

REPORT PD/5.1/22.04



Subject: Mill Hill Heritage Conservation Area Rezoning

TRIM No: A21/0431

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RECOMMENDATION:

That Council:

1. Does not pursue the rezoning of the Mill Hill Heritage Conservation Area from R3 Medium Density Residential to R2 Low Density Residential.
2. Does not pursue any changes to the permitted uses in the R3 Medium Density Residential Zone in the *Waverley Local Environmental Plan 2012*.

1. Executive Summary

On 20 July 2021, a notice of motion was adopted by Council for officers to consider whether the current zoning of the Mill Hill Heritage Conservation Area (Mill Hill HCA) is appropriate and whether the permissible commercial uses within the R3 Medium Density Residential Zone are appropriate for the needs of the immediate community.

Council officers have responded to this resolution by undertaking an investigation of these matters, taking into account the characterisation of the built form and current uses which occur in the Mill Hill HCA, and whether the existing controls should be revised accordingly.

The findings of this investigation as detailed in this report is that the Mill Hill HCA has a prevailing medium-density character, and that downzoning is not recommended in these circumstances as it would not appropriately reflect the current built form of the area, would unreasonably limit the ability of residents to make alterations and additions to their property, and is inconsistent with recently adopted Council strategies. It has also been concluded that the permissible uses in the R3 Medium Density Residential Zone in the *Waverley Local Environmental Plan 2012* (WLEP) are considered appropriate and therefore no changes are recommended to this effect.

2. Introduction/Background

This report has been prepared in response to a notice of motion adopted by Council at its meeting on 20 July 2021. The resolution required Council officers to review the current land zoning of the Mill Hill HCA and consider whether a change to R2 Low Density Residential Zone from the current R3 Medium Density Residential Zone would be appropriate and whether the currently permitted commercial uses within the R3 Medium Density Residential Zone genuinely service the immediate community. The resolution follows the approval of a development application within the Mill Hill HCA at 2 Birrell Street, Bondi Junction (DA-12/2021). DA-12/2021 proposed a change of use from dwelling house to a medical centre with internal and external alterations, car parking, signage and landscape works and was approved on 23 June 2021 by the

Waverley Local Planning Panel, despite many objections from the community. The resolution also required officers to investigate the appropriateness of the zoning to the character and uses of the area. The Mill Hill Heritage Conservation Area (Mill Hill HCA) takes in the majority of the lots to the south of Oxford Street, east of York Road and St James Road, south of Ebley Street, west of Bronte road and north of Birrell Street in Bondi Junction, and is within a Heritage Conservation Area listed under schedule 5 part 2 (heritage conservation areas) in the *Waverley Local Environmental Plan 2012* (WLEP). The statement of significance on the NSW State Heritage Inventory defines the Mill Hill Heritage Conservation Area as comprising 'streetscapes, residential and retail structures recording the aesthetic character and qualities of late 19th and early 20th Century consolidation of Bondi Junction as a commuter suburb based upon improvements in transport and the rapid expansion of suburban Sydney between 1880 and 1915. The Mill Hill Heritage Conservation area street and subdivision patterns are derived from initial land grants of the 1830's-40's.' The Mill Hill HCA is described as having evolved throughout a number of different periods from the 1840s to the present, with a particular increase toward residential uses following residential subdivisions in the 1880s.

Further specific illustration of the area in question can be seen in the red shaded area within the black borders in Figure 1.

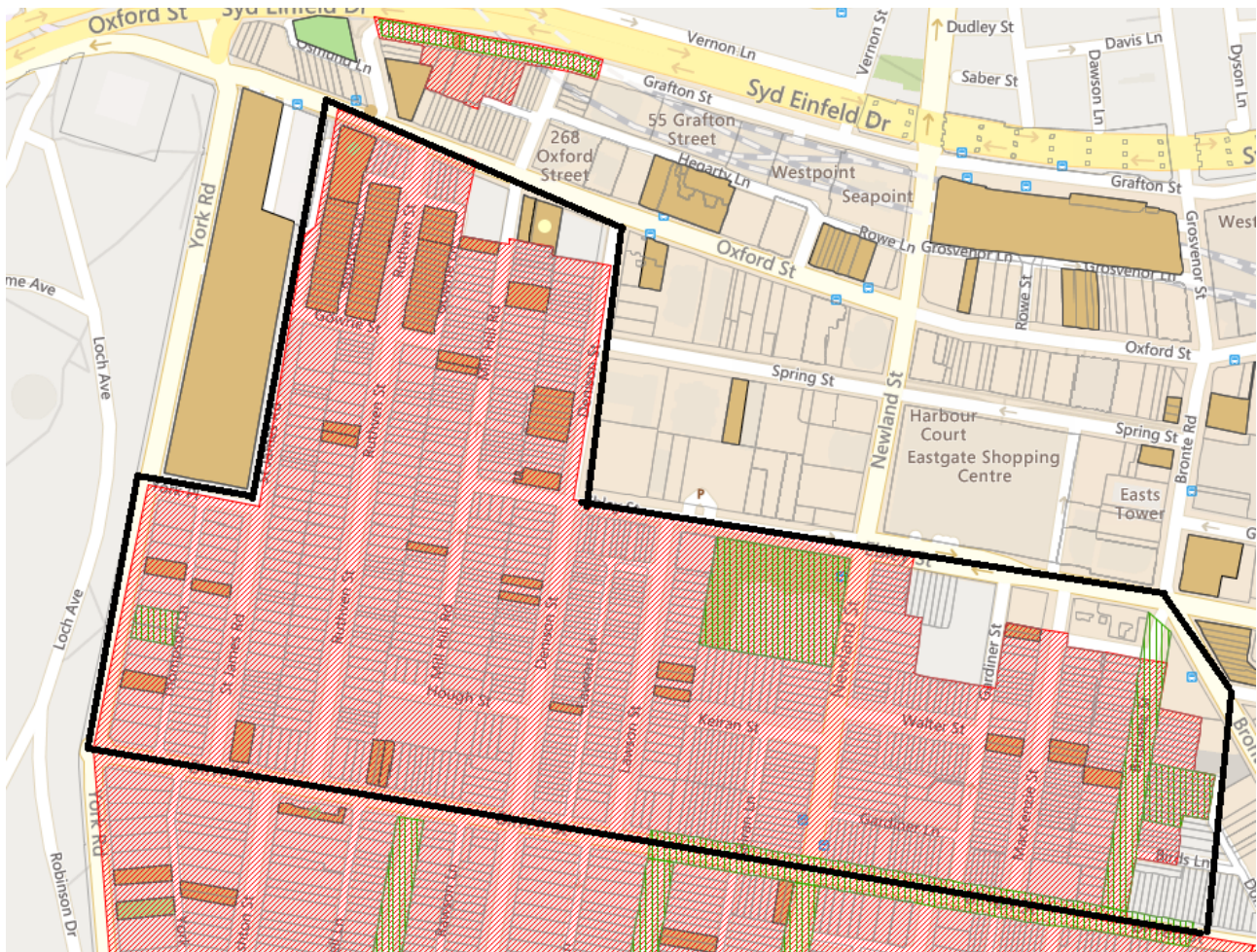


Figure 1. Mill Hill Heritage Conservation Area (Mill Hill HCA).

The Mill Hill HCA is currently zoned entirely R3 Medium Density Residential in the WLEP. The area acts as a transition zone between the area on Bondi Junction zoned as B4 Mixed Use and the R2 Low Density Residential zone south of Birrell Street in Queens Park. A summary of planning controls is outlined in Table 1, with a full list of objectives, permitted and prohibited uses detailed in Table 3.

Table 1. Existing zoning, height and floor space ratio controls.

Zone	Building Height	Floor Space Ratio
R3 Medium Density Residential	9.5 m	0.9:1

While the Mill Hill HCA is predominantly residential, there are a number of other uses that occur on properties within the area. Some examples include: a delicatessen, a service station, a storage facility, childcare facilities, an early education centre, a dry cleaner and health consulting rooms.

3. Relevant Council Resolutions

Meeting and date	Item No.	Resolution
Council 20 July 2021	CM/8.7/21.07	<p>That Council:</p> <ol style="list-style-type: none"> Reviews the zoning classification for the Mill Hill Conservation area from R3 to R2 to better reflect the character and heritage of the local area. If feasible, amends the Waverley Local Environmental Plan to clarify which commercial projects can operate in a R3 zone and that must genuinely service the immediate community. Writes to the NSW Planning and Open Spaces Minister, Rob Stokes, local MPs Dr Marjorie O’Neil and Gabrielle Upton, and LGNSW President, Linda Scott, demanding the return of planning decisions to elected members of local councils, as residents deserve a planning system that protects them. Notes that these changes are necessary as the current planning system takes the power away from residents and locally elected representatives and gives power over planning to developers. Officers report back to Council on the matters raised in clauses 1 and 2 above.

4. Discussion

Appropriateness of the current R3 zone and whether or not the area should be rezoned to R2 Low Density Residential

When considering the appropriateness of the existing zoning of R3 Medium Density Residential, consideration was given firstly to the built form within the Mill Hill HCA, and whether the character fits that of a ‘Medium Density Residential Area’.

Density relating to dwellings can be defined in a number of different ways, for the purposes of this analysis, two definitions have been considered. Firstly, the Australian Bureau of Statistics (ABS) defines information collated in the census relating to dwellings into a number of categories. In this definition, ‘Medium Density’ includes all semi-detached, row, terrace, townhouses and villa units, plus flats and apartments in blocks of one or two storeys, and flats attached to houses. For the purposes of this definition, all sub-areas in which

census data is collected in the Census within the Mill Hill HCA in the 2016 Census were defined either Medium or High Density. In another definition outlined in the 'residential density guide' prepared by Landcom—the NSW Government's land and property development organisation—different levels of density have been defined against a number of dwellings per hectare as displayed in Table 2.

Table 2. Residential densities (Landcom).

Category	Dwellings per hectare
Residential component in mixed use configurations	>66 dwellings per hectare
High-density development	40 dwellings per hectare
Medium-density development	20-40 dwellings per hectare
Low-density development	12.5-20 dwellings per hectare

When considering the above residential density guide in relation to the Mill Hill HCA, dwelling density information contained in the most recently available Census data (2016) shows that the dwelling density is consistently within the medium-density range, with some parts even above 40 dwellings per hectare in the high-density category. This medium density characterisation is consistent with previous assessments of the area and reflective of the current zoning, especially when considering the narrow lot sizes and historical subdivision patterns, which make it difficult to characterise the area as 'low density' by way of either dwelling or population density.

When considering the objectives of the R2 and R3 zones, the R3 zone in the WLEP currently provides for many of the same objectives as the R2 zone. To illustrate the similarities and differences between the zones, the objectives and permitted uses are displayed in Table 3.

Table 3. WLEP land use table extract.

	R2 Low Density Residential	R3 Medium Density Residential
1. Objectives of zone	<ul style="list-style-type: none"> To provide for the housing needs of the community within a low density residential environment. To enable other land uses that provide facilities or services to meet the day to day needs of residents. To maximise public transport patronage and encourage walking and cycling. 	<ul style="list-style-type: none"> To provide for the housing needs of the community within a medium density residential environment. To provide a variety of housing types within a medium density residential environment. To enable other land uses that provide facilities or services to meet the day to day needs of residents. To maximise public transport patronage and encourage walking and cycling.
2. Permitted without consent	Home occupations.	Home occupations.

3. Permitted with consent	Bed and breakfast accommodation; Boarding houses; Building identification signs; Business identification signs; Centre-based child care facilities; Community facilities; Dual occupancies; Dwelling houses; Emergency services facilities; Environmental facilities; Environmental protection works; Exhibition homes; Exhibition villages; Flood mitigation works; Group homes; Health consulting rooms; Home-based child care; Home businesses; Home industries; Hostels; Information and education facilities; Markets; Neighbourhood shops; Oyster aquaculture; Places of public worship; Pond-based aquaculture; Recreation areas; Respite day care centres; Roads; Secondary dwellings; Semi-detached dwellings; Seniors housing; Tank-based aquaculture.	Attached dwellings; Bed and breakfast accommodation; Boarding houses; Building identification signs; Business identification signs; Centre-based child care facilities; Community facilities; Group homes; Home industries; Kiosks; Markets; Multi dwelling housing; Neighbourhood shops; Oyster aquaculture; Places of public worship; Respite day care centres; Roads; Seniors housing; Tank-based aquaculture; Any other development not specified in item 2 or 4.
4. Prohibited	Any development not specified in item 2 or 3.	Agriculture; Air transport facilities; Airstrips; Amusement centres; Animal boarding or training establishments; Biosolids treatment facilities; Boat building and repair facilities; Boat launching ramps; Boat sheds; Camping grounds; Car parks; Caravan parks; Cemeteries; Charter and tourism boating facilities; Commercial premises; Correctional centres; Crematoria; Depots; Eco-tourist facilities; Electricity generating works; Entertainment facilities; Extractive industries; Farm buildings; Forestry; Freight transport facilities; Function centres; Heavy industrial storage establishments; Helipads; Highway service centres; Home occupations (sex services); Industrial retail outlets; Industrial training facilities; Industries; Jetties; Marinas; Mooring pens; Moorings; Mortuaries; Open cut mining; Passenger transport facilities; Pond-based aquaculture; Public administration buildings; Recreation facilities (major); Recreation facilities (outdoor); Registered clubs; Research stations; Restricted premises; Rural industries; Rural workers' dwellings; Service stations; Sewage treatment plants; Sex services premises; Shop top housing; Signage; Storage premises; Tourist and visitor accommodation; Transport depots; Truck depots; Vehicle body repair workshops;

		Vehicle repair stations; Veterinary hospitals; Warehouse or distribution centres; Waste or resource management facilities; Water recreation structures; Water recycling facilities; Water supply systems; Wharf or boating facilities; Wholesale supplies.
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When considering the comparison between the two, it is evident that there are many similarities between the objectives within the R2 and R3 zones, with the R3 zone containing an additional objective relating 'to provide a variety of housing types within a medium density residential environment'. This objective reflects that it is desirable to have a variety of housing types within the zone, something that is already achieved and consistent within the existing character of the Mill Hill HCA.

When considering the types of structures permitted in the R2 zone, attached dwellings are not listed as permitted with consent, while in the R3 zone it is. It would, considering the substantial number of attached dwellings (many of heritage significance) in the Mill Hill HCA, not be consistent to change the zoning of an area to one in which the permitted uses do not align with the existing structures. Given the area is a HCA, the overall heritage character of the area should be retained, which reflects the pattern of development at a medium density. Accordingly, it is the current and desired future character of the area that the development pattern is maintained. The downzoning of this area to R2 Low Density Residential and commensurate FSR, would likely unreasonably limit the ability of residents to make future alterations and additions to their property.

In addition, it is important to consider that Council has recently completed a comprehensive review of the WLEP as part of the recent Local Strategic Planning Statement Implementation Planning Proposal (LSPS Planning Proposal), which was submitted to the Department of Planning and Environment (DPE) in April 2021. Part of this Planning Proposal included the proposal to rezone Diamond Bay (Diamond Bay Road, Craig Avenue and Isabel Avenue) from R3 Medium Density Residential to R2 Low Density Residential, a position previously endorsed by Council on the 21 April 2020. Council in August 2021 received a conditional Gateway Determination from the DPE with a condition to remove the proposed zone and development standard changes to Diamond Bay, Vaucluse precinct as the downzoning of this area is not supported by the DPE.

Furthermore, the LSPS Planning Proposal identifies that the Waverley Local Housing Strategy, adopted by Council in 2020, demonstrates that under the existing capacity and zoning of the LGA, that no rezoning or intensification is required to meet the NSW Government's housing targets for 2036 (although this position was not endorsed by DPE in their review). Should a decrease in density occur at one location, a different area of the LGA may be required to show an increase in density to meet the housing targets. On balance, as the Mill Hill HCA is well located in close walking distance of the Bondi Junction Transport Interchange and significant open spaces of Centennial and Queens Park, it is strategically important that this location remain a medium-density area for housing to ensure that appropriate housing is provided in areas with high amenity and accessibility. The Mill Hill HCA is an important and ideal location to deliver a mix of medium-density housing types that have high levels of accessibility and amenity, while maintaining the character of the Heritage Conservation Area.

This decision by the DPE not to support the Diamond Bay rezoning highlights that even if Council sought to rezone the Mill Hill HCA from R3 Medium Density Residential to R2 Low Density Residential, that it would very likely not be supported by the DPE, as the proposal is not in keeping with the Waverley Local Strategic Planning Statement or Waverley Local Housing Strategy.

Whether or not the permitted commercial uses in the R3 Zone reflect the genuine needs of the immediate community

When comparing the uses permitted with consent and whether or not they are appropriate, there are also some key findings pertinent to this investigation. These findings are largely that there are many similar commercial uses permitted within both of the zones on various scales, as set out in Table 3. Some of these examples include centre-based childcare facilities, neighbourhood shops and places of public worship, all of which already exist within the zone or have in the past, and all of which have implications to surrounding residential areas by way of the potential for increase in parking demand, traffic movements, waste collection, deliveries and other issues which may result in an intensification of activities in the area.

The R3 zone does, however, provide some more flexibility by way of permitting with consent, ‘any other development not specified in item 2 or 4’. This was the case with the recent development application at 2 Birrell Street, Bondi Junction, which proposed a change of use from dwelling house to a medical centre with internal and external alterations, car parking, signage and landscape works. While a medical centre would be prohibited in the R2 zone, ‘health consulting rooms’ are permitted with consent in the R2 zone. Such an application as was approved at 2 Birrell Street, would still in essence be possible within the R2 zone, albeit on a slightly reduced scale if modified in form to consist of ‘health consulting rooms’ rather than a medical centre. Health consulting rooms require that they are ‘used by not more than 3 health care professionals at any one time’. The approved medical centre has four consult rooms, which is unlikely to be sufficiently different in scale than an otherwise approved health consulting room. It is also important to note that, regardless, if a proposed use is permitted with consent, that provision of consent is still subject to an appropriate assessment of compliance against the WLEP and DCP and merit in the context in which it is proposed. Many of the objections regarding the development at 2 Birrell Street related to potential amenity impacts that would result from the development, rather than the proposed use itself – an issue that may likely have arisen for a similarly scaled ‘health consulting room’.

5. Financial impact statement/Time frame/Consultation

As this report is proposing no changes, there is no financial, time frame or consultation impact.

6. Conclusion

As discussed in the report, the current R3 Medium Density Residential zoning of the Mill Hill HCA best reflects the current and desired future character of the area, both in terms of built form and the variety of non-residential uses which presently and previously have occurred within the area. Taking this into account, alongside the fact that Council has recently undertaken a comprehensive review of the WLEP and the Mill Hill HCA area was not identified for rezoning, it is not recommended that any changes to the zoning or permitted uses occur. The Mill Hill HCA remains an important and ideal location to deliver a mix of medium-density housing types that have high levels of accessibility and amenity and maintain the character of the heritage conservation area. The non-residential uses within the R3 zone are recommended to be maintained.

7. Attachments

Nil.