infrastructure on the site.'* The Department considers that the objectives around provision of health and social infrastructure should be contained in the site-specific DCP to allow the local provision to be clear and focus on the incentive requirements.

4.1.5 Rehousing existing residents on the site

The Council resolution on 17 August 2021, included a request that the Department consider *'options for rehousing existing residents in a sensitive and considered way, including giving preference to existing residents in the future development.'* The resolution also resolved that *'officers, in any future development application, give consideration to rehousing existing residents.'*

The Department acknowledges that this request responds to concern raised in many community submissions. However, the rehousing of existing residents is not a matter for the finalisation of this planning proposal. As noted above, the Council report confirms that the Proponent has been made aware of these submissions and that this is a matter for the Proponent to consider going ahead. Following the Council resolution, the Proponent advised Council that it *'has undertaken discussions with existing residents to discuss potential relocation options available to be explored in the future.'* and indicated that it is obliged to comply with the applicable legislation for the various tenancy arrangements.

4.1.6 Urban design

Following Gateway determination, the indicative concept scheme was revised (**Attachment F**) and included in the updated planning proposal package that was placed on public exhibition. The revisions to the concept scheme were the result of the inclusion of the land subject to the Birrell Street planning proposal, which presented an opportunity to provide an indicative masterplan for the entire Edina Estate (**Figures 3 and 4**). The previous, superseded concept scheme options that were considered in the Gateway determination report are presented in **Figure 5**.

The revised masterplan identifies what could be achieved over the Edina Estate under the proposed development standards and draft DCP. The masterplan seeks to locate the bulk of the floor space towards the Birrell Street and Bronte Road frontages to allow consolidated open space and deep soil areas to be provided. It is considered by Council to achieve an improved urban outcome and better protect the heritage significance of the site.

Whilst the masterplan has been updated, there have been no changes sought to the proposed bonus maximum building heights and FSR under the planning proposal. The Department has not recommended any further amendments to these and it is not considered necessary to re-assess the impacts of the proposed bonus controls. Further assessment of the built form, open space and amenity impacts will be undertaken at the DA stage, both against the proposed LEP provisions and the site-specific DCP controls.

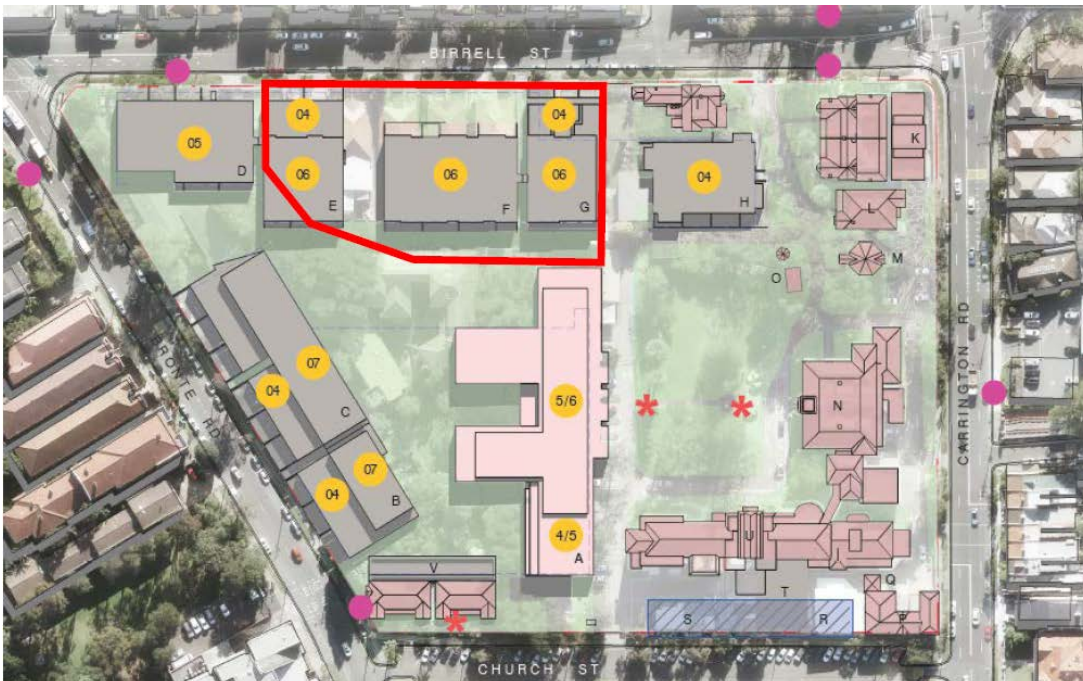


Figure 3 Concept masterplan (the area within the red outline is not in the site and is the site of the Birrell Street planning proposal) (Base source: Urban Design Report by Architectus)



Figure 4 Concept masterplan for the Edina Estate, looking from the north-west corner – Birrell Street and Bronte Road (Source: Urban Design Report by Architectus)



Figure 4 Massing diagrams of original concept scheme, which relates to the Campus site only (Scenario 1 and 2) (Source: Original planning proposal)

4.1.7 High-performance building standards

The planning proposal states that it seeks to ensure positive environmental outcomes for the site by “Requiring new development on site to be provided to a high-performance building standard, to reduce operational water and energy usage on-site, and to minimise embodied carbon.” (p. 41 - Part 3 – Justification). The appendix of the proposal contains an example draft clause suggesting the high-performance standard would be:

“The consent authority must be satisfied that the design of buildings and building services for any commercial part of a building must take appropriate measures to ensure the development is capable of achieving 5.5 star NABERS Energy and 4.5 star NABERS Water with a Commitment Agreement.”

It is noted that the permissible uses under the SP2 and R3 zoning, as well as the current configuration of the NABERS system, mean that there would be a limited range of commercial uses that would trigger the requirement.

During the finalisation of the proposal, Council has provided further clarification that the standard is intended to apply to non-residential uses, as well as residential aged care facility and common areas of independent living units. The Department does not object to the NABERS targets applying to non-residential uses. However, neither the planning proposal as exhibited, nor as reported to Council mentioned applying the NABERS requirements to residential care facilities and common areas of independent living units (which are both classified as residential accommodation under the standard instrument LEP), therefore this has not been adequately justified or supported for inclusion.

A site specific development control plan is being prepared for the site, Council can consider the inclusion of further NABERS and sustainability measures as part of the DCP.

5 Post-assessment consultation

The Department consulted with the following stakeholders after the assessment.

Table 7 Consultation following the Department’s assessment

Stakeholder	Consultation	The Department is satisfied with the draft LEP
Mapping	Three maps have been prepared by Council and reviewed by the Department’s ePlanning team and meet the technical requirements.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No, see below for details
Council	<p>Council was consulted on the terms of the draft instrument under clause 3.36(1) of the <i>Environmental Planning and Assessment Act 1979 (Attachment H)</i></p> <p>On 20/10/2021, Council suggested some minor revisions to the draft LEP, and noted the post-exhibition changes being sought are not supported (Attachment I). The Department has met with Council officers to explain its position, and also considered their suggestions for the drafting.</p>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No, see below for details

Stakeholder	Consultation	The Department is satisfied with the draft LEP
Parliamentary Counsel Opinion	On 28/10/2021, Parliamentary Counsel provided the final Opinion that the draft LEP could legally be made. This Opinion is provided at Attachment PC .	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No, see below for details

6 Recommendation

It is recommended that the Minister's delegate as the local plan-making authority determine to make the draft LEP under clause 3.36(2)(a) of the Act because:

- the proposal will provide for additional seniors housing to meet the increasing need due to expected growth in the ageing population.
- redevelopment associated with the proposal will provide for additional social infrastructure and provide employment opportunities, in a location close to public transport and commercial and retail services.
- the proposal demonstrates strategic and site-specific merit, and is consistent with the Eastern City District Plan, Waverley Local Strategic Planning Statement and relevant SEPPs. The proposal is consistent with Ministerial Section 9.1 Directions.
- it is consistent with the Gateway Determination.
- issues raised during consultation have been addressed, and there are no outstanding agency objections to the proposal.



Simon Ip
 Manager, Place and Infrastructure



Laura Locke
 Director, Eastern and South Districts

Assessment officer

Lawren Drummond
 A/Senior Planning Officer, Eastern and South Districts
 9274 6185

Attachments

Attachment	Document
A	Planning proposal (30 August 2021)
B	Gateway determination
C	Gateway determination report
D	Letter to Council – post-Gateway endorsement
E	Council's post-exhibition report
F	Urban design report
G1	Proponent submission (9 September 2021)
G2	Proponent submission (30 September 2021)
G3	Proponent submission (15 October 2021)
H	Section 3.36(1) consultation with Council
I	Council comments on draft LEP