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Gateway determination report – PP-2021-4641

99-117 Birrell Street, Waverley

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Table 1 Reports and plans supporting the proposal

Relevant reports, plans and key documents
A - Planning Proposal report prepared by Council
D - Council letter requesting Gateway Determination
E - Proposed mapping
F - Planning Proposal report prepared by Ethos Urban
G - Response to request for additional information prepared by Ethos Urban
H - Urban Design Report
I - Statement of Heritage Impact
J - Conservation Management Plan (2005)
K - Conservation Management Plan (2017)
L - Environmental Site Assessment
M - Traffic Impact Assessment
N - Landscape Design Statement
O - Draft Site-Specific Development Control Plan prepared by Council
P - Letter of Intent – Provision of affordable housing
Q - Council correspondence regarding GFA calculations and affordable housing
R - Arborist Report
S - Survey Plan

1 Planning Proposal

1.1 Overview and objectives of the planning proposal

Table 2 Planning proposal details

LGA	Waverley Local Government Area		
PPA	Waverley Council		
NAME	Waverley War Memorial Hospital - Birrell Street Site		
NUMBER	PP-2021-4641		
LEP TO BE AMENDED	Waverley Local Environmental Plan 2012 (Waverley LEP 2012)		
ADDRESS	99-117 Birrell Street, Waverley, NSW 2024		
DESCRIPTION	Lot 1, DP312247	Lot A, DP437866	Lot 4, DP520982
	Lot 1, DP1115332	Lot B, DP437866	Lot 3, DP520982
	Lot 2, DP515904	Lot 1, DP961790	Lot 2, DP212655
	Lot 1, DP515904	Lot 11, DP667554	
RECEIVED	21 July 2021		
FILE NO.	IRF21/2696		
POLITICAL DONATIONS	There are no donations or gifts to disclose and a political donation disclosure is not required		
LOBBYIST CODE OF CONDUCT	There have been no meetings or communications with registered lobbyists with respect to this proposal		

The planning proposal contains objectives and intended outcomes that adequately explain the intent of the proposal.

The stated objectives of the planning proposal are to:

- Enable the holistic redevelopment of the broader site, inclusive of the War Memorial Hospital campus, known as the 'Edina Estate'.
- Maintain the unique heritage and environmental significance of the broader site.
- Increase public accessibility within the site.
- Allow the expansion of the existing aged care and seniors living uses, including affordable housing options.
- Ensure that the site achieves positive environmental outcomes.

The objectives of the planning proposal are clear and adequate.

The subject proposal seeks to complement a separate but related planning proposal (PP_2019_WAVER_003_00) known as the War Memorial Hospital Campus Planning Proposal (WMH proposal). The WMH proposal and the subject proposal together comprise the entire block bound by Birrell Street, Carrington Road, Church Street and Bronte Road (approximately 3.5

hectares), collectively referred to as the Edina Estate. Consistent with the views of the Waverley Local Planning Panel, the Department considers the subject proposal to have both strategic and site-specific merit only when implemented in conjunction with the WMH proposal (for 125 Birrell Street, Waverley).



Figure 1 Birrell Street site coloured in yellow and WMH campus site outlined in red (Source: Ethos Urban 2020)

1.2 Explanation of provisions

The planning proposal seeks to amend the Waverley LEP 2012 as it applies to the Birrell Street site as per the changes below:

Table 3 Current and proposed controls

Control	Current	Proposed
Key Sites Map	Not applicable to the site.	Include the site on the Key Sites Map to refer to a new site-specific incentive provision and clause 6.9 Design Excellence.
Site-specific provision under Part 6	Not applicable to the site.	Create a new site-specific provision that applies to the site, which: <ul style="list-style-type: none"> (a) Provides objectives for the redevelopment of the site. (b) Applies Clause 6.9 Design Excellence to the site.

		<p>(c) Sets out the requirements of a site-specific Development Control Plan (DCP) for the site.</p> <p>(d) Provides for an incentive provision to access the alternative floor space ratio (FSR) and height controls as indicated on the maps that requires:</p> <ul style="list-style-type: none"> i. Deep soil provision at 30% of the total site area, with the spatial layout as indicated in the Site Specific DCP ii. High performance building standards (see section 1.2.2 below) iii. Affordable housing contribution of 10% of the overall development on the lots at 99-117 Birrell Street, Waverley be set aside as in-kind affordable housing, or as an equivalent monetary contribution. (See section 1.2.1 below)
Alternative Height of Buildings Map	<p>There is no existing alternative height of buildings map.</p> <p>The maximum building height per clause 4.3 is 9.5m.</p>	An alternative height of buildings map showing part 15m and 21m for the site where new site-specific provisions are met.
Alternative Floor Space Ratio (FSR) Map	<p>There is no existing alternative FSR map.</p> <p>The maximum FSR per clause 4.4 is 0.6:1.</p>	An alternative FSR map showing 1.2:1 FSR for the site where new site-specific provisions are met.
Requirement for a DCP	Not applicable to the site.	<p>Requirement for a DCP to be prepared that must provide for all of the following —</p> <ul style="list-style-type: none"> a) built form, scale and interface to surrounding land uses, heritage buildings and gardens within the site, b) pedestrian access and through site links, c) provision of landscaped open space.

1.2.1 Affordable Housing

In August 2020, the proponent provided a letter of intent to Council (**Attachment P**) in relation to the Birrell Street site that:

“It is Uniting’s intention to provide affordable housing on the site (up to a maximum of 10%) which may be in conjunction with an affordable housing program.”

This was reinforced in the Ethos Urban planning proposal report of 2021, where part of the justification of the need for the planning proposal was that “up to 10% of the dwellings will be affordable housing for seniors.” (page 36)

On 13 July 2021, Council wrote to the Department (**Attachment Q**) to confirm that they would like to pursue a site specific provision to the effect of:

“The consent authority must be satisfied that a minimum of at least 10% of any dwellings or 404 square metres (whichever is greater) in the proposed development on sites identified as 99-117 Birrell Street, Waverley will be set aside as affordable housing, or that an

equivalent monetary payment is provided in lieu of the physical allocation of affordable housing.”

The 404sqm quantum was calculated by approximating 10% of the maximum permissible floorspace under the incentive controls.

1.2.2 High performance building standards

The High Performance Buildings provision stated in the planning proposal seeks to incentivise BASIX affected development to be designed to achieve 5 BASIX points above the State mandated target for water, 10 BASIX points above the State mandated target for energy, and to meet a 7 stars NatHERS rating for thermal comfort.

Additionally, the provision also seeks to require any commercial part of a building to achieve 5.5 stars NABERS Energy and 4.5 stars NABERS Water with a Commitment Agreement.

The high performance building standards described above are intended to form part of the site-specific incentive provision, which are required to be satisfied if a future development seeks to utilise the alternative FSR and alternative building height standards.

The above standards are provided in the appendix of the planning proposal as a draft clause, but not in the ‘explanation of provisions’ section. A Gateway condition is recommended to require a plain English explanation of the above standards to be provided upfront in the proposal.

The planning proposal for the War Memorial Hospital campus also seeks to include a high-performance building standard provision. The Gateway determination dated 8 July 2020 requires the provision to be revised as an incentive clause, in order to avoid potential inconsistency with clause 8 of the State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004. The approach in this Gateway is consistent with the previous Gateway given for the broader WMH campus site.

The drafting of the provision will be undertaken by Parliamentary Counsel, should the proposal progress to the finalisation stage. The draft clause prepared by Council may be subject to change having regard to the intent and coherence of the draft LEP.

1.3 Site Description

The subject site is located on the northern edge of the War Memorial Hospital Campus in Waverley, approximately 800m south-east from Bondi Junction Interchange. It encompasses 11 residential lots with a combined area of approximately 0.34 hectares (ha) (3,370sqm).

Eight of the subject 11 lots are owned by the proponent, with negotiations to acquire the remaining 3 understood to be ongoing. The three remaining lots to be acquired are 99 Birrell Street (Lot 1 DP 312247 and Lot 1 DP 1115332) and 101 Birrell Street (Lot 2 DP 515904) (See blue lots highlighted on **Figure 2** below).

The site fronts Birrell Street to the north but is surrounded on all other sides by the War Memorial Hospital Campus (see **Figures 2** and **3**).



Figure 2 Subject site (blue sites yet to be acquired by proponent) (Source: Sixmaps, 2021)



Figure 3 Site Context Map (Nearmap, 2021)

1.3.1 Existing Built Form and Site Features

Existing development on the Birrell Street site comprises a row of detached and semi-detached dwellings extending over a street frontage of 80 metres. The site's topography falls approximately 5.5m from east to west, with an average gradient of 7%.

Both the Arborist Report (**Attachment R**) and the Urban Design Report (see **Figure 4**) identify two trees just outside the site boundary. The one located on the south western corner is a broad-leaved paperbark and the one located half-way along the southern boundary is a significant Moreton Bay fig. The canopy of both these trees reach into the subject site, but neither of them is located within the site boundary.

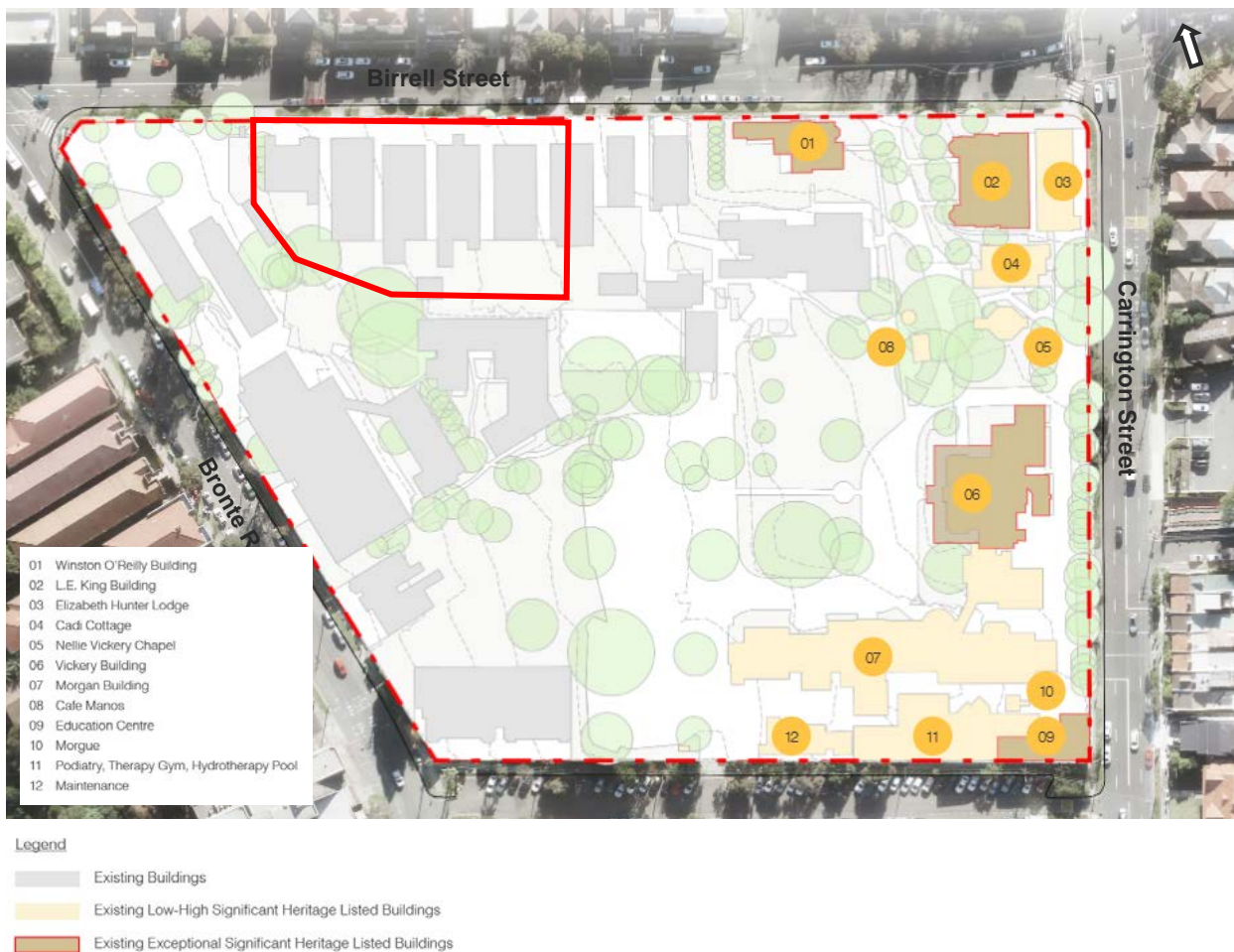


Figure 4 Urban Design Report extract depicting the existing site features. The location of the Birrell Street property is depicted in red by the Department



Figure 5 Existing single storey dwellings along Birrell Street that form part of the subject site, looking south-east (Source: Google Street View)

1.3.2 Surrounding Development

The War Memorial Hospital Campus is located to the east, west and south of the Birrell Street site and comprises approximately 28 buildings, including the aged care facility (Uniting Edina Waverley), independent living units, detached dwellings, and the Waverley War Memorial Hospital. There are a number of heritage items within the WMH campus listed in the Waverley LEP.

To the north, on the opposite side of Birrell Street, development is predominately residential, comprising a mix of 2 to 4-storey residential flat buildings, interspersed with detached houses and terraces. This area forms part of the Botany Street Heritage Conservation Area (HCA) (see **Figure 6**).

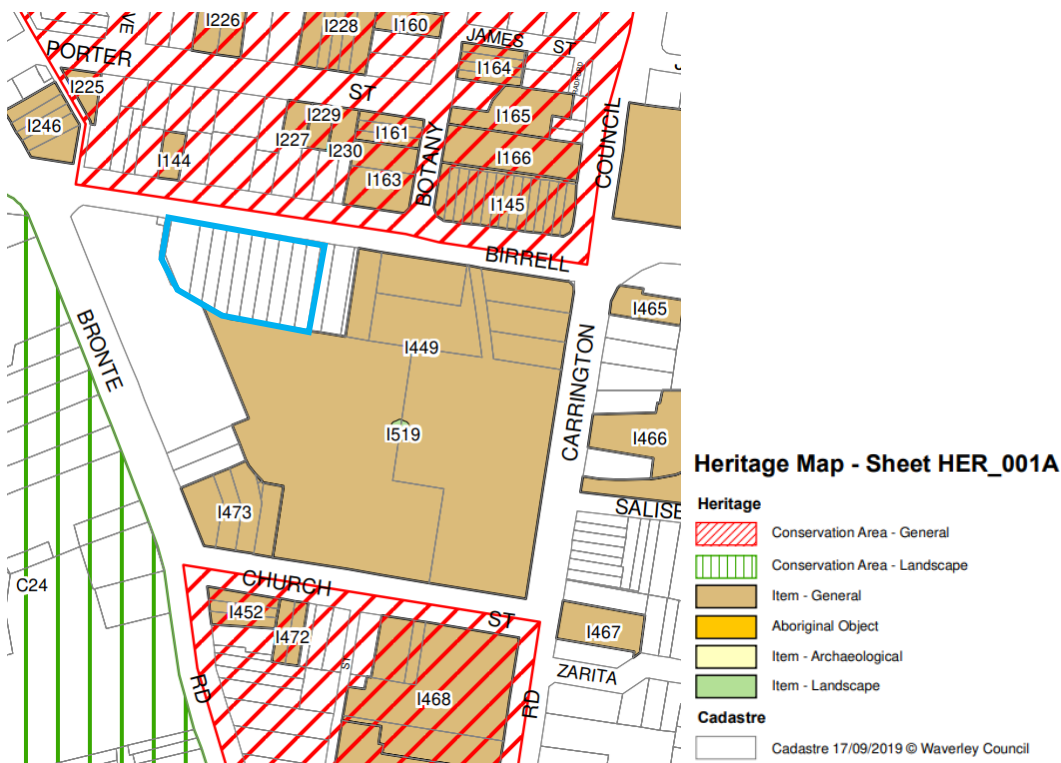


Figure 4 Extract from Waverley LEP heritage map, showing the subject site (site identified in blue by the Department) and context (Source: Waverley LEP 2012)

1.4 Mapping

The planning proposal includes mapping showing the existing controls and proposed changes to the Waverley LEP 2012, which are suitable for community consultation. A full set of proposed maps are included in the planning proposal (**Attachments A and E**) and comprise the following, as depicted in **Figures 7 and 8**.

- Key Sites Map
- Alternative Floor Space Ratio (FSR) Map
- Alternative Height of Buildings Map



Figure 6 Existing FSR (left) and Height of Buildings Maps (right), with the site outlined in black (Planning Proposal, 2021)

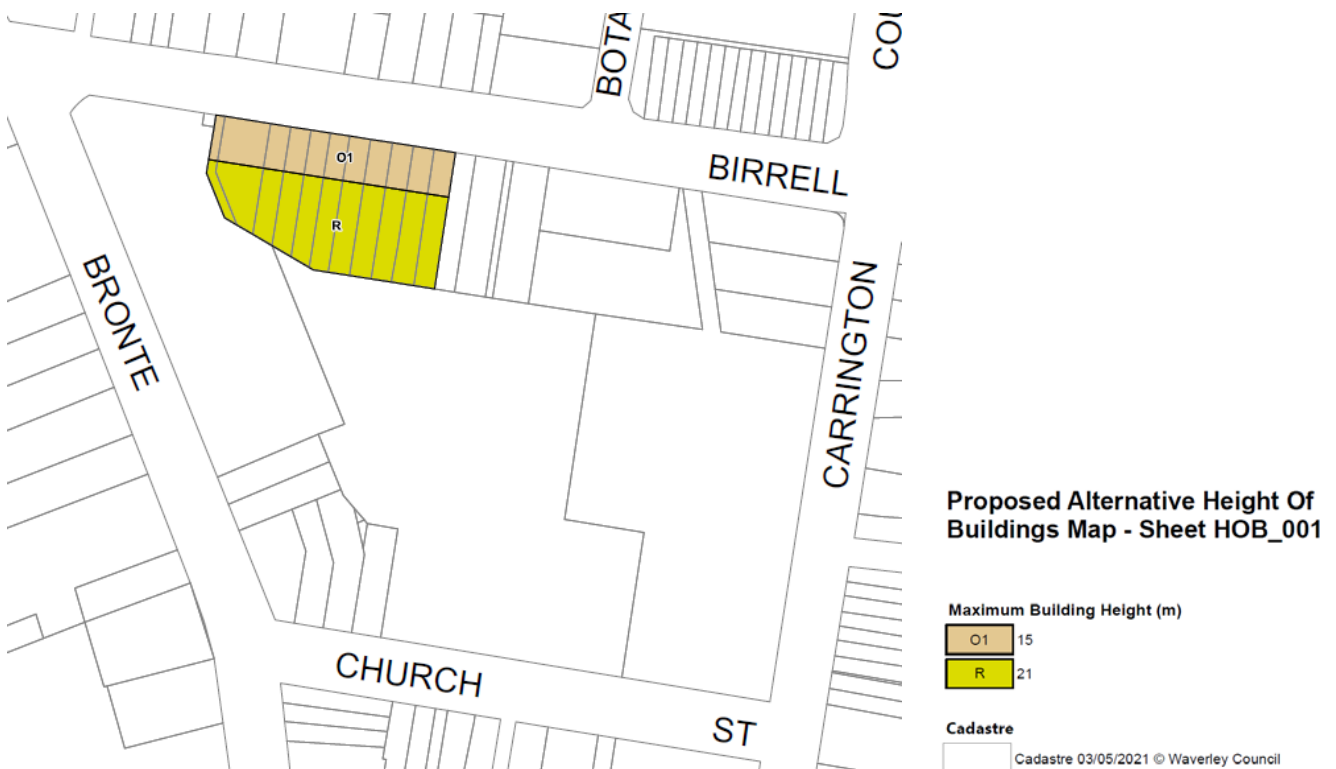


Figure 7 Proposed Alternative Height of Buildings Map (Planning Proposal, 2021)

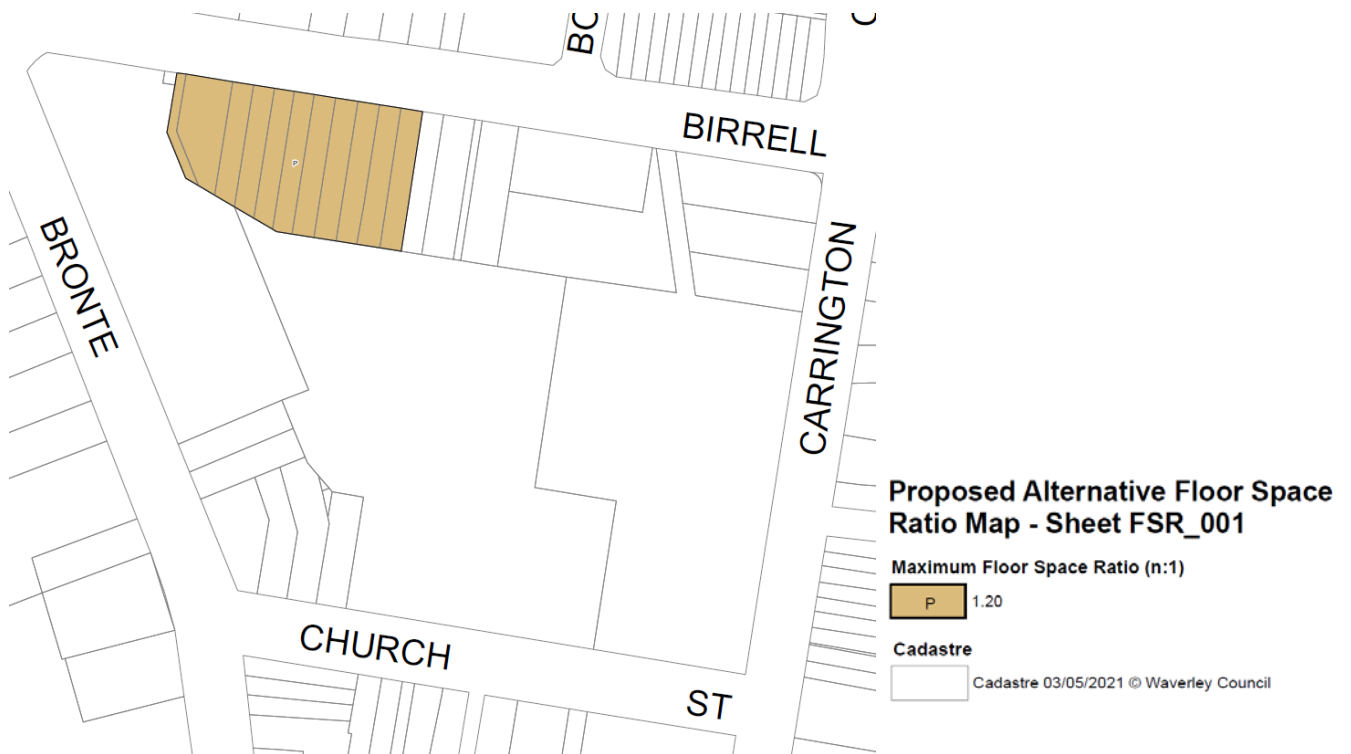


Figure 8 Proposed Alternative Floor Space Ratio Map (Planning Proposal, 2021)

The alternative height of buildings and FSR maps for the Birrell Street site are proposed to align with the alternative height of buildings and FSR mapping proposed in the adjacent WMH campus planning proposal as depicted at **Figures 9 and 10** below.

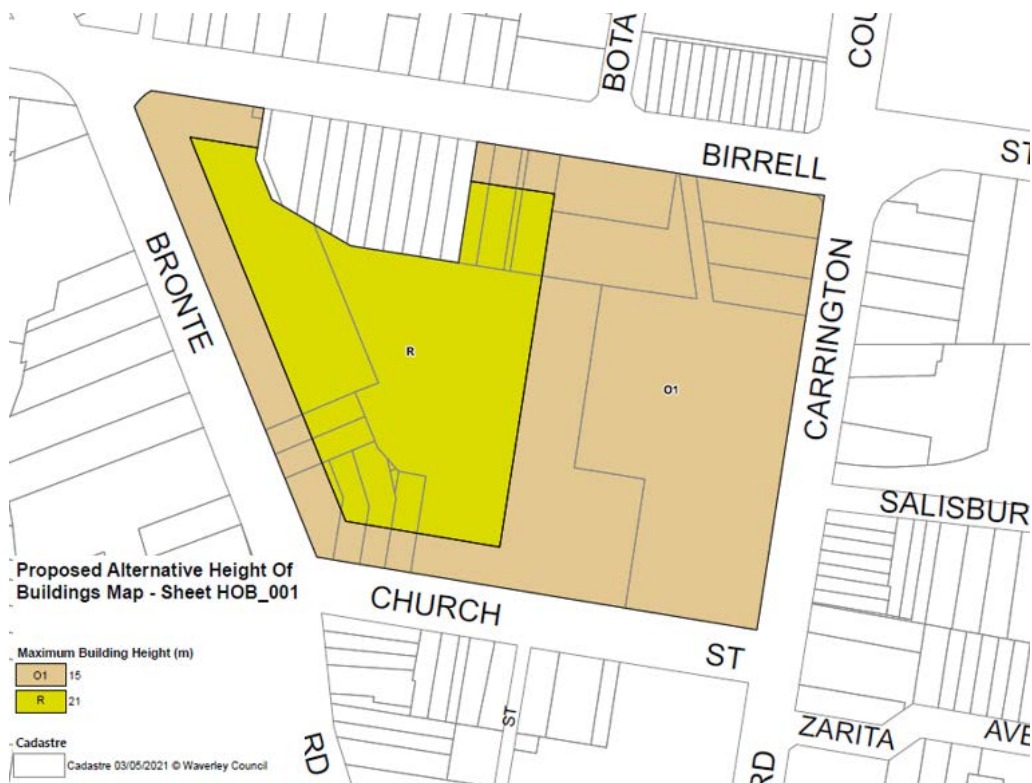


Figure 5 Alternative Height of Buildings Map proposed for the WMH campus site (WMH Campus Proposal 2021)



Figure 6 Alternative FSR Map proposed for the WMH campus site (WMH Campus Proposal 2021)

1.5 Background

Strategic planning activities in relation to the Edina Estate have been undertaken over several years, with key events relevant to the WMH Campus and Birrell Street proposals summarised below.

WMH Campus Planning Proposal

- **July 2017** – a planning proposal was submitted for the WMH campus and involved rezoning the land from SP2 Health Services Facility to R3 Medium Density Residential, and increasing building heights to between 15m and 28m and FSR to 1.5:1. The proposal was not supported by Council.
- **May 2018** – an amended planning proposal was submitted for the main campus and was extended to include the Birrell Street site. This maintained the existing zoning, however allowed for all uses permitted within the R3 Medium Density Residential zone as additional permitted uses within the SP2 zoned land. The planning proposal sought heights ranging between 15m and 28m and an FSR of 1.5:1.
- **November 2018** - the planning proposal was revised to alter the zoning to be a mix of SP2 Health Services Facility and R3 Medium Density Residential, and to introduce a range of additional permitted uses. It included a site-specific control to give flexibility to land use across zoning boundaries. The Waverley Local Planning Panel (LPP) resolved not to support the proposal.
- **March 2019** - the proponent lodged a request for a rezoning review. The Sydney Eastern City Planning Panel considered the proposal on 18 October 2019 and determined that it has strategic merit but not site-specific merit, and did not support the proposal to proceed to Gateway.
- **May 2019** - Council resolved to prepare its own planning proposal for the WMH campus, which excluded the Birrell Street site. This proposal did not include zoning changes or the

zone boundary flexibility clause, however it did include seniors housing, community facilities and centre-based childcare facilities as additional permitted uses.

Following the rezoning review (of the proponent-led proposal discussed above), the Council's subsequent proposal was amended to increase the maximum building heights to part 15m and 21m, increase the FSR to 1.2:1 and create new site-specific provisions around deep soil, design excellence and high performance building standards.

- The proposal was submitted on 5 May 2020 and received conditional Gateway in July 2020. The proposal and draft DCP were placed on exhibition from 20 May to 4 July 2021.

Birrell St Planning Proposal (subject proposal)

- 18 August 2020 - the planning proposal was lodged with Council.
- 8 October 2020 - the planning proposal was presented to the Waverley LPP, who advised Council that the proposal was considered to have strategic and site-specific merit only when considered as part of the WMH Campus site, and not in isolation. The Panel's comments are further detailed in section 3.4 of this report.
- 3 November 2020 - the proposal was referred to the Waverley Strategic Planning and Development Committee, who resolved to forward the planning proposal to the Department for a Gateway Determination.

2 Need for the planning proposal

The planning proposal is needed to enable redevelopment of the Edina Estate. The planning proposal will enable alternative FSR and heights to be achieved at the Birrell Street site, where site specific incentive provisions are met.

The planning proposal is not a result of a strategic study or report, however the request is consistent with the WMH Campus proposal for the adjoining land. The WMH campus proposal and the subject proposal are both informed by a single concept masterplan for the broader Edina Estate, which aims to unite both sites and facilitate holistic redevelopment. The concept design co-locates seniors and affordable housing with upgraded health facilities and publicly accessible open space.

The planning proposal states that it has strategic and site-specific merit when considered in conjunction with the WMH Campus proposal (Pages 6 and 8). The two proposals serve to realise the holistic redevelopment of the Edina Estate. The Department concurs with Council's view, and considers this would also ensure the proposed FSR and deep soil landscaping controls for the Birrell Street site are applied in conjunction with those for the Campus site to achieve an appropriate development outcome.

The planning proposal states that (Page 13):

"To avoid the isolated development of the Birrell Street lots without the rest of the campus, or the development of only some Birrell Street lots, it is proposed that any increase in the height or FSR on the site is provided as an incentive via an Additional Local Provision that applies to the subject lots."

The Department concurs that the Birrell Street proposal is only supportable if all 11 properties comprising the Birrell Street site are redeveloped as a coherent entity, and also integrated with the adjoining WMH Campus proposal. This is to avoid ad hoc and uncoordinated redevelopment of the Birrell Street residential allotments, which may frustrate the ability of the remaining lots to be developed in an integral manner.

However, Council's intent for site consolidation was not discussed in the "Explanation of Provisions" section of the planning proposal. A Gateway condition is recommended to require the proposal to be updated to reflect the above intent.

The planning proposal is viewed as the best means of achieving an integrated development outcome across the entire Edina Estate.

3 Strategic assessment

3.1 Regional Plan

The Greater Sydney Commissions' Regional Plan – A Metropolis of Three Cities has goals related to Infrastructure and Collaboration, Liveability, Productivity and Sustainability, as well as Ten Directions that relate to the whole of the Greater Sydney Region. The Department is satisfied that the planning proposal is consistent with the relevant directions of the Plan.

3.2 District Plan

The site is within the Eastern City District and the Greater Sydney Commission released the Eastern City District Plan in March 2018. The plan contains planning priorities and actions to guide the growth of the district while improving its social, economic and environmental assets.

The Department is satisfied the planning proposal gives effect to the District Plan in accordance with section 3.8 of the *Environmental Planning and Assessment Act 1979* (EP&A Act). The following table includes an assessment of the planning proposal against relevant directions and actions.

Table 5: Eastern City District Plan

District Plan Priorities	Justification
Priority E1: Planning for a city supported by infrastructure	Consistent. The redevelopment of the site will complement the WMH campus, which is the subject of a separate planning proposal. The overall vision for both sites seeks to ensure the continuation and expansion of a vital piece of existing social infrastructure (i.e. the War Memorial Hospital) and the creation of new publicly accessible open space for the local population as it grows.
Priority E3: Providing services and social infrastructure to meet people's changing needs	Consistent. As above.
Priority E4: Fostering healthy, creative, culturally rich and socially connected communities	Consistent. The proposal will facilitate increased residential density for seniors living within the LGA. The accessibility of the site and colocation of seniors living and hospital facilities with open space will enable healthy, active, and socially connected lifestyles.

District Plan Priorities	Justification
Priority E5: Providing housing supply, choice and affordability, with access to jobs, services and public transport	<p>Consistent.</p> <p>The proposal seeks to provide additional housing, including seniors housing and affordable housing. This will contribute to housing supply, choice and affordability for the LGA.</p> <p>The site is in close proximity to public transport infrastructure, including bus stops within 400m and Bondi Junction Interchange within 800m.</p>
Priority E6: Creating and renewing great places and local centres, and respecting the District's heritage	<p>Consistent.</p> <p>The proposal will complement and enhance the conservation and adaptive reuse of heritage items within the adjoining WMH Campus, and renew the broader Edina Estate. See section 4.1.1 for details.</p>
Priority E11: Growing investment, business opportunities and jobs in strategic centres	<p>Consistent.</p> <p>The additional residential population would generate further demand for local services and promote the vibrancy of nearby centres, such as Charing Cross and Bondi Junction.</p>
Priority E15: Protecting and enhancing bushland and biodiversity	<p>Consistent, when considered in conjunction with the WMH Campus proposal.</p> <p>There is no critical habitat on the Birrell Street site. An existing habitat corridor is identified in the Waverley DCP 2012 on the adjoining WMH Campus and intersects the south east corner of the subject site. The planning proposal will enhance biodiversity outcomes by facilitating deep soil landscape areas throughout the Edina Estate.</p>
Priority E16: Protecting and enhancing scenic and cultural landscapes	<p>Consistent.</p> <p>The subject proposal and related draft DCP would protect and enhance the scenic (both environmental and heritage) qualities of the Edina Estate by locating new development away from areas of significant heritage and biodiversity value.</p>
Priority E17: Increasing urban tree canopy cover and delivering Green Grid connections	<p>Consistent, when considered in conjunction with the WMH Campus proposal.</p> <p>The proposal would give effect to the vision of the masterplan for the Edina Estate, which includes green links and open spaces. The proposal includes a site-specific incentive provision to require deep soil landscaped areas, which would contribute to tree canopy cover.</p>
Priority E18: Delivering high quality open space	<p>Consistent, when considered in conjunction with the WMH Campus proposal.</p> <p>The concept masterplan seeks to deliver new and enhanced publicly accessible open space and landscaping throughout the Edina Estate. The proposal would facilitate achievement of the above initiatives in the masterplan.</p>

District Plan Priorities	Justification
Priority E19: Reducing carbon emissions and managing energy, water and waste efficiently	Consistent. The alternative (increased) height and FSR would only be achievable where the site-specific incentive provisions for high performance buildings are met. This would promote environmentally sustainable development outcomes.
Priority E20: Adapting to the impacts and natural hazards and climate change	Consistent. The planning proposal would contribute to an increase in landscaping across the broader Edina Estate and assist in mitigating the urban heat island effect. Furthermore, the high performance buildings incentive provisions would promote environmentally sustainable development outcomes.

3.3 Local Plans

The consistency of the proposal with local plans and endorsed strategies is addressed below.

Table 6: Local Strategies Alignment Summary

Local Strategy	Justification
Waverley Local Strategic Planning Statement (LSPS) 2020-2036	<p>The Waverley LSPS considers Waverley's economic, social and environmental needs to 2036. The planning proposal responds to some of the key issues identified in the LSPS, including increasing open space, increasing urban tree canopy, preserving and managing the heritage value of buildings and increasing affordable housing.</p> <p>The proposal is also consistent with the relevant Directions of the LSPS such as:</p> <ul style="list-style-type: none"> • <i>“Ensure the community is well serviced by crucial social and cultural infrastructure” (Direction 4)</i> • <i>“Increase the sense of wellbeing in our urban environment” (Direction 5)</i> • <i>“Facilitate a range of housing opportunities in the right places to support and retain a diverse community” (Direction 6)</i> • <i>“Connect people to inspiring and vibrant places, and provide easy access to shops, services, and public transport” (Direction 8)</i> • <i>“Protect and grow our areas of biodiversity and connect people to nature” (Direction 13)</i> <p>The planning proposal addresses its alignment with the LSPS in adequate detail.</p>
Waverley Local Housing Strategy (LHS)	<p>The Waverley LHS was endorsed by the Department on 16 July 2021, subject to a number of requirements. The alignment of the planning proposal with the endorsed local housing strategy is required to be discussed as a Gateway condition.</p>

3.4 Local planning panel (LPP) recommendation

On 8 October 2020 the WLPP reviewed the subject proposal, and provided a unanimous resolution as follows:

The Panel advises Council that:

1. *For the reasons in the Council's Summary Report and Recommendations the subject Planning Proposal is considered to have strategic and site-specific merit only when considered as part of the War Memorial Hospital Campus site. The subject Planning Proposal is not considered to have strategic and site-specific merit if it were able to be developed in isolation.*
2. *To achieve the integrated development of the whole site, the Planning Proposal should be amended prior to being forwarded to DPIE for a Gateway determination to include an Additional Local Provision and Key Sites Map (or other relevant mapping) which provides for additional Floor Space Ratio (up to 1.2:1) and Height (15m and 21m) only if:*
 - a. *All Birrell Street lots are amalgamated with the War Memorial Hospital Campus*
 - b. *The deep soil zone and high-performance building provisions are consistent with those proposed for the War Memorial Hospital Campus*
 - c. *A site specific DCP has been prepared for the Birrell Street site and the War Memorial Hospital Campus in accordance with the Gateway determination for the War Memorial Hospital Campus.*
3. *It is preferable that a consolidated Planning Proposal for the Birrell Street sites and War Memorial Hospital Campus be prepared and exhibited following Gateway determination. The consolidated Site Specific DCP should be prepared as a matter of urgency.*
4. *By way of comment, the Panel notes that the Proponent's Letter of Intent currently relates to affordable housing only, but other matters such as publicly accessible open space could also be considered.*

The Department concurs with the panel and considers the planning proposal to have strategic and site-specific merit only when integrated with the broader Edina Estate. It is noted that a site-specific DCP has been prepared and exhibited (with the WMH Campus planning proposal) in accordance with recommendation 3 above.

As discussed earlier, a Gateway condition is recommended to require Council's intent to avoid the isolated development of the Birrell Street site or development of only some of the Birrell Street lots to be explained in the "Explanation of Provisions" section of the planning proposal.

3.5 Section 9.1 Ministerial Directions

The planning proposal's consistency with relevant section 9.1 Directions is discussed below:

Table 7 9.1 Ministerial Direction assessment

Directions	Consistent / Not Applicable	Reasons for Consistency or Inconsistency
2.3 Heritage Conservation	Consistent	<p>Direction 2.3 requires that a planning proposal contain provisions which facilitate the conservation of items, places, buildings, works, relics, moveable objects or precincts of environmental heritage.</p> <p>The proposal does not change the existing listing of heritage items and conservation areas in the vicinity of the subject site.</p> <p>The proposed development standards have been informed by</p>

Directions	Consistent / Not Applicable	Reasons for Consistency or Inconsistency
		<p>a master plan that seeks to protect the curtilage of heritage items within the WMH Campus.</p> <p>The proposal is consistent with this direction. (See the Site-Specific Assessment, section 4.1 for details.)</p>
2.6 Remediation of Contaminated Land	Consistent	<p>The planning proposal is accompanied by a preliminary site investigation that indicates there is no significant contamination concerns on the Birrell Street site. An amendment to the planning proposal report is required to include commentary addressing this direction that relates specifically to the Birrell Street site. A Gateway condition is recommended to this effect. (See discussion at section 4.1.)</p>
3.1 Residential Zones	Consistent	<p>Direction 3.1 aims to encourage a variety of housing types, make efficient use of existing infrastructure and services, and minimise the impact of residential development on the environment.</p> <p>The proposal is consistent with this direction as it will increase the potential residential yield of the site and provide for a broader variety of housing types within the locality, including seniors housing and affordable housing.</p> <p>The land is also adequately serviced to increase the supply of residential development, and the proposed provisions will not decrease the permissibility of residential development on the site.</p>
3.4 Integrating Land Use and Transport	Consistent	<p>Direction 3.4 aims to encourage sustainable transport, reduced dependency of private vehicles, reduced travel demand, and the use of public transport.</p> <p>The planning proposal is consistent with this direction as it will facilitate the co-location of residential and health care uses, and reduce private vehicle dependence by providing seniors housing in an area within walking distance of jobs and services (Charing Cross and Bondi Junction).</p> <p>Frequent public bus services are available within walking distance from the site on the Bronte Road and Birrell Street frontages, including connection to Bondi Junction.</p>
6.3 Site Specific Provision	Not Consistent	<p>Direction 6.3 prescribes that, when a planning proposal allows a particular development to be carried out, the controls are to</p> <p><i>4(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.</i></p> <p>The planning proposal is not consistent with 4(c) because it imposes specific controls for development on the site including:</p> <ul style="list-style-type: none"> Affordable housing,

Directions	Consistent / Not Applicable	Reasons for Consistency or Inconsistency
		<ul style="list-style-type: none"> Minimum deep soil area, and High-performance building standards, including requirements in excess of BASIX. <p>The Direction requires that a planning proposal may be inconsistent with the terms of this direction only if:</p> <p><i>the relevant planning authority can satisfy the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) that the provisions of the planning proposal that are inconsistent are of minor significance.</i></p> <p>The proposed site-specific provisions are structured as an incentive control that the proponent can choose whether or not to utilise. The requirement for affordable housing is also consistent with an offer made by the proponent as part of the planning proposal. As such, the site-specific provisions are not considered to be unnecessarily restrictive and the inconsistency with the direction is of minor significance.</p>

3.6 State environmental planning policies (SEPPs)

The consistency of the proposal with all relevant SEPPs is discussed in the table below.

Table 8 Assessment of planning proposal against relevant SEPPs

SEPPs	Requirement	Proposal	Complies
SEPP (Building Sustainability Index: BASIX) 2004	The SEPP applies to BASIX affected development and aims to ensure consistency in the implementation of the BASIX scheme throughout the State. As per clause 7, the SEPP prevails over any other environmental planning instrument, whenever made, to the extent of any inconsistency.	The proposed High Performance Buildings provision (see section 1.2.2) is written as an incentive rather than a requirement so there is no inconsistency created with the BASIX SEPP. However, the planning proposal has not discussed the relationship between the incentive provision and the SEPP, accordingly a Gateway condition has been recommended to address this.	Gateway condition recommended
SEPP No. 70 Affordable Housing (Revised Schemes)	The premise of the SEPP is to allow councils to levy new development for affordable housing contributions. Under Section 7.32(3)(b) of the EP&A Act, a	Waverley Council does not yet have an endorsed SEPP 70 affordable housing contribution scheme in place. See section 3.6.1 for further discussion.	Gateway condition recommended to address consistency.

SEPPs	Requirement	Proposal	Complies
	condition can only be imposed by a council to levy a developer contribution for affordable housing if the contribution requirement is in an LEP, and the condition is in accordance with an affordable housing contribution scheme.		
SEPP 65 – Design Quality of Residential Apartment Development	This Policy recognises that the design quality of residential apartment development is of significance for environmental planning for the State due to the economic, environmental, cultural and social benefits of high quality design.	<p>The Urban Design report supporting the planning proposal states that the proposed masterplan has considered the principles of the Apartment Design Guide (ADG).</p> <p>At the development application (DA) stage, proposals for apartment development will be required to address their consistency with the SEPP and the ADG. The proposed incentive height and FSR controls do not prevent future designs from meeting these requirements.</p>	To be addressed further at DA stage.
SEPP (Housing for Seniors or People with a Disability) 2004	This SEPP aims to encourage the provision of housing for seniors and persons with a disability that will make use of existing infrastructure and services and be of good design.	<p>One of the stated objectives of the proposal is to allow expansion of seniors living uses.</p> <p>The compliance of the future development with the design and access controls in the SEPP, or any public domain works required to achieve compliance will be addressed at the DA stage.</p>	To be addressed further at DA stage.

3.6.1 Affordable Housing Mechanism

As detailed at section 1.2 of this report, the planning proposal requires that 10% of dwellings on the Birrell Street site or 404sqm of floor space (whichever is greater) be developed as affordable housing as a pre-condition or incentive mechanism to access additional building height and FSR for the site. The proponent's planning proposal states that "*the future redevelopment of the site in accordance with the Planning Proposal, up to 10% of dwellings will be affordable housing for seniors*" (Page 36). This forms the justification for the proponent's proposal.

A developer contribution towards affordable housing may only be imposed in accordance with an affordable housing scheme identified in the local environmental plan pursuant to section 7.32 of the *Environmental Planning and Assessment Act 1979* and SEPP 70. Waverley Council does not yet have an affordable housing scheme which is adopted in the LEP. As such, the recommended Gateway conditions require modifications to the planning proposal to remove all references to a monetary affordable housing contribution or payment, as well as references to contributions under SEPP 70.

The provision of affordable housing will be based on a site-specific incentive clause. This is consistent with the approach taken on other planning proposals where the proponent has offered to provide affordable housing not in accordance with SEPP 70.

4 Site-specific Assessment

4.1 Environmental

The following table provides an assessment of the potential environmental impacts associated with the proposal.

Table 9 Environmental impact assessment

Environmental Impact	Assessment
Urban Design & Heritage	See discussion at section 4.1.1.
Access, Parking and Traffic	<p>The planning proposal is accompanied by a traffic and transport impact assessment (Attachment M) which addresses the Edina Estate as a whole. The traffic report concludes that the expected traffic generation impacts are moderated by the intended use as seniors housing. Council's planning proposal report notes that the main intersection at Charing Cross would be impacted especially during the morning peak, and that pedestrian safety would need to be considered and managed due to the proximity of four schools adjacent to the site.</p> <p>The site is highly accessible with frequent bus services along the adjacent streets. The site location in conjunction with the intended seniors housing use would promote sustainable and public transport. Further traffic and parking assessment can be undertaken at the DA stage.</p> <p>The Department notes the draft DCP includes objectives to reduce reliance on private vehicles, and controls relating to parking, vehicular access and servicing.</p>
Urban Tree Canopy	The environmentally and culturally significant trees are located within the WMH Campus site. The proposed deep soil landscaped area provision would protect and enhance tree canopy across the broader Edina Estate.
Biodiversity	<p>No critical habitat or threatened species have been identified at the site. A habitat corridor is identified under the Waverley DCP, which intersects the south eastern corner of the subject site.</p> <p>As per the planning proposal, the corridor is to be protected and enhanced through additional controls in the Site Specific DCP, and the planning proposal's deep soil zone provisions.</p>
Contamination	<p>The planning proposal is accompanied by a preliminary site investigation which concludes the following:</p> <ul style="list-style-type: none"> • <i>“Review of site history indicates the site has only been utilised for residential purposes;</i> • <i>Based on an assessment of the site history, environmental setting, and limited site inspection, potentially contaminating activities were identified as shallow fill used to raise the surface levels, hazardous building material impacts to shallow soils, and garden sheds and associated limited chemical storage; and</i> • <i>The assessment did not identify the potential for gross or widespread contamination on the site.”</i>

Environmental Impact	Assessment
	<p>It is noted that on pages 56 and 57 of the planning proposal, there is a discussion about contamination which relates to the Campus site rather than the subject site. This should be amended prior to exhibition and a Gateway condition has been recommended to this effect. The condition will also require acronyms to be supplemented by full description of terms.</p> <p>The Department are satisfied that adequate investigations in relation to contamination have been undertaken. Further detailed investigations are anticipated at the DA stage.</p>

4.1.1 Urban Design and Heritage

The planning proposal prescribes a maximum alternative FSR of 1.2:1 and building height of part 15m (4-5 storeys) and 21m (6 storeys) at Birrell Street. (See **Figures 7 and 8**.)

The draft LEP controls are supported by a draft DCP (**Attachment O**) for the Edina Estate that prescribes building envelopes and heights (in storeys) (see **Figure 11**).

The planning proposal is accompanied by an urban design report, which considers the site in the context of the broader Edina Estate. An indicative masterplan in the urban design report identifies what could be achieved over the Edina Estate under the proposed development standards and draft DCP. This indicates approximately 240 independent living units (ILUs) in total. Heights on the Birrell Street site range between 4 and 6 storeys, with varied setbacks (see **Figure 12**).

The urban design report states that the masterplan has been prepared in line with the alternative height and FSR controls stated in the planning proposal. 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.

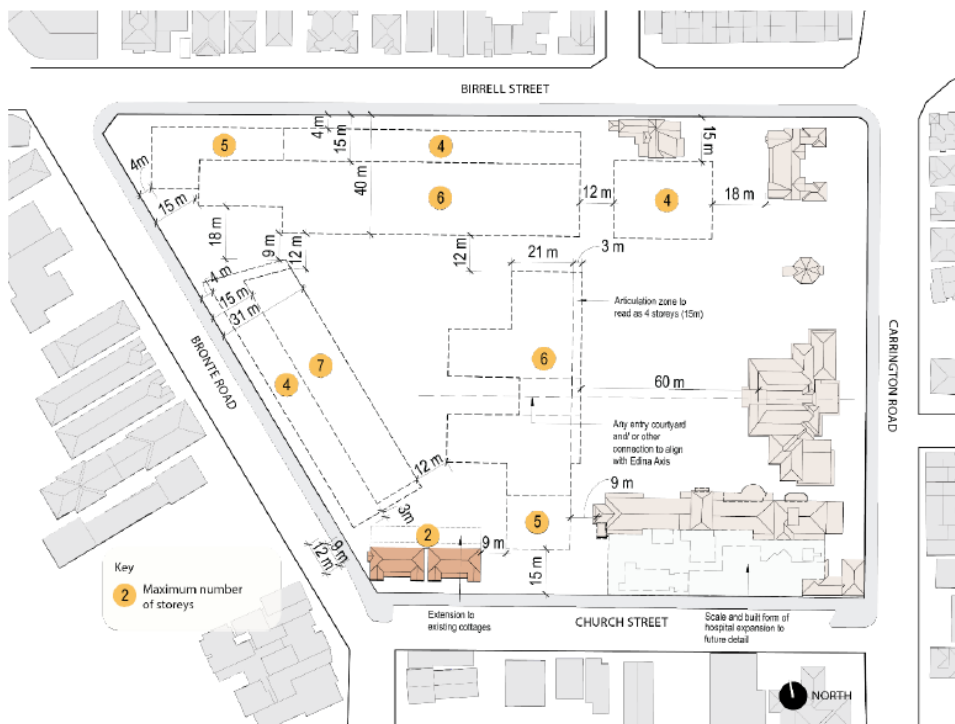


Figure 3: Site Layout and New Building Zones

Figure 7 Site layout & building zone plan, extract from draft Edina Estate Development Control Plan

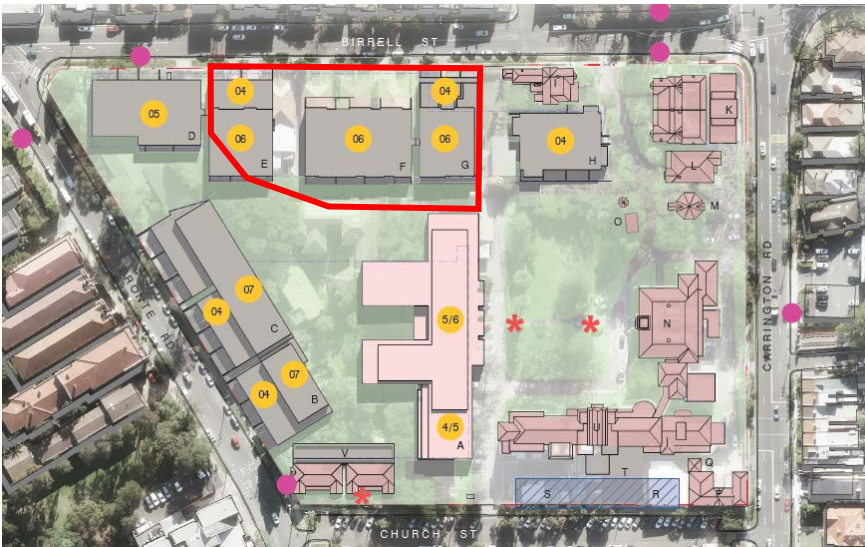


Figure 82 Concept Masterplan, extract from the Urban Design Report prepared by Architectus (Birrell Street site outlined in red by the Department)

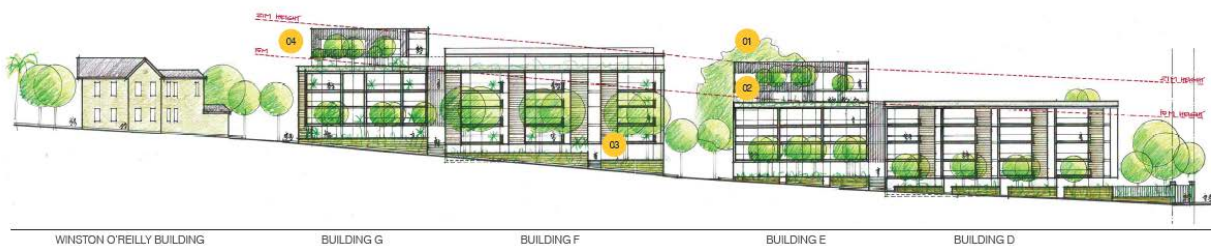


Figure 93 Extract from Draft DCP depicting Birrell Street elevation

Site planning, built form and FSR calculations

In reviewing the planning proposal and concept masterplan, the Department notes the following:

- The masterplan does not clearly depict the boundary of the Birrell Street site.
- The masterplan locates buildings over the property boundaries, assuming the Birrell Street allotments to be redeveloped as part of the broader Edina Estate (see **Figure 14** below).
- The masterplan does not provide break-downs of gross floor areas (GFAs) between the WMH campus site and the Birrell Street site.

Part 2 of the Apartment Design Guide (ADG) comprises guidance on “*Developing the Controls*” that is relevant to planning proposals, which recommends that:

- *2B Building Envelopes* - A building envelope should be 25-30% greater than the achievable floor area (see section 2D Floor space ratio) to allow for building components that do not count as floor space but contribute to building design and articulation
- *2C Building Height* - Where a floor space ratio control is defined, test height controls against the FSR to ensure a good fit
- *2D Floor Space Ratio* - Test the desired built form outcome against the proposed FSR to ensure it is coordinated with the building envelope, height, depth, setbacks and open space requirements

The Department conducted an internal test of the concept masterplan against the proposed controls and found that they agree to an adequate extent, when applied across the whole Edina Estate. However, the buildings on the Birrell Street site as depicted in the masterplan would materially exceed the proposed FSR of 1.2:1.

While noting the issues outlined above, the concept plan represents one possible development outcome for the Edina Estate. A detailed assessment against the ADG and compliance with the floor space ratio and height controls would be required at the DA stage.



Figure 104 Concept Masterplan identifying the buildings across the Edina Estate. Note that the proposed buildings on the Birrell Street site extend beyond the lot boundary. (Source: Urban Design Report 2021, with overlay and annotation by DPIE)

Deep soil zone

The planning proposal seeks to include an incentive provision of requiring 30% of the site as deep soil zones. The Department notes that the masterplan does not set aside 30% of the Birrell Street site area as a deep soil zone. As discussed, a Gateway condition is recommended to require the Explanation of Provisions section to be updated to reflect Council's intent for site consolidation.

Solar access and overshadowing

The concept masterplan demonstrates that appropriate solar access to the deep soil landscaped areas within the Edina Estate is feasible under the proposed controls. Overshadowing of properties outside the site on Bronte Road would occur briefly in the morning period in mid-winter. Further assessment on solar access and overshadowing will be undertaken at the DA stage.

Heritage

The proposal would facilitate future buildings to be located closer to the Birrell Street frontage, allowing the provision of more consolidated and legible open space within the central part of the Edina Estate. This would improve protection of the curtilage to the heritage items (buildings, gardens and trees) on the Campus site.

The stepped building heights proposed for the site would ensure future development would be of an appropriate scale and sympathetic to the Botany Street HCA on the opposite side of Birrell Street.

Subject to addressing the matters noted above, the Department is satisfied that the proposed controls would facilitate a united Edina Estate and appropriately relate to the WMH Campus proposal.

4.2 Social and economic

The following provides an assessment of the potential social and economic impacts associated with the proposal.

4.2.1 Social

The planning proposal would facilitate seniors housing catering for an aging population and contribute to the renewal of health care uses within the locality. The proposal would also contribute to the increased availability of affordable housing and publicly accessible open space.

4.2.2 Economic

The planning proposal would result in construction jobs during redevelopment and ongoing employment once operational. The increase in residential population would also generate demand for goods and services, which would in turn promote the economic viability of the nearby town centres.

4.3 Infrastructure

The site is well serviced by public transport and is approximately 800m from Bondi Junction train station and interchange. Furthermore, bus stops are located along Birrell Street and Bronte Road in the vicinity of the site.

The proposal is unlikely to require significant increase in local infrastructure. Augmentation to utility services may be required and can be addressed at the DA stage.

To ensure infrastructure needs are adequately addressed, a Gateway condition is recommended to require consultation with Transport for NSW, Sydney Water and Ausgrid.

5 Consultation

5.1 Community

Council proposes a community consultation period of 28 days. The Department notes that the WLPP prefers the subject proposal to be exhibited in conjunction with the WMH Campus proposal.

The exhibition period proposed is considered adequate, and forms a condition of the Gateway determination. The exhibition of the Campus proposal has already occurred (20 May to 4 July 2021), as such it is no longer relevant for the two proposals to be exhibited concurrently.

5.2 Agencies

The proposal does not specifically raise which agencies will be consulted.

It is recommended the following agencies be consulted on the planning proposal and given 21 days to comment:

- Transport for NSW;
- NSW Health;
- Sydney Water;
- Heritage NSW – Department of Premier and Cabinet; and
- Ausgrid.

6 Timeframe

The proposal includes a time frame of approximately 6 months (from April/May to September 2021) to complete the LEP.

The Department recommends a time frame of 9 months to ensure it is completed in line with its commitment to reduce processing times, while taking into consideration the Gateway conditions that require amendments to the proposal prior to exhibition and Council Election in December 2021. It is recommended that if the Gateway is supported it also includes conditions requiring Council to exhibit and report on the proposal by specified milestone dates.

A condition to the above effect is recommended in the Gateway determination.

7 Local plan-making authority

Council has advised that it would like to exercise its functions as a Local Plan-Making authority.

Given the interrelated nature of the subject planning proposal and the adjoining WMH Campus proposal, the latter of which was previously the subject of a rezoning review, the Department will exercise the function of plan making authority for the proposal.

8 Assessment Summary

The planning proposal is supported to proceed with conditions for the following reasons:

- It demonstrates strategic and site-specific merit when considered as part of the Edina Estate, which comprises the subject site and the adjoining WMH Campus site.
- It would deliver social benefits by enabling renewal of the existing hospital and providing for new seniors housing, affordable housing and publicly accessible open space.
- The proposed alternative height and FSR controls represent a logical extension of controls proposed for the adjoining land under the WMH Campus planning proposal, which received a gateway determination and was recently exhibited by Council.
- It is consistent with the Eastern City District Plan, Waverley Local Strategic Planning Statement and Waverley Local Housing Strategy.
- It is consistent with the relevant section 9.1 Ministerial Directions, except for Direction 6.3 Site Specific Provisions. The inconsistency with Direction 6.3 is considered to be of a minor significance and is supported.
- It would facilitate developments that are able to satisfy relevant SEPPs.
- The proposal will enable the holistic redevelopment of the Edina Estate.

As discussed in the body of this report, the planning proposal should be updated prior to exhibition as follows:

- Update the Explanation of Provisions section to reflect Council's intent to avoid the isolated development of the Birrell Street site, or the development of only some of the Birrell Street lots;
- Provide a plain English explanation of the high performance building standards upfront, and to include a commentary addressing SEPP: BASIX;
- Remove references to affordable housing contributions as they relate to SEPP 70, as the LEP has not adopted an affordable housing contributions scheme consistent with SEPP 70; and
- Address the Waverley Local Housing Strategy.

9 Recommendation

It is recommended the delegate of the Secretary:

- Agree that any inconsistency with section 9.1 Ministerial Direction - 6.3 Site Specific Provisions is minor and justified.

It is recommended the delegate of the Minister determine that the planning proposal should proceed subject to the following conditions:

1. The planning proposal (including relevant attachments) is to be revised prior to exhibition to address the matters set out below:
 - (a) Update the Explanation of Provisions to explain that the bonus/incentive provisions are only available if the properties are developed as part of the broader War Memorial Hospital site.
 - (b) Provide a plain English explanation of the high-performance building standards in the body of the planning proposal, and that the alternative FSR and building height may be achievable if the above standards are met; include a commentary addressing SEPP: BASIX by stating that the proposed higher BASIX commitments form part of an incentive provision.
 - (c) Remove all references to affordable housing contributions where they relate to an affordable housing contributions scheme prepared in accordance with SEPP No. 70 Affordable Housing (Revised Schemes), as well as all references to monetary contributions or payment for affordable housing.
 - (d) Update the discussion on section 9.1 Ministerial Direction 2.6 Remediation of Contaminated Land to summarise the results of the preliminary site investigation for the subject Birrell Street site and include the full terms for any acronyms.
 - (e) Remove reference to section 9.1 Ministerial Direction 7.1, which was revoked on 9 November 2020.
 - (f) Address the Waverley Local Housing Strategy, which was endorsed by the Department on 16 July 2021.
 - (g) Update Part 6 Project Timeline to be consistent with the Gateway determination.
2. Consultation is required with the following public authorities:
 - Transport for NSW;
 - NSW Health;
 - Sydney Water;
 - Heritage NSW – Department of Premier and Cabinet; and
 - Ausgrid.
3. The planning proposal should be made available for community consultation for a minimum of 28 days.
4. The planning proposal must be exhibited no later than 2 months from the date of the Gateway determination.
5. The planning proposal must be reported to council for a final recommendation no later than 7 months from the date of the Gateway determination.
6. The timeframe for completing the LEP is to be 9 months from the date of the Gateway determination.
7. Given the integrated nature of the proposal with the adjoining War Memorial Hospital Campus proposal which was the subject of a rezoning review, the Department will retain the role of the local plan making authority.



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17 September 2021
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