



IRF 22/3661

Gateway determination report – PP-2022-676

34 Flood Street, Bondi

November 22

Published by NSW Department of Planning and Environment

dpie.nsw.gov.au

Title: Gateway determination report – PP-2022-676

Subtitle: 34 Flood Street, Bondi

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Acknowledgment of Country

The Department of Planning and Environment acknowledges the Traditional Owners and Custodians of the land on which we live and work and pays respect to Elders past, present and future.

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Table 1 Reports and plans supporting the proposal

Relevant reports and plans
Planning Proposal – 34 Flood Street, Bondi – prepared Planning Ingenuity, dated 28 February 2022
Planning Proposal – Annexure A: Pre-lodgement advice
Planning Proposal – Annexure B: Future Development Scenarios, prepared by Meriton, undated.
Minutes of Waverley Council Strategic Planning and Development Committee, dated 5 July 2022
Rezoning review record of decision, Sydney Eastern City Planning Panel, dated 13 October 2022

1 Planning proposal

1.1 Overview

Table 2 Planning proposal details

LGA	Waverley LGA
PPA	Sydney Eastern City Planning Panel
NAME	34 Flood Street, Bondi
NUMBER	PP-2022-676
LEP TO BE AMENDED	Waverley Local Environmental Plan 2012
ADDRESS	34 Flood Street, Bondi
DESCRIPTION	Lot 1 in DP 1094020
RECEIVED	25/10/2022
FILE NO.	IRF22/3661
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

1.2 Objectives of planning proposal

The objective of the proposal is to correct an anomaly in the current land use zoning of the site and apply a zoning consistent with the surrounding land.

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

1.3 Explanation of provisions

The planning proposal seeks to amend the Waverley Local Environmental Plan 2012 (WLEP) to rezone the land at 34 Flood Street, Bondi from *SP2 Infrastructure (Educational Establishment)* (SP2 zone) to *R3 Medium Density Residential* (R3 zone). The proposal does not seek any other changes to the applicable development standards or LEP provisions. The site's current use as a 'place of public worship' (synagogue) is permitted with consent in the R3 zone.

The current and proposed controls are outlined in **Table 3** as follows:

Table 3: Current and proposed controls

Control	Current (Waverley LEP 2012)	Proposed
Zone	SP2 Infrastructure (Educational Establishment)	R3 Medium Density Residential
Maximum height of the building	12.5m	No change
Floor space ratio	0.9:1	No change
Minimum lot size	N/A	No change

The planning proposal contains an explanation of provisions that adequately explains how the objectives of the proposal will be achieved.

1.3.1 Indicative future land use outcomes

The proposal states that it will *“facilitate feasible future development and use of the site and prevent isolation of the adjoining land to the south whereas current planning provisions create an impasse for any feasible future development of these lots either separately or as an amalgamated site”*.

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

The proposal includes an overview of two potential future development scenarios that have been identified for the site in conjunction with the adjoining land at 36A Flood Street, Bondi (to the south), based on existing planning controls under the WLEP 2012.

As outlined in **Table 4**, these scenarios provide for future residential development and are premised upon the amalgamation of the subject site with neighbouring land at 36A Flood Street, Bondi, which are under the same ownership.

Table 4: Provisions of the potential future development scenarios for the site

Key element	Current	Potential outcome of future development scenarios
Jobs	N/A	TBD
Housing	1 (Caretaker Cottage)	19 apartments <u>OR</u> 8 multi-dwelling housing**

****Note:** Potential dwelling yield is premised upon the amalgamation of the subject site with neighbouring land at 36A Flood Street, Bondi.

1.4 Site description and surrounding area

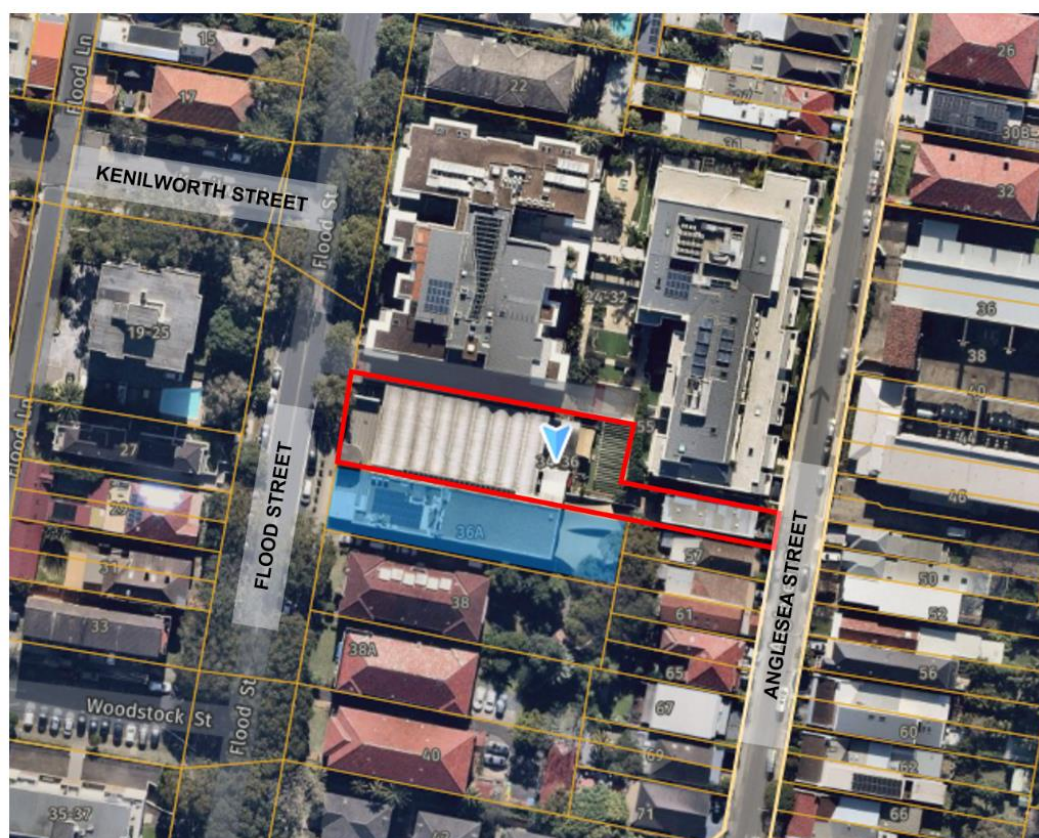
1.4.1 The site

The planning proposal applies to land at 34 Flood Street, Bondi (the site), which is legally described as Lot 1 DP 1094020. The site has an area of 1,327m² and is irregular in shape, displaying a typical ‘battle-axe’ configuration. It has primary street frontage to Flood Street (western boundary) with the eastern boundary having frontage to Anglesea Street (narrow handle portion of the site). The site can be seen in **Figure 1**.

Existing development on the site includes a place of public worship (synagogue) with pedestrian access to Flood Street. A not-for-profit community kitchen is located at the rear, accessed via a shared driveway located on the adjacent property to the north at 26-32 Flood Street, which accommodates a part four and five-storey seniors housing development. The eastern portion of the site (narrow handle portion) contains a two-storey detached dwelling house with frontage and vehicle access to Anglesea Street.

The site has been developed in conjunction with the adjacent property to the south at 36A Flood Street, which is under the same ownership as the site. It is noted that 36A Flood Street is an educational establishment (known as Yeshiva College) catering for students from Kindergarten to Year 10.

The site was used from the late 1950’s to the 1980’s as a school (Yeshiva College), which was later relocated to its current location at 36A Flood Street. The subject site has since been utilised as a synagogue attached to the school.



- Subject site
- Yeshiva College - 36A Flood Street, Bondi

Figure 1: Subject site (Source: Nearmap, October 2022)

1.4.2 The surrounding area

Surrounding development is characterised by a mix of residential flat buildings and detached and semi-detached dwellings. The residential buildings range in height from one to nine storeys.

The site is located approximately:

- 1km from Bondi Junction and Bondi Junction train station;
- 1.9km from Bondi Beach; and
- 5km from Sydney Central Business District.

The site is walking distance from high frequency bus services which operate along Old South Head Road and Bondi Road. Accessible open space includes Dickson Park (to the north-east), Waverley Park (to the south) and Cooper Park (to the north-west). Site surrounds can be seen in **Figure 2**.



★ Subject site

Figure 2 Site context (Source: Adapted from Google Maps, October 2022)

1.5 Current controls, zone context and mapping

The current land use zoning and development controls that apply to the site and surrounding land under the WLEP 2012 are shown in **Figure 3** to **Figure 6**.

This site is predominantly surrounded by land within the R3 zone, except for the narrow handle portion of the site which adjoins land zoned R2 Low Density Residential to the south, south-east and opposite on Anglesea Street further east.

Development controls that apply to the site largely align with those that apply to the surrounding R3 zoned land. The exception is minimum lot size provisions with the site currently having no lot size provisions applicable. The proposal does not seek any amendments to the development controls that currently apply to the site under the WLEP 2012.

A map illustrating the proposed amendment to the WLEP 2012 Land Use Zoning map has not been included in support of the proposal. Should the proposal be granted a Gateway determination to proceed, conditions would require an update the planning proposal to include sufficient mapping to illustrate the proposed new zone, to enable the community to clearly understand the intended outcomes.

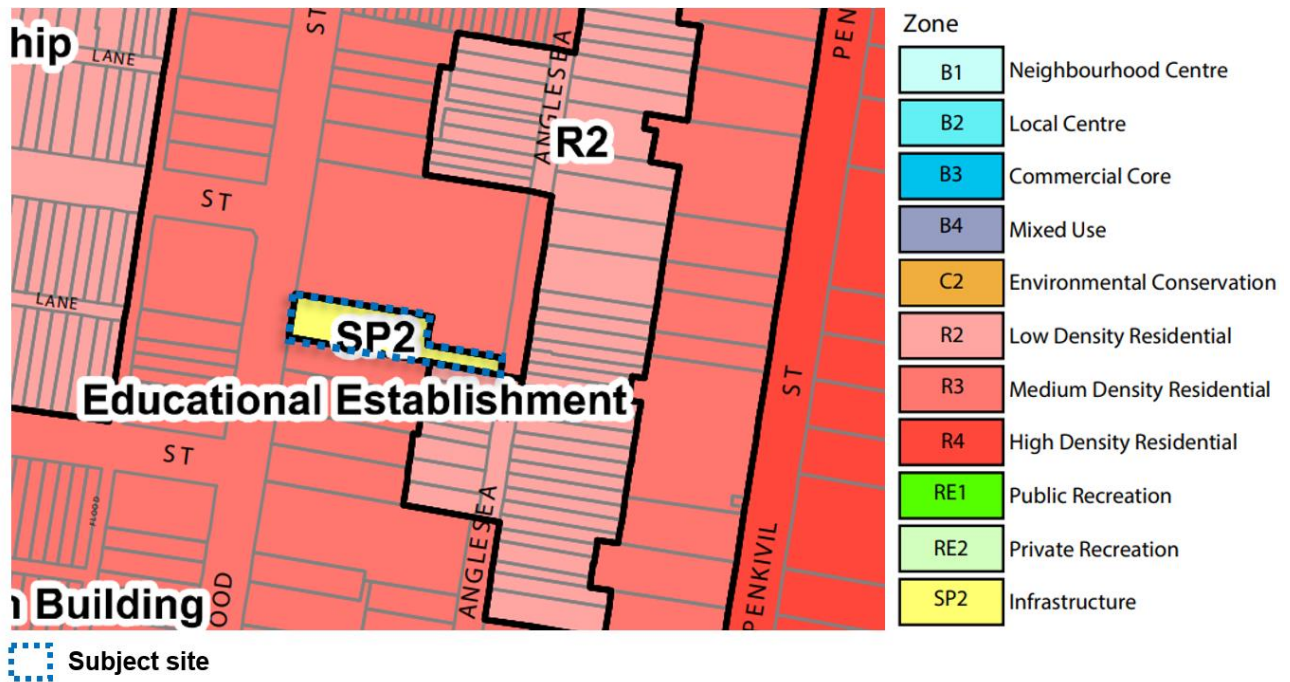


Figure 3: Current zoning map (Source: WLEP 2012 Land Use Zoning Map Sheet LZN_004)



Figure 4: Current height of building map (Source: WLEP 2012 Height of Buildings Map Sheet HOB_004)

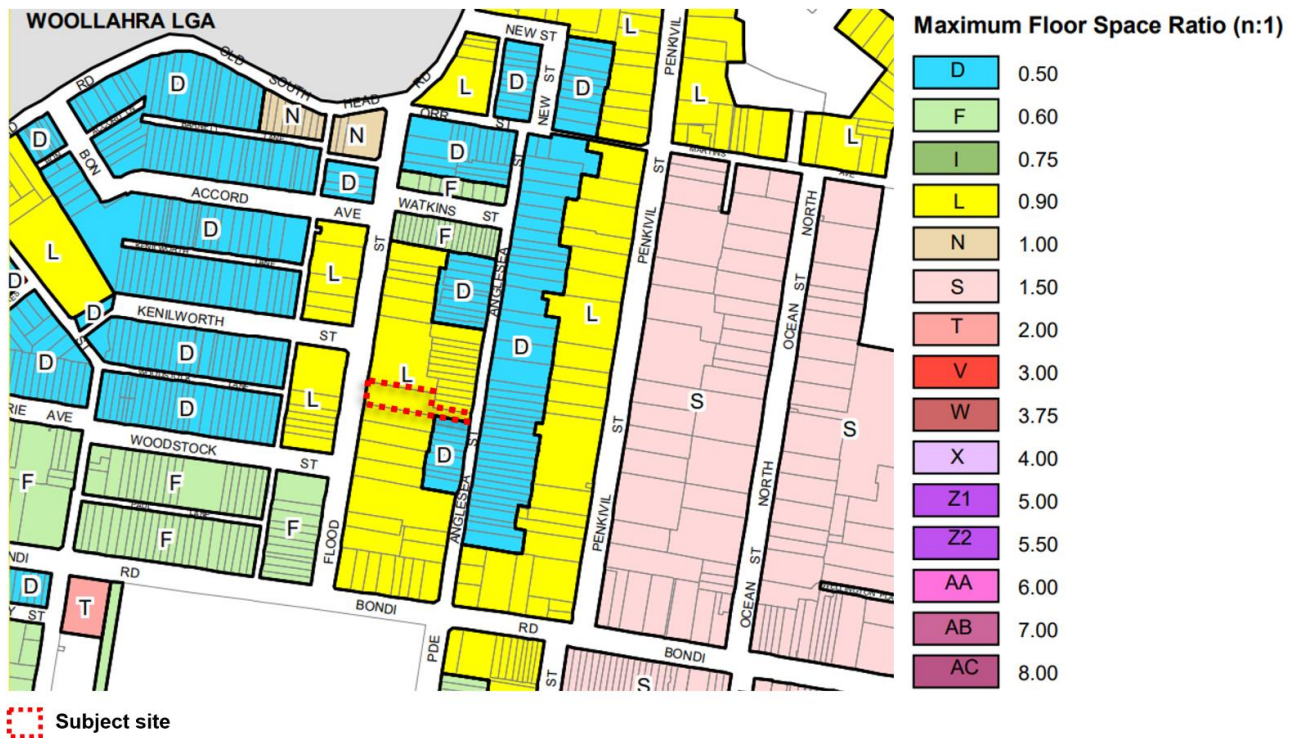


Figure 5: Current floor space ratio map (Source: WLEP 2012 Floor Space Ratio Map Sheet FSR_004)



Figure 6: Current minimum lot size map (Source: WLEP 2012 Lot Size Map Sheet LSZ_004)

1.6 Background

The following background information is relevant to the planning proposal:

Date	Background
9 March 2022	The proponent-led planning proposal and supporting documentation was submitted to Council by Kanimbla Properties, seeking to amend the land use zoning of the subject land at 34 Flood Street, Bondi, under the Waverley LEP 2012 from SP2 Infrastructure (Educational Establishment) to R3 Medium Density Residential.
25 May 2022	The proposal was reported to the Waverley Local Planning Panel (WLPP) on 25 May 2022 for advice. At this meeting, the WLPP did not support the proposal proceeding to a Gateway Determination.
5 July 2022	<p>Advice provided by the WLPP at the meeting on 25 May 2022 were considered by Council officers, who subsequently recommended in a report to the Strategic Planning and Development Committee, that the proposal not proceed to Gateway on the grounds that it does not have sufficient merit.</p> <p>On 5 July 2022, the Strategic Planning and Development Committee (SP&DC) resolved not to support the proposal as it considered that it <i>“lacks strategic merit and involves a change in Council’s long-established policy in relation to SP2 Infrastructure Zones”</i></p>
28 July 2022	<p>Council notified the proponent in writing that:</p> <p><i>“at the Strategic Planning and Development Committee on 5 July 2022, it was resolved that Council:</i></p> <ol style="list-style-type: none"> <i>1. Does not support the planning proposal set out in the report to amend Waverley Local Environmental Plan 2012 in respect of 34-36 Flood Street, Bondi, Lot 1 DP 1094020, as the proposal lacks strategic merit and involves a change in Council’s long-established policy in relation to SP2 Infrastructure Zones.</i> <i>2. Investigates the strategic merit of amending the current zoning of SP2 Infrastructure ‘Educational Establishment’ to a more appropriate zoning that represents the existing use on the site in a future housekeeping planning proposal.”</i> (Refer to Council’s decision notice letter, dated 28 July 2022).
3 August 2022	Rezoning review was request was lodged with the Department.
18 August 2022	Rezoning review application was deemed adequate by the Department.
13 October 2022	The rezoning review application for 34 Flood Street, Bondi (RR-2022-21), was considered by the Strategic Planning Panel of the Sydney Eastern City Planning Panel (the Panel). At this meeting, the Panel recommended that the proposal should be submitted for a Gateway determination as it had considered the proposal to have demonstrated strategic and site-specific merit.

Date	Background
17 October 2022	<p>On 17 October 2022 the Panel notified the proponent and Council of its recommendation regarding RR-2022-21 that the proposal should be submitted for a Gateway determination.</p> <p>As Council had refused to support the proposal, the Panel also advised that, as delegate of the Minister for Planning, it had determined to appoint itself as the PPA to finalise this matter under section 3.32(1) of the <i>Environmental Planning and Assessment Act 1979</i>.</p>
25 October 2022	Application for Gateway determination received

2 Need for the planning proposal

The planning proposal is not the result of any specific strategy, study or report. Rather, it is a proponent led, site-specific proposal that has been initiated to correct *“an oversight or error made in the application of land use zoning to the site”*. The proposal states that it seeks to correct this zoning anomaly, to facilitate the permissibility of the site’s current use and future redevelopment potential.

The proposal has outlined that the site’s current SP2 Infrastructure (for the purposes of an Educational Establishment) zoning does not appropriately reflect its current and historic use as a place of public worship.

Under the current SP2 zoning, *aquaculture, roads and educational establishment* (including any development that is ordinarily incidental or ancillary to development for that purpose), are the only land uses that are permitted with consent on the subject site, with *‘places of public worship’* a prohibited land use in the zone. The proposal however indicates that the place of public worship currently benefits from existing use rights.

The proposal states that:

“If the current zone is not rectified, existing use rights provisions do not facilitate feasible alterations or significant new work to the existing Synagogue building nor do they facilitate other forms of compatible development which would enhance the feasibility of improving the Synagogue”.

“the current zoning prevents the feasible replacement of buildings that are reaching the end of their useful life and precludes any significant enhancement, alteration or reconstruction under existing use rights provisions”.

The proposal has identified the sites existing zoning as an impediment to any feasible future redevelopment, including the significant works that the proponent considers will be required to ensure the existing development aligns with contemporary standards.

The proposal states that the *“current zoning does not facilitate the most desirable future use of the site within the setting of the surrounding medium density residential environment”*. The proposal identifies the inconsistency of the site’s current zoning with guidelines and directions in the Departments LEP Planning Practice Notes PN10-001 and PN11-002 as further justification for the proposal.

The progression of the proposal for Gateway assessment is the outcome of a Rezoning Review decision (RR-2022-21) in October 2022 of the Sydney Eastern City Planning Panel’s Strategic Planning Panel, who determined that the proposal should proceed to Gateway determination.

3 Strategic assessment

3.1 Regional Plan

The Greater Sydney Region Plan – *A Metropolis of Three Cities* (the Region Plan) was released by the NSW Government in 2018. The Plan contains objectives, strategies and actions which seek to manage growth and change across Greater Sydney over the next 20 years.

Table 5 provides an assessment of the planning proposal against relevant aspects of the Region Plan.

Table 5 Region Plan assessment

Regional Plan Objectives	Justification
<i>Objective 6: Services and infrastructure meet communities' changing needs</i>	The proposed rezoning will not impact the ability for the site to be used as an educational establishment in the future. <i>State Environmental Planning Policy (Transport and Infrastructure) 2021</i> permits educational establishments within the R3 zone.
<i>Objective 10: Greater housing supply</i> & <i>Objective 11: Housing is more diverse and affordable</i>	These objectives are focused on the supply and diversity of housing in the right locations to accommodate the needs of Sydney's growing population. In recognition of the subject sites access to existing public transport, social infrastructure, services and quality open space, this proposal is considered consistent with these objectives as the proposed rezoning can increase the housing supply and diversity potential of the subject site, supporting the needs of Greater Sydney's growing population and creation of more liveable neighbourhoods.

3.2 District Plan

The site is located within the Eastern City District. The Eastern City District Plan (the District Plan), released by the Greater Sydney Commission in March 2018, sets out the planning priorities and actions to guide the growth of the District while improving its social, economic and environmental assets.

Table 6 provides an assessment of the planning proposal against relevant priorities and actions of the Eastern City District Plan.

Table 6 District Plan assessment

District Plan Priorities	Justification
<i>Planning Priority E3: Providing services and social infrastructure to meet people's changing needs</i>	This planning priority seeks to ensure that social infrastructure meets people's/communities' changing needs now and into the future, utilising existing public land for infrastructure needs where possible. The site is currently zoned for the purpose of an educational establishment land use. As discussed in Section 3.6 and through this report, rezoning the land as to an R3 zone will not preclude future development of the site for a school. The R3 zone

District Plan Priorities	Justification
	<p>is a 'prescribed zone' under State Environmental Planning Policy (Transport and Infrastructure) 2021 which permits development for the purposes of a 'school', consistent with the site's current SP2 zoning.</p> <p>Whilst the current use of the site is public in nature (being a place of public worship), the site is not considered to be public land as it is in private ownership. Further the SP2 zoning of the land does not specify a 'public' educational establishment land use. The proposal does not impact current or future availability of social infrastructure in the locality, the current use of the site will also remain permissible on the land.</p>
<p><i>Planning Priority E5: Providing housing supply, choice and affordability, with access to jobs, services and public transport</i></p>	<p>This planning priority is focused on the delivery of housing supply, diversity and affordability.</p> <p>Although it is not the expressed intent of the proposal, the proposal acknowledges that the rezoning of the subject site to R3 Medium Density Residential will provide opportunities for future residential development. The indicative future development scenarios prepared in support of the proposal show the site in conjunction with 36A Flood Street, Bondi, to accommodate approximately 8 multi-dwelling houses or 19 apartments, based on the current development controls in the WLEP 2012.</p> <p>The proposal is consistent with this planning priority as it will provide an opportunity for infill residential development on land that is accessible to jobs and services in the Bondi Junction strategic centre, existing public transport, social infrastructure, open space and recreational areas, and in a metropolitan locality where there is a growing demand for housing.</p>

3.3 Local

An assessment of the consistency of the proposal with relevant local strategic plans is included in **Table 7** below.

Table 7 Local strategic planning assessment

Local Strategies	Justification
<p>Waverley Local Strategic Planning Statement</p>	<p>The Waverley Local Strategic Planning Statement (LSPS) plans for Waverley's economic, social and environmental needs over the next 20 years (to 2036). The proposal identifies consistency with the various local strategic principles for change and local site-specific principles for change outlined in the LSPS.</p> <p>The proposal also identifies consistency with the relevant Planning Priorities of the LSPS, in particular:</p> <ul style="list-style-type: none"> • Planning Priority 4 – Ensure the community is well serviced by crucial social and cultural infrastructure • Planning Priority 6 – Facilitate a range of housing opportunities in the right places to support and retain a diverse community • Planning Priority 7 – Recognise and celebrate Waverley's unique place in the Australian contemporary cultural landscape • Planning Priority 13 – Protect and grow our areas of biodiversity and connect people to nature

Local Strategies	Justification
	<ul style="list-style-type: none"> • Planning Priority 14 – <i>Achieve net zero carbon emissions in the built environment</i> <p>The Department notes the following statement in the LSPS that:</p> <p><i>“When Waverley Council moved to the Standard Instrument LEP, Council chose to retain all land zoned ‘SP2 – Infrastructure’ for the purposes of retaining these crucial pieces of infrastructure in our area. This has meant that despite increasing pressures for residential development, Council has largely been able to protect these facilities for the community”</i></p> <p>The Department also notes the following actions of the LSPS:</p> <p><i>“Action 4. Review and strengthen existing planning controls in the WLEP to continue to provide crucial social and cultural infrastructure for the area”</i></p> <p><i>“Action 8. Investigate and implement planning mechanisms to identify and protect crucial cultural and social infrastructure for the community” (p.33)</i></p> <p>For approximately 40 years, the site has been used for the purposes of a place of public worship (synagogue) and not for the purposes of an ‘educational establishment’ for which it is currently zoned.</p> <p>Any inconsistencies of the proposal with Planning Priority 4 and the supporting actions 4 & 8 of the LSPS are of minor significance. The proposal seeks to correct an anomaly and apply a zoning (the R3 zone) that is compatible with the site’s current use and is consistent with the surrounding land.</p> <p>Places of public worship are permitted with consent in the R3 zone of the WLEP 2012. The proposed rezoning of the site will also not preclude its use for the purposes of an educational establishment, which is permitted in the R3 zone under provisions of <i>State Environmental Planning Policy (Transport and Infrastructure) 2021</i> (Transport and Infrastructure SEPP).</p> <p>While it is not the primary intent of the proposal, the proposed rezoning demonstrates consistency with Planning Priority 6 of Council’s LSPS as it can increase the housing supply and diversity potential of the subject site, which is located in proximity to existing transport, social infrastructure and essential services, open space and recreation areas.</p>
Waverley Local Housing Strategy 2020 – 2036	<p>The Waverley Local Housing Strategy (LHS) provides the framework to guide the future of housing in Waverley over the next 20 years. The planning proposal does not include commentary on the consistency of the proposal with the Waverley LHS.</p> <p>Although the intent of the proposal is to correct an anomaly in the current land use application of the site, the proposed R3 zoning provides for a mix of housing typologies and will increase potential housing supply and diversity opportunities in the locality, which is accessible and well serviced. This has the potential to assist council in realising its local housing targets.</p> <p>Having regard to the nature of the planning proposal and proximity of the site to the nearby Bondi Junction strategic centre, high frequency rail and bus corridors, social infrastructure, open space and recreational areas, the proposal is considered broadly consistent with the following priorities of the LHS:</p> <ul style="list-style-type: none"> • Priority H1: Manage housing growth sustainably and in the right location • Priority H2: Encourage a range of housing options to support and retain a diverse community.

Local Strategies	Justification
	<p>The planning proposal has not addressed the LHS, should a Gateway determination be issued for the proposal to proceed, conditions will require the proposal to be updated accordingly prior to community consultation.</p>
<p>Waverley 2032 – Waverley Community Strategic Plan 2022-2032</p>	<p>Waverley 2032 (the CSP), the Waverley Community Strategic Plan adopted by Council in June 2022, sets out the Waverley community's vision for the next 10 years.</p> <p>The CSP identifies the Communities priorities for the future, including a number of objectives and strategies. Those of relevance to this proposal include:</p> <ul style="list-style-type: none"> • Objective 1.7 Housing Needs: <i>Actively drive housing policy to meet the needs of the vulnerable, diverse and growing population</i> <ul style="list-style-type: none"> - Strategy 1.7.4. <i>Manage housing supply, choice and affordability with access to jobs, services and public transport</i> <p>Although the primary intent of the proposal is to correct a zoning anomaly on the subject land, the proposed R3 Medium Density Residential zone would enable future residential development of the site, consistent with the development standards applying to the surrounding Medium Density Residential zoned land.</p> <p>The planning proposal has not addressed the CSP, should a Gateway determination be issued for the proposal to proceed, conditions will require the proposal to be updated accordingly prior to community consultation.</p>

3.4 Local planning panel (LPP) recommendation

As outlined in **Section 1.6** of this report, Council has made numerous resolutions relating to the proposal. The LPP recommendation and subsequent relevant Council resolutions are provided below:

Waverley Local Planning Panel Meeting – 25 May 2022

The Waverley Local Planning Panel considered a report by Council officers in relation to the proposal. The Panel resolved not to support the proposal proceeding to a Gateway determination.

Waverley Strategic Planning and Development Committee Meeting - 5 July 2022

A report by Council officers on the proposal was considered by the Strategic Planning and Development Committee. This report recommended that the proposal not proceed to Gateway.

At this meeting, a resolution was passed by the Strategic Planning and Development Committee:

“That Council:

1. *Does not support the planning proposal set out in the report to amend the Waverley Local Environmental Plan 2012 in respect of 34–36 Flood Street, Bondi, Lot 1 DP 1094020, as the proposal lacks strategic merit and involves a change in Council's long-established policy in relation to SP2 Infrastructure Zones.*
2. *Investigates the strategic merit of amending the current zoning of SP2 Infrastructure ‘Educational Establishment’ to a more appropriate zoning that represents the existing uses and considers potential future uses on the site in a future housekeeping planning proposal.”*

Sydney Eastern City Planning Panel's – 13 October 2022

The rezoning review application for the subject site was considered by the Strategic Planning Panel of the Sydney Eastern City Planning Panel (the Panel). The Panel's reasons for decision are as follows:

“

1. *The current SP2 Educational Establishment zoning as gazetted in 2012 is incorrect and the current land use (i.e., place of public worship) has existed for at least 40 years and is now prohibited in the zone.*
2. *The current SP2 zone is inconsistent with the Department's LEP practice note, published in 2010, which provides that “Most existing infrastructure land currently zoned ‘special use’ should be rezoned in the LEP according to what the adjacent zone is, if that zone is a ‘prescribed zone’ in the ISEPP which permits that type of infrastructure.” (LEP practice note PN10-001, Principle 2.2).*
3. *The Panel notes the current practice elsewhere in this LGA for educational facilities and places of public worship to operate in zones other than SP2 and forms the view that this rezoning will not create a precedent.*
4. *The Panel notes the Council officer's advice that the zoning of this site is an anomaly in that the site is not an educational establishment and has not been for at least 40 years.*
5. *The Panel agrees with the Council officer's report to the Waverley Local Planning Panel that the planning proposal has both strategic and site-specific merit and “the use of the SP2 land is not appropriate for this site. The R3 zone, however, surrounds the site and facilitates the uses continuing/expanding under its zoning provisions”.*

3.5 Local Planning Directions (s.9.1 Directions)

The planning proposal's consistency with the relevant Local Planning Directions (section 9.1 Directions) is discussed in **Table 8** as follows:

Table 8 9.1 Ministerial Direction assessment

Directions	Consistency	Reasons for Consistency or Inconsistency
Direction 1.1 Implementation of Regional Plans	Consistent	The proposal is consistent with this direction as it contains provisions which support implementation of the Greater Sydney Region Plan (see Section 3.1 of this report).
Direction 1.4 Site Specific Provisions	Consistent	The proposal is consistent with this direction as it seeks to rezone the site to an existing zone in the WLEP 2012 and does imposing any development standards or requirements in addition to those already apply to the land.
Direction 3.2 Heritage Conservation	Consistent	<p>The planning proposal has not identified the subject site to contain a heritage item however, it acknowledges the site's location adjacent to the Woodstock Road Heritage Conservation Area and the Flood Street Landscape Conservation Area as identified in the WLEP 2012.</p> <p>The proposal primarily seeks to correct a land use zoning anomaly in the WLEP 2012 and will have no impact upon the heritage significance of the nearby conservation areas. Any future development on the site and associated potential heritage impacts can be addressed as part of any future development assessment process.</p>

Directions	Consistency	Reasons for Consistency or Inconsistency
Direction 4.4 Remediation of contaminated land	Inconsistent and unresolved	<p>The objective of this direction is to reduce the risk of harm to human health and the environment by ensuring that contamination and remediation are considered by planning proposal authorities.</p> <p>The direction applies as the proposal seeks to rezone land which will subsequently permit residential land uses. The proposal has not addressed this direction or land use contamination. Therefore, consistency with this direction is unresolved.</p> <p>Should the proposal be supported to proceed, conditions of any subsequent Gateway determination would require this direction to be addressed with any supporting documentation to be included in the planning proposal.</p>
Direction 5.1 Integrating Land Use and Transport	Consistent	The proposal is considered consistent with this direction as it has the potential to increase the supply of housing on the site, which is accessible and well located in proximity to nearby centres, social infrastructure, public transport, open space and recreational areas.
Direction 6.1 Residential zones	Consistent	The resulting R3 zone has the potential to increase the supply and diversity of housing on the site which is in close proximity to employment and services in existing nearby centres, public transport, social infrastructure and quality open space and recreational areas.

Should the proposal be supported to proceed, conditions of any subsequent Gateway determination would require the planning proposal be updated prior to community consultation to remove reference to the repealed Ministerial Directions and include an assessment of the proposal against all current s.9.1 Ministerial Directions relevant to the proposal, with supporting documentation provided as required.

3.6 State environmental planning policies (SEPPs)

The Department has considered the proposal against relevant SEPPs in **Table 9** below.

Table 9 State Environmental Planning Policy assessment

SEPPs	Assessment
State Environmental Planning Policy (Transport and Infrastructure) 2021	<p>The SEPP aims to facilitate the effective delivery of infrastructure across the state.</p> <p>The site is currently zoned SP2 for the purposes of an education establishment. This does not reflect the current use of the site as a place of public worship. The proposed R3 zone is a prescribed zone under the Transport and Infrastructure SEPP which permits development for the purposes of a 'school', consistent with the current zoning of the site. The proposal is generally consistent with the SEPP.</p>
State Environmental Planning Policy (Resilience and Hazards) 2021	<p><u>Chapter 4 Remediation of land</u></p> <p>An assessment against the provisions of the Section 9.1 Direction 4.4 Remediation of Contaminated Land has been previously provided in Section 3.5 of this report. Should the proposal be supported to proceed, conditions of any subsequent Gateway determination would require contamination to</p>

SEPPs	Assessment
	address contamination with any supporting documentation to be included in the planning proposal.
SEPP No 65 – Design Quality of Residential Apartment Buildings	Whilst two concept designs have to demonstrate potential medium density residential development on the site (See Section 4.1.2). SEPP 65 has not been addressed in the proposal, conditions of any subsequent Gateway determination would require the proponent to address the SEPP.

The planning proposal states that does not impact the way in which the relevant SEPPs operate, however does not providing any specific SEPP assessments.

A Gateway condition is recommended should the proposal be supported to proceed that the planning proposal be updated prior to community consultation, to remove all references to repealed SEPPs and provide an assessment against currently applicable SEPPs.

3.7 Department Practice Notes

The proposal details inconsistencies of the current zoning of the site with the Department's Local Environmental Plan (LEP) Practice Note PN10-001 'Zoning for Infrastructure in LEPs' (December 2010) and PN11-002 'Preparing LEPs using the Standard Instrument: standard zones' (March 2011). Consideration against the practice notes is provided below.

PN10-001 - Principle 2.2 'Rezoning existing 'special use' zones to adjacent prescribed zones'

Practice Note PN10-001 provides guidance to councils on zoning public infrastructure land. This includes the identification of whether the infrastructure type is covered in the repealed *State Environmental Planning Policy (Infrastructure) 2007* (ISEPP), which is now part of the Transport and Infrastructure SEPP. The Practice Note provides that *'Most existing infrastructure land currently zoned 'special use' should be rezoned in the LEP according to what the adjacent zone is, if that zone is a 'prescribed zone' in the ISEPP which permits that type of infrastructure'*.

As previously illustrated in **Figure 3**, land immediately surrounding the site is predominantly zoned R3 Medium Density Residential, except for a small portion of R2 zoned land to the south-east fronting Anglesea Street. The R3 zone is a 'prescribed zone' under clause 3.34(1) of the Transport and Infrastructure SEPP, accordingly development for the purposes of a 'school' is permissible with consent in the R3 zone, pursuant to clause 3.36 of the Transport and Infrastructure SEPP.

The proposal is consistent with the Practice Note in seeking to apply a land use zone consistent with the adjacent R3 zoned land, which permits with consent schools and places of public worship.

PN11-002 – Permitted and prohibited land uses in zones

Practice Note PN11-002 provides that the SP2 Infrastructure zone *'may also be appropriate for major state infrastructure or strategic sites such as major 'hospitals,' large campus universities/TAFEs, major dams, power stations, landfill or waste disposal sites, 'correctional centres,' and 'airports.'*

It also provides that Councils must give effect to any relevant State or regional planning guidance when determining permitted and prohibited land uses. Where the permissibility of certain land uses is provided for under a relevant SEPP (e.g. former ISEPP), then there is no need to include these types of development in Standard Instrument LEPs.

PN10-001 includes the criteria below to assist in the assessment of what school sites, which are currently zoned 'special use' would constitute as a 'strategic site' and hence be appropriate to retain its 'special use' infrastructure zoning:

- is it 20 hectares or more in size?; and/or

- does it provide a wide range of facilities (meeting rooms, halls, pool, sports fields, tennis courts and the like) that can also be used by the surrounding community? and/or
- is it of regional significance (i.e. the only school servicing a large region)?

Given the size of the site and its current use as a public place of worship, it does not meet the criteria to be a 'strategic site' or major state infrastructure. Therefore, its current 'special use' infrastructure zoning is not required to be retained. As discussed above, development for the purposes of a 'school' is permitted with consent in the proposed R3 zone under the Transport and Infrastructure SEPP. The current use of the site along with 'schools' will both be permitted with consent on the site under the R3 zone.

4 Site-specific assessment

4.1 Environmental impacts

4.1.1 Natural environment

The site is located in an established urban area that is not known to contain any critical habitat or threatened species, populations or ecological communities, and is not identified as being flood affected. Council's online mapping identifies that the site as containing part of a biodiversity habitat corridor (**Figure 7**).

The Department notes that the site is largely free of any significant vegetation and that the proposal identifies the biodiversity habitat corridor relating to the established urban tree canopy along Flood Street (green grid connection as per Council's LSPS). Any future development of the site would have an opportunity to contribute to the corridor to provide a positive environmental outcome.

Overall, the planning proposal is unlikely to result in any adverse environmental impacts given that the proposal seeks to correct an anomaly in the land use zoning application of the site under the WLEP 2012. Should the site however be developed in the future, any potential site-specific and natural environment impacts arising can also be considered in the assessment of any future development application(s).



4.1.2 Built Environment

The proposed R3 zoning has the potential to enable the future redevelopment of the site for medium density residential purposes. Indicative future development scenarios included in support of the proposal identify the development potential of 8 multi-dwelling houses or 19 apartments on the site (in conjunction with the neighbouring land at 36A Flood Street, under the same ownership), based on the development standards for the R3 zone (**Figure 8**).

A medium density outcome is consistent with the context of the area should this be pursued in the future. However, to provide further information to support a medium density outcome, a Gateway condition is recommended to address how a future scheme will be capable of responding to SEPP 65.

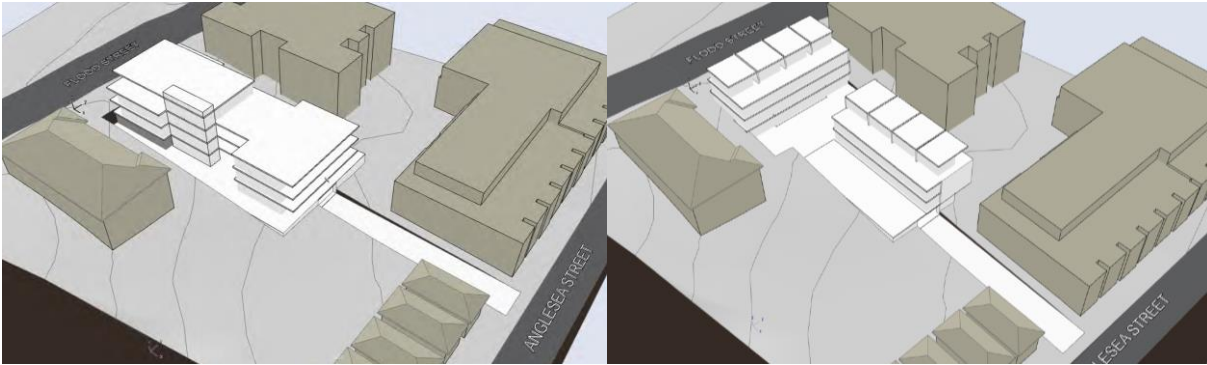


Figure 8 Potential future development scenarios (Source: Planning Proposal)

The proposal does not include the adoption of minimum lot size provisions of 325m² which surround the site (see **Figure 6** – noting the seniors housing development adjacent to the north of the site does not have a minimum lot size control). Without an applicable minimum lot size control for the site once zoned R3, potential future subdivision of the site would be guided only by subdivision provisions of the Waverley Development Control Plan 2012 (DCP).

Whilst the DCP provides principles on allotment configuration, it is not specific on allotment sizes. It is appropriate that a minimum lot size provision be applied to the site that is consistent with surrounding R3 zoned land and 36A Flood Street to the south. This will ensure a consistency for any future subdivision and allotment pattern in the locality. Conditions of any subsequent Gateway determination should require this.

4.2 Social and economic impacts

The proposal seeks to facilitate the correction of a land use zoning anomaly on the site under the WLEP 2012, to a zone that is more compatible with the site's existing use and the surrounding land use character. The rezoning will not impact upon the current use of the site as a place of public worship. The need for the current use to rely upon any existing use rights it may have would also be removed as result of the proposal. The R3 zoning facilitates a broader range of land uses which may compliment the site's current use and the adjoining school at 36A Flood Street.

Although it is not the primary intent of the proposal, the Department acknowledges that the proposed land use rezoning may enable the future development of the site for medium density residential purposes. This has the potential to increase the housing supply and diversity on the subject site, which is located in proximity to jobs in the nearby Bondi Junction strategic centre, existing transport and social infrastructure, open space and recreation areas.

4.3 Infrastructure

The site is well located in terms of public transport and is in an established urban area with good access to other physical and social infrastructure.

Whilst the proposal does not seek to amend the existing development standards that apply to the site, the Department acknowledges that the land use rezoning may facilitate future opportunities for the development of the site for medium density residential purposes, which may have the potential to increase traffic and additional transport demand in the locality. Therefore, should a Gateway determination be granted for the proposal to proceed, condition is recommended to require consultation with Transport for NSW.

4.4 Existing use rights

Existing use rights which may apply to the site and its current use are referred to throughout the planning proposal as being prohibitive to future development (see also **Section 2** of this report), stating only 'minor' works are permitted. The proposal provides that:

- existing use rights provisions do not facilitate feasible alterations or significant new work to the existing Synagogue.
- the provisions for existing use right that may apply to the site only permit minor alterations for the purposes of an educational establishment. The building would require more than minor alterations to be used as an educational establishment that would meet contemporary standards.
- the planning framework for existing use rights allows only for minor alterations to an existing use. Given that the ageing Synagogue would need major works to bring it up to contemporary standards, the current planning framework prevents feasible future development opportunities.

The Department is satisfied that the proposed rezoning of the land will remove any ambiguity about the existing use rights. However, the planning proposal to addressing an anomaly in zoning consistent with the strategic planning framework is the key justification for the merits of the progressing the planning proposal request.

5 Consultation

5.1 Community

The Department notes that the proposal includes an anticipated community consultation period of a minimum of 28 days.

A Gateway condition is recommended for a 20-day community consultation period in accordance with the Department's *Local Environmental Plan Making Guideline* (September 2022) should the proposal be recommended to proceed.

5.2 Agencies

Having regard to the intent and scope of the proposal it is recommended that the following agencies be consulted on the planning proposal and given 30 days to comment:

- Transport for NSW
- NSW Department of Education
- Schools Infrastructure NSW
- Waverley Council

6 Timeframe

The Department recommends a time frame of 6 months to ensure it is completed in line with its commitment to reducing processing times. A condition to the above effect is recommended for any subsequent Gateway determination issued.

7 Local plan-making authority

As previously discussed in **Section 1.6** of this report, as Council has refused to support the proposal, the Sydney Eastern City Planning Panel, as delegate of the Minister for Planning, has determined to appoint itself as the Planning Proposal Authority to finalise this matter under section 3.32(1) of the *Environmental Planning and Assessment Act 1979*.

In light of the above, the Sydney Eastern City Planning Panel is not recommended to be authorised to be the local plan-making authority.

8 Assessment summary

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

- it is consistent with the relevant provisions of the Greater Sydney Region Plan and the South District Plan;
- it seeks to correct an anomaly in the current land use zoning of the site and apply a zoning consistent with the current use of the site and surrounding land, in accordance with the guidance in the Department's LEP practice notes PN10-001 and PN11-002; and
- it provides for potential housing capacity increase within the Waverley LGA;

Based on the assessment outlined in this report, the proposal must be updated before consultation to:

- include sufficient mapping information to illustrate the alternative land use proposed for the site, to enable the community to clearly understand the intended outcomes;
- include an assessment against the provisions of the Waverley Local Housing Strategy and Community Strategic Plan;
- remove references to repealed State Environmental Planning Policies (SEPPs) and provided an assessment against applicable SEPPs; and
- remove references to the repealed Ministerial Directions and include an assessment of the proposal against all the current s.9.1 Ministerial Directions considered of relevance to the proposal.

9 Recommendation

It is recommended the delegate of the Secretary:

- **agree** that any inconsistencies with the Waverley Local Strategic Planning Statement are considered justified and are of minor significance; and
- **note** that the inconsistency with Section 9.1 Ministerial Direction 4.4 Remediation of Contaminated Land remains unresolved and will require justification.

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

1. Prior to community consultation, the planning proposal is to be updated to:

- a) apply a minimum lot size control of 325m² consistent with 'D' of the Waverley Local Environmental Plan 2012 Lot Size Map Sheets to the site;
 - b) include clear mapping to illustrate the existing and proposed land use zone and minimum lot size for the site, to enable the community to clearly understand the intended outcomes;
 - c) include an assessment against the Waverley Local Housing Strategy and the Waverley Community Strategic Plan;
 - d) remove references to repealed State Environmental Planning Policies (SEPPs) and include an assessment against applicable SEPPs, including but not limited to:
 - i. SEPP (Transport and Infrastructure) 2021
 - ii. SEPP (Resilience and Hazards) 2021; and
 - iii. SEPP No. 65 – Design Quality of Residential Apartment Development.
 - e) remove references to repealed Section 9.1 Ministerial Directions and include an assessment of the proposal against all current applicable Directions (with the exception of Direction 4.4 which must be addressed prior to finalisation).
2. Prior to finalisation, the planning proposal is to be updated to include information that demonstrates consistency with, or that any inconsistent is justified and/or of minor significance in relation to Section 9.1 Direction 4.4. Remediation of Contaminated Land.
 3. Public exhibition is required under section 3.34(2)(c) and clause 4 of Schedule 1 to the Act as follows:
 - (a) the planning proposal is categorised as standard as described in the *Local Environmental Plan Making Guidelines* (Department of Planning and Environment, 2022) and must be made publicly available for a minimum of 20 days; and
 - (b) the planning proposal authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for material that must be made publicly available along with planning proposals as identified in *Local Environmental Plan Making Guidelines* (Department of Planning and Environment, 2022).

Exhibition must commence within 4 months following the date of the gateway determination.

4. Consultation is required with the following public authorities and government agencies under section 3.34(2)(d) of the Act and/or to comply with the requirements of applicable directions of the Minister under section 9 of the EP&A Act:
 - i. NSW Department of Education
 - ii. Schools Infrastructure NSW
 - iii. Waverley Council
 - iv. Transport for NSW

Each public authority is to be provided with a copy of the planning proposal and any relevant supporting material via the NSW Planning Portal and given at least 30 days to comment on the proposal.

5. A public hearing is not required to be held into the matter by any person or body under section 3.34(2)(e) of the EP&A Act. This does not discharge the planning proposal authority from any obligation it may otherwise have to conduct a public hearing (for example, in response to a submission or if reclassifying land).
6. Given the nature of the proposal, the Sydney Eastern City Planning Panel is not authorised to be the local plan-making authority.

7. The timeframe for completing the LEP is 6 months from the date of the Gateway determination.



9 November 2022

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10 November 2022

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