



IRF 23/1334

LEP finalisation report – PP-2022-676

Waverley Local Environmental Plan 2012 –
Map Amendment No.2
34 Flood Street, Bondi

July 2023

Published by NSW Department of Planning and Environment

dpie.nsw.gov.au

Title: LEP finalisation report – PP-2022-676

Subtitle: Waverley Local Environmental Plan 2012 – Map Amendment No.2
34 Flood Street, Bondi

© State of New South Wales through Department of Planning and Environment 2023 You may copy, distribute, display, download and otherwise freely deal with this publication for any purpose, provided that you attribute the Department of Planning and Environment as the owner. However, you must obtain permission if you wish to charge others for access to the publication (other than at cost); include the publication in advertising or a product for sale; modify the publication; or republish the publication on a website. You may freely link to the publication on a departmental website.

Disclaimer: The information contained in this publication is based on knowledge and understanding at the time of writing [July 23] and may not be accurate, current or complete. The State of New South Wales (including the NSW Department of Planning and Environment), the author and the publisher take no responsibility, and will accept no liability, for the accuracy, currency, reliability or correctness of any information included in the document (including material provided by third parties). Readers should make their own inquiries and rely on their own advice when making decisions related to material contained in this publication.

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.

Contents

1	Introduction.....	3
	Overview	3
1.1.1	Name of draft LEP	3
1.1.2	Site description	3
1.1.3	Background	6
1.1.4	State electorate and local member.....	10
2	Gateway determination.....	11
3	Public exhibition and post-exhibition changes	12
3.1	Response to submissions received.....	12
3.1.1	Community submissions objecting to and/or raising issues about the proposal	12
3.1.2	Council's submission objecting to the proposal.....	22
3.1.3	Advice from agencies.....	25
3.2	Department's Post-exhibition Assessment.....	33
3.2.1	Sydney Eastern City Planning Panel's resolved changes	33
3.2.2	Correspondence received from Meriton's Karimbla Properties (the proponent) - June 2023	33
3.2.3	Department's Assessment	34
3.2.4	Eastern City District Plan (2018)	37
3.2.5	Section 9.1 Ministerial Directions	37
3.2.6	State Environmental Planning Policies (SEPPs)	38
3.2.7	Interim Heritage Order & planning proposal for heritage listing on the site	38
4	LEP Drafting.....	38
5	Post-assessment consultation	39
6	Recommendation.....	39
	Attachments	41

1 Introduction

Overview

1.1.1 Name of draft LEP

Waverley Local Environmental Plan 2012 (Map Amendment No. 2).

The draft LEP seeks to amend the Waverley Local Environmental Plan 2012 to rezone land at 34 Flood Street, Bondi (the site) from *SP2 Infrastructure (Educational Establishment)* (SP2 zone) to *R3 Medium Density Residential* (R3 zone) and introduce a minimum lot size provision of 325m² to the site consistent with the surrounding sites.

1.1.2 Site description

Table 1 Site description

Site Description	The planning proposal (Attachment A) applies to land at 34 Flood Street, Bondi
Type	Site
Council / LGA	Waverley Council
LGA	Waverley Local Government Area

The draft LEP 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 approximately 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 is in the Eastern City District and 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. that the adjoining site 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.



Figure 1 - Subject site (Source: Nearmap and extract from Eastern City District Plan)

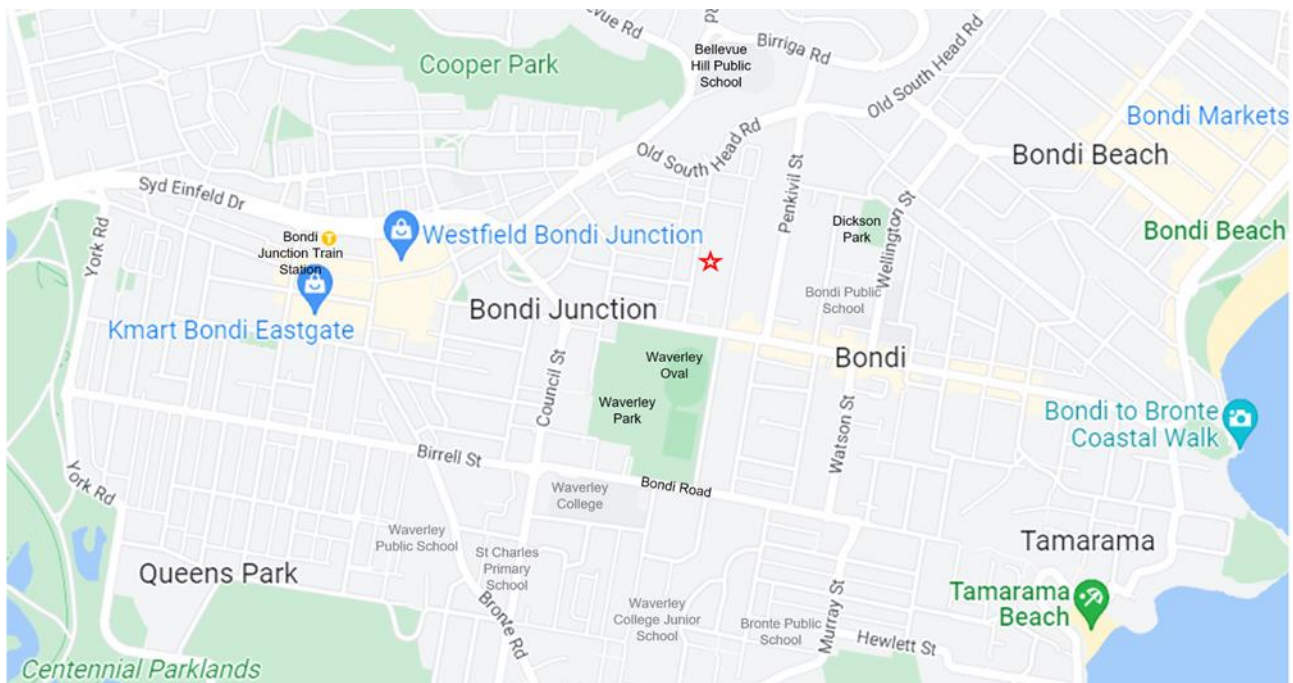
This site is predominantly surrounded by land within the R3 zone, except for the narrow handle portion of the site which adjoins land zoned R2 Low Density Residential to the south, south-east and opposite on Anglesea Street further east.

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 within 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)

1.1.3 Background

A summary of background information of relevance to the proposal and/or subject site is provided below:

Date	Background
March 2022	<ul style="list-style-type: none"> On 9 March 2022 the proponent-led planning proposal and supporting documentation were submitted to Council by Karimbla Properties (Meriton), 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.
May 2022	<ul style="list-style-type: none"> The proposal was considered by the Waverley Local Planning Panel (WLPP) on 25 May 2022. The WLPP did not support the proposal proceeding to a Gateway Determination.
July 2022	<ul style="list-style-type: none"> On 5 July 2022, the Strategic Planning and Development Committee (SP&DC) resolved not to support the proposal as it considered that it lacks strategic merit and involves a change in Council's long-established policy in relation to SP2 Infrastructure Zones. On 28 July 2022 Council notified the proponent that it did not support the proposal on the grounds that it lacks strategic merit and is contrary to Council's policy regarding SP2 Infrastructure Zones.
August 2022	<ul style="list-style-type: none"> On 3 August 2022 a rezoning review request was lodged with the Department (deemed adequate on 18 August 2022).
October 2022	<ul style="list-style-type: none"> On 13 October 2022 the rezoning review application (RR-2022-21) was considered by the Strategic Planning Panel of the Sydney Eastern City Planning Panel (the Panel), who 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. 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. The Panel also advised that, as delegate of the Minister for Planning, it had determined to appoint itself as the planning proposal authority (PPA) to finalise this matter under section 3.32(1) of the <i>Environmental Planning and Assessment Act 1979</i>. On 25 October 2022 the application for Gateway determination was received by Department.

Date	Background
November 2022	<ul style="list-style-type: none"> On 18 November 2022 the Department issued a Gateway determination which determined that the proposal should proceed subject to conditions (Attachment B). The Gateway conditions required (amongst many things) various updates to the proposal prior to public exhibition, including the application of a minimum lot size control of 325m² to the site. The Gateway also conditioned that the proposal be updated prior to finalisation, to include information demonstrating the proposal's consistency or justifying any inconsistency with Section 9.1 Direction 4.4 – Remediation of Contaminated Land. (Note: These matters are further discussed in Section 3 and 5 of this report). The proposal was updated on 23 November 2022 to address the conditions of the Gateway determination required prior to exhibition. The updated proposal was submitted by the proponent to the Department's Agile Planning and Programs Team on 25 November 2022, who was assisting the Sydney Eastern City Planning Panel (the Panel) in its functions as the Planning Proposal Authority.
December 2022 – January 2023	<ul style="list-style-type: none"> In December 2022 the Department's Agile Planning and Programs Team (on behalf of the Panel as PPA) endorsed the proposal for public exhibition (Attachment E of Attachment 1). The planning proposal was publicly exhibited from 12 November 2022 to 24 January 2023. A total of 27 submissions on the proposal were received during the exhibition period (refer to Section 4 of this report for further discussion).
February 2023	<ul style="list-style-type: none"> At a meeting on 7 February 2023, Waverley Council's Strategic Planning and Development Committee recommended (amongst many things) that Council: <ul style="list-style-type: none"> note the Department's provisional Gateway approval for the spot rezoning of the site; lodges an interim heritage order for 34-36 Flood Street with Heritage NSW (with amendment); engages an independent heritage expert to undertake a heritage assessment of the site's synagogue; and prepare a report to Council on whether the building should be nominated for inclusion in Schedule 5 of the Waverley LEP 2012 and State Heritage Register. At an Ordinary meeting of Council on 21 March 2023, Waverley Council noted that an interim heritage order to protect the Harry-Seidler-designed building at 34–36 Flood Street, Bondi, had been lodged by Council. The interim heritage order is in place from 10 February 2023 to 10 February 2024.
April 2023	<ul style="list-style-type: none"> On 20 April 2022 the proponent submitted a Preliminary Site Investigation report in support of the proposal. This PSI was undertaken to ascertain whether the site potentially presents a risk of harm to human health and the environment, and to determine the suitability of the site for the proposed rezoning, having regard to State Environmental Planning Policy (Resilience and Hazards) 2021 (Refer to Attachment K of Attachment 1).
May 2023	<ul style="list-style-type: none"> The Panel held an online public meeting on 16 May 2023 to discuss the post-exhibition and finalisation of the proposal. On 17 May 2023 the Panel determined that the proposed instrument should be made with amendment (Attachment C).

Date	Background
June 2023	<ul style="list-style-type: none"> On 6 June 2023, Waverley Council's Strategic Planning and Development Committee (SP&DC) considered a report on a planning proposal seeking to list 34-36 Flood Street, Bondi, as a local heritage item under the Waverley LEP 2012. At this meeting, the SP&DC recommended (amongst many things) that Council: <ul style="list-style-type: none"> forward the planning proposal (which seeks to list the subject site as a local heritage item) to the Department for Gateway determination. On 8 June 2023 Council submitted a planning proposal (PP-2023-1224) to the Department for Gateway determination, seeking the heritage listing of land at 34-36 Flood Street, Bondi. On 8 June 2023 the Panel submitted the planning proposal package for 34 Flood Street, Bondi (PP-2022-676) to the Department for finalisation.

Purpose of plan

The objective of the planning proposal is to correct an anomaly in the current land use zoning of the subject site at 34 Flood Street, Bondi, under the Waverley Local Environmental Plan 2012 (WLEP 2012).

The planning proposal seeks to amend the Waverley Local Environmental Plan 2012 2012 as follows:

- amend the Land Zoning Map to rezone the site from SP2 Infrastructure (Educational Establishment) to R3 Medium Density Residential; and
- amend the Lot Size Map to apply a minimum lot size control of 325m² to the site, as per the Gateway conditions.

The proposal does not seek any further changes to the development standards or LEP provisions which currently apply to the site.

The current and proposed controls for the site are outlined in **Table 2** and **Figures 3** and **4** as follows:

Table 2 Current and proposed controls

Control	Current	Proposed
Zone	SP2 Infrastructure (Educational Establishment)	R3 Medium Density Residential (Figure 3)
Maximum height of the building	12.5m	12.5m (No change)
Floor space ratio	0.9:1	0.9:1 (No change)
Minimum lot size	N/A	325m ² (Figure 4)

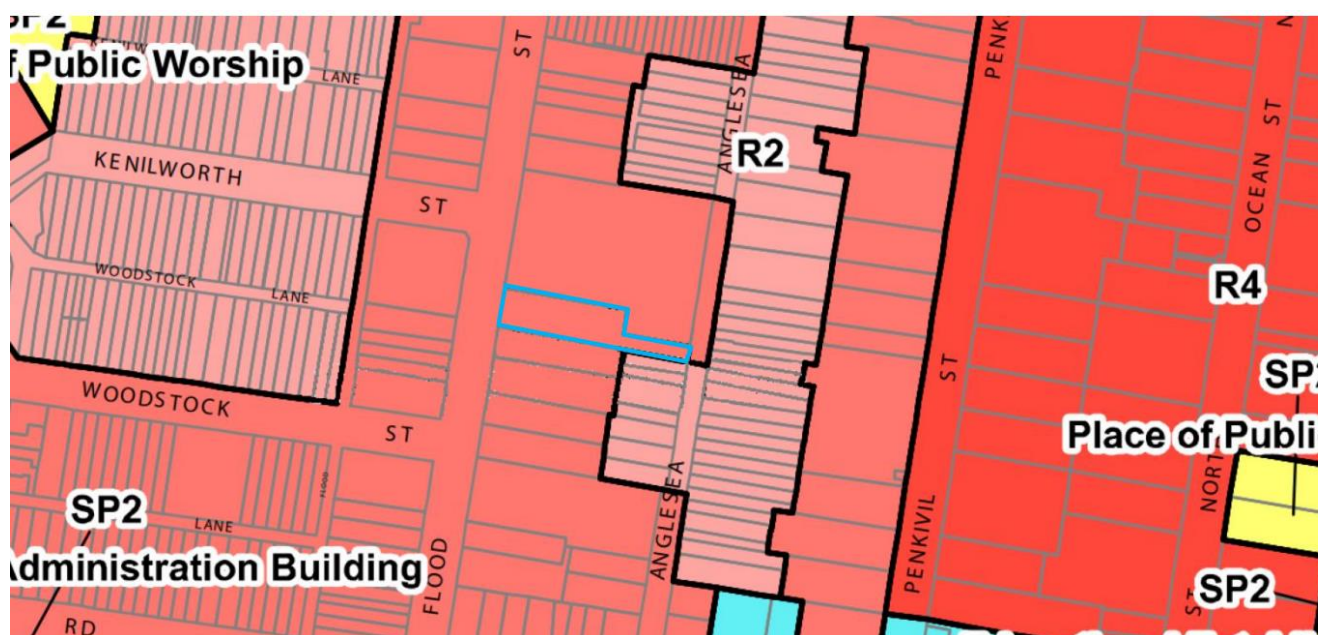


Figure 3 - Proposed R3 Medium Density Residential zoning (Subject site edged in blue)
 (Source: Planning Proposal, November 2022)

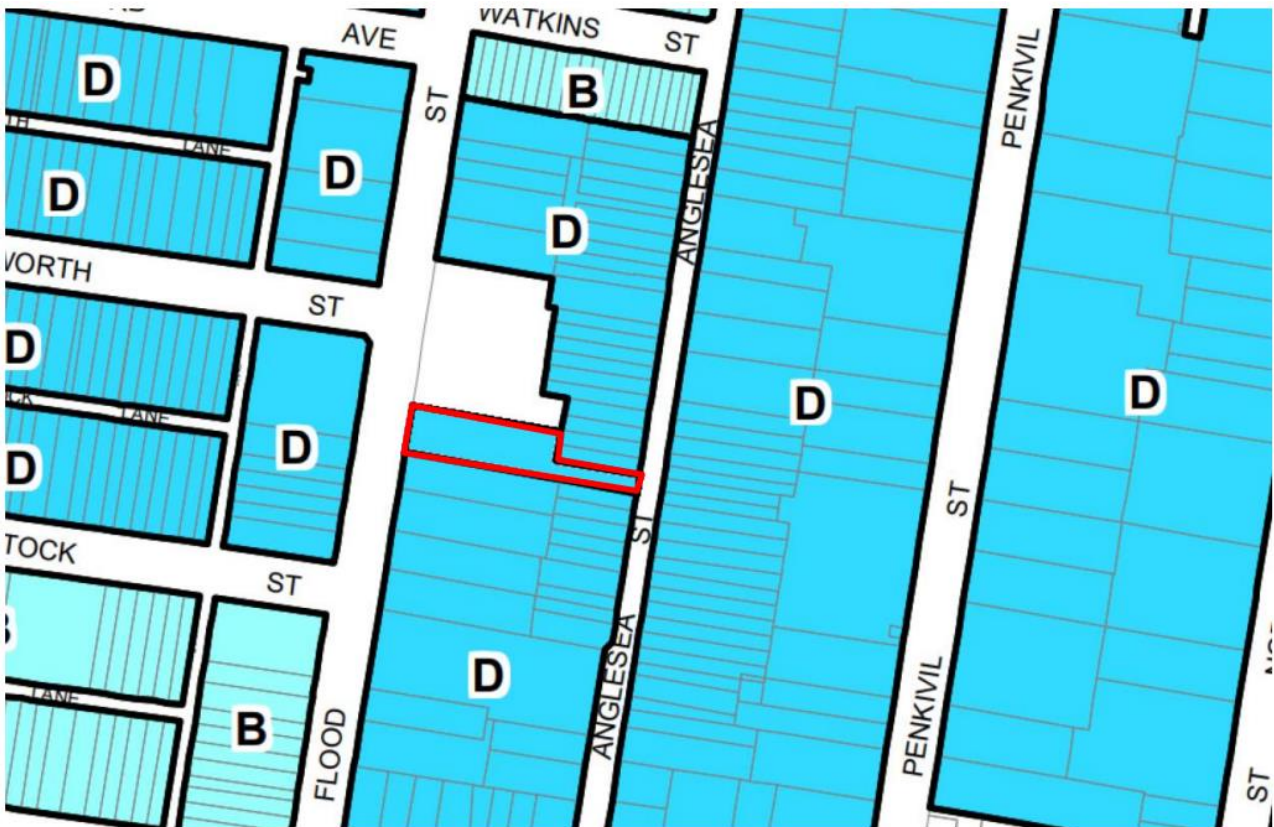


Figure 4 - Proposed minimum lot size (Subject site edged in red, D = 325m²) (Source: Planning Proposal, November 2022)

1.1.4 State electorate and local member

The site falls within the following state and federal electorates:

Electorate	Member
State electorate: Vaucluse	Ms Kellie Slone MP
Federal electorate: Wentworth	Ms Allegra Spender MP

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

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

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

2 Gateway determination

The Gateway determination issued on 18/11/2022 (**Attachment B**) specified that the proposal should proceed subject to conditions, as outlined below.

Condition 1 of the Gateway required revisions to the proposal prior to exhibition. This condition required that the planning proposal be updated to:

- introduce a minimum lot size control of 325m² to the site;
- include clear mapping to illustrate the existing development controls and proposed changes;
- include an assessment against the Waverley Local Housing Strategy and Waverley Community Strategic Plan;
- remove references to repealed SEPPs and include an assessment of the proposal against all current applicable SEPPs (including but not limited to SEPP (Transport and Infrastructure) 2021, SEPP (Resilience and Hazards) 2021, and SEPP No.65 Design Quality of Residential Apartment Development); and
- remove references to repealed section 9.1 Ministerial Directions and include an assessment of the proposal against the applicable Ministerial Directions (with the exception of s.9.1 Direction 4.4 – Remediation of Contaminated Land, which must be addressed prior to finalisation).

On 23 November 2023 the proponent lodged an updated planning proposal with the Panel (as the PPA), which addressed the requirements of Condition 1 of the Gateway determination. The updated proposal was endorsed in December 2022 by the Panel for public exhibition (**Attachment E of Attachment 1**).

The Department has reviewed the updated planning proposal and confirms that the requirements of Condition 1 of the Gateway determination were satisfied prior to the proposal being publicly exhibited from December 2022 to January 2023.

Condition 2 of the Gateway determination requires the planning proposal to include information demonstrating consistency or justifying any inconsistency with Ministerial section 9.1 Direction 4.4 Remediation of Contaminated Land, prior to finalisation.

The planning proposal submitted to the Department for finalisation is supported by a Preliminary Site Investigation, prepared by Geotechnique Pty Ltd (dated April 2023). This report identifies the limited potential for contamination on the site due to past and present activities (**Attachment K of Attachment 1**).

The report recommends that sampling and testing be undertaken to address the potential contaminants and concludes that if contaminants are identified the site can be made suitable for the proposed R3 zoning (following successful remediation and validation). Further detailed contamination studies in line with SEPP (Resilience and Hazards) 2021 will be required in the assessment of any future development application for the subject site.

Considering the above, the Department is satisfied that the requirements of **Condition 2** of the Gateway have been met.

In accordance with the requirements of **Condition 3** of the Gateway determination, the planning proposal and supporting documentation was publicly exhibited on the NSW Planning Portal for at least the required 20 days (from 12 December 2022 to 24 January 2023) excluding the Christmas New Year period, with exhibition commencing just under 1 month after the Gateway determination was issued.

3 Public exhibition and post-exhibition changes

In accordance with the Gateway determination, the planning proposal was publicly exhibited by the from 12 December 2022 to 24 January 2023. This allowed for a net 22 days excluding the Christmas and New Year period (from 20 December 2022 to 10 January 2023).

Submissions received during exhibition

A total of 27 submissions were received regarding the planning proposal, during exhibition including:

- 24 community submissions;
- Two agency submissions (one each from Schools Infrastructure and Transport for NSW); and
- One submission from Waverley Council.

3.1 Response to submissions received

The Panel undertook a review of submissions and prepared a Post-Exhibition Report, which identifies and responds to the key issues raised regarding the proposal (**Attachment 1**). This summary also includes comments from the proponent in response to the submissions received (**Attachment J of Attachment 1**).

Upon review of the submissions report, the Department is satisfied that the Panel has adequately responded to the key matters raised and/or has provided further justification which supports the proposed LEP amendments.

These matters are further discussed in **Sections 4.1.1 to 4.1.3** of this report.

3.1.1 Community submissions objecting to and/or raising issues about the proposal

Of the total (24) number of community submissions received, 23 submissions (or 96%) objected to the proposal, while one submission (or 4%) expressed its support having outlined the need for more housing (including affordable housing) in the Waverley Local Government Area.

The key issues and concerns raised in the community submissions of objection are listed in order of frequency (from highest to lowest) below:

- | | |
|--|---|
| 1. Heritage significance - including requests for interim heritage order (57%) | 7. Public hearing (13%) |
| 2. Zoning (43%) | 8. Parking (9%) |
| 3. Community and social infrastructure (35%) | 9. Incorrect information (9%) |
| 4. Architecture and built form (22%) | 10. Demolition (9%) |
| 5. Local road infrastructure and traffic (13%) | 11. Infrastructure and services (4%) |
| 6. Overdevelopment (13%) | 12. Streetscape character and trees (4%) |
| | 13. Overshadowing and loss of sunlight (4%) |

A summary of the key issues raised during exhibition, and the Panel's response is provided in **Table 3**. Further details of the submissions received can also be found in the Post-Exhibition Report and the supporting documentation included in **Attachment 1**.

Table 3 Summary of key issues raised in the community submissions of objection

Key issue(s) raised	Submissions (%)	Response and adequacy assessment of response
<p>Heritage significance (including requests for interim heritage order)</p> <ul style="list-style-type: none"> Several submissions identified the Synagogue and institution as iconic, and a foundation for Sydney's Jewish community. Submissions recommended heritage listing of the existing building, with several submissions requesting an Interim Heritage Order be placed on the site to enable a heritage study and statement of significance to be completed. Others recommended inclusion of the site as a local heritage item in the Waverley LEP 2012. One submission requested an independent heritage assessment be undertaken, having identified the site as containing the only religious building designed by Harry Seidler. One submission recognised the sites as containing the only functioning and available mikvah in NSW. 	57% (or 13 out of 23)	<p>The Panel's Response:</p> <ul style="list-style-type: none"> An Interim Heritage Order (IHO 1 of 2023) was gazetted for this site on 10 February 2023. An IHO provides a signal of intent to commence a heritage process and provide immediate protection from demolition. As no development application for demolition is proposed, there is no immediate threat to the building and demolition could not occur. The proposal does not seek to demolish, alter, or make any changes to the current buildings on site, and only seeks to rezone the land from SP2 to R3. The IHO will not impact the Planning Proposal from proceeding to rezone the land from SP2 to R3. <p>The Department's assessment of the response:</p> <ul style="list-style-type: none"> The Department considers that the Panel has adequately responded to the issues raised as the intent of the proposal is to correct a zoning anomaly on the site. An Interim Heritage Order is currently in place on the site however, this does not preclude the rezoning of the subject land, site. 8 June 2023, Council submitted a planning proposal to the Department for Gateway determination, seeking the heritage listing of land at 34-36 Flood Street, Bondi, under the Waverley LEP 2012. This proposal is currently under assessment by the Department and is further discussed in Section 5 of this report.

Key issue(s) raised	Submissions (%)	Response and adequacy assessment of response
<ul style="list-style-type: none"> Concerns were raised that the proposal does not assess the heritage significance. 		
<p>Zoning</p> <ul style="list-style-type: none"> Concerns raised that Bondi is already high density and the rezoning would further increase development density and open the door for more rezonings. Several requests were made for the existing zoning to be retained, as well as a recommendation that the provision of community services or a new school or childcare be encouraged on the subject land. Several submissions raised concerns raised about the impact the rezoning would have upon the Jewish community. One submission recommended an extension of the existing SP2 zoning to include land at 36a Flood Street, Bondi. 	<p>43% (or 10 out of 23)</p>	<p>The Panel's Response:</p> <ul style="list-style-type: none"> The proposal seeks to correct a land use zoning anomaly on the subject site (at No.34 Flood St) to a zone the site to be more compatible with the site's existing use and surrounding R3 land use pattern. The strategic intent of this rezoning is consistent with the guidance in the Department's Practice Note (PN10-001). The Panel has previously determined the proposal contains strategic and site-specific merit. The site has been developed in conjunction with the adjacent property to the south at 36A Flood Street (containing the Yeshiva College), however No. 36A does not form part of this Planning Proposal. 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. 'Places of public worship' are prohibited in the zone. Rezoning the site will allow a broader range of land uses including various social infrastructure uses (educational establishments, places of public worship, community facilities etc.) than what is otherwise prohibited in its current SP2 zone. The merits of inclusion of a new school and / or childcare facility within the future development is a matter to be explored and demonstrated as part of any future DA. <p>The Department's assessment of the response:</p> <ul style="list-style-type: none"> The Department considers the Panel has adequately responded to the issues raised, as the proposal seeks to correct a zoning anomaly to reflect the site's existing use more accurately. The proposal does not seek to alter the maximum height of building or FSR controls that currently apply to the site.

Key issue(s) raised	Submissions (%)	Response and adequacy assessment of response
Community and social infrastructure <ul style="list-style-type: none"> One submission outlined the facility was established by holocaust survivors and that many local Orthodox communities could benefit from use of the synagogue. One submission outlined the school may be re-established under new management, and noted the original intention was to continue the sites use as a synagogue. Community submissions highlighted the benefits 'Our Big Kitchen' provides and outlined that the zoning would be a loss to the community. Submissions raised concerns about the potential loss of critical community space. Submissions outlined that the SP2 zoning should not be removed due to the lack of infrastructure in the area and highlighted the need for educational facilities in the area. Concerns raised that the proposal indicates neither a place of public worship nor educational establishment are proposed after rezoning. 	35% (or 8 out of 23)	The Panel's Response: <ul style="list-style-type: none"> The planning proposal does not impact the future use of the site for the purposes of providing social infrastructure. The current use can continue to operate and function on the site under the proposed R3 rezoning. The proposed R3 zone will allow for a wider range of community infrastructure uses than the current SP2 zone, which prohibits community facilities. The Department's assessment of the response: <ul style="list-style-type: none"> The Department considers the Panel has adequately responded to the issue, as the proposed rezoning will not impact the ability for the site to be used for community and purposes, as 'community facilities' and 'places of public worship' are permitted with development consent in the proposed R3 zone under Waverley LEP 2012. The Department also notes that <i>State Environmental Planning Policy (Transport and Infrastructure) 2021</i> permits educational establishments within the R3 zone.

Key issue(s) raised	Submissions (%)	Response and adequacy assessment of response
Architecture and built form <ul style="list-style-type: none"> Concerns raised that the rezoning will impact the architectural character and spatial configuration of development on site. Several submissions highlighted the architectural significance of the Harry Seidler building, with one submission providing recommendations for its restoration and requesting the property be placed in an independent trust to ensure it remains community property. One submission noted that the Talmudical College and Synagogue at 34-36 Flood St, Bondi is listed on the Royal Australian Institute of Architects Register of Significant buildings, while another noted that Sydney Talmudical College was heritage listed by Council in 2003. Another recommended that any future development on the site preserve the roof form of the existing Synagogue. 	22% (or 5 out of 23)	The Panel's Response: <ul style="list-style-type: none"> The Planning Proposal does not seek to demolish, alter, or make any changes to the current buildings on site, and only seeks to rezone the land from SP2 to R3. Any proposed future development on the site and associated architectural and built form impacts can be addressed at the DA stage. The merits of restoration including adaptive re-use and residential development can be further explored at the DA stage. The Department's assessment of the response: <ul style="list-style-type: none"> The Department considers the Panel has adequately responded to the issues raised, as the intent of the proposal is to correct a zoning anomaly. The proposal does not seek to demolish or alter the existing buildings on the site.

Key issue(s) raised	Submissions (%)	Response and adequacy assessment of response
Local road infrastructure and traffic <ul style="list-style-type: none"> Concerns raised about increase in traffic. Concerns existing roads cannot accommodate increased traffic. Concerns raised that the proposed driveway along Anglesea Street cannot take the proposed traffic. 	13% (or 3 out of 23)	<p>The Panel's Response:</p> <ul style="list-style-type: none"> As the proposal is supported by an indicative building form, potential traffic impacts and infrastructure capacity can be further assessed and determined at a later stage as part of the DA process, if this were to proceed. The traffic impact on the surrounding road network has not been addressed by the Proponent. It is acknowledged that the rezoning may facilitate future opportunities for medium density residential development (either 8 or 19 dwellings as shown in the Future Development Scenarios), which may have the potential to increase traffic and additional infrastructure in the area. <p>However, as the plans are still indicative / in concept form, the potential traffic impact and infrastructure capacity assessment can be resolved and assessed at any subsequent DA stage.</p> <ul style="list-style-type: none"> Further as the plans are still indicative / in concept form, any future proposed driveway access for the site and car parking requirements would need to be adequately considered and assessed at the DA stage (if this occurs). <p>The Department's assessment of the response:</p> <ul style="list-style-type: none"> The Department considers the Panel has adequately responded to the issues raised as the proposal seeks to correct a zoning anomaly. It does not seek to amend the existing FSR of height controls that currently apply to the site, which are consistent with the applicable development controls of the surrounding R3 zoned land. While it is not the expressed intent of the proposal, the 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. However, the potential traffic implications of any future residential development for the site could be adequately addressed at the DA stage. Transport for NSW raised no objection to the proposal in its submission during exhibition.

Key issue(s) raised	Submissions (%)	Response and adequacy assessment of response
<p>Overdevelopment</p> <ul style="list-style-type: none"> Concerns raised that Bondi is already experiencing overdevelopment. One submission highlighted that there is demand for educational facilities, and no need for more residents in the area. 	13% (or 3 out of 23)	<p>The Panel's Response:</p> <ul style="list-style-type: none"> The proposal acknowledges that the rezoning of the subject site to R3 Medium Density Residential may provide opportunities for future residential development. The indicative future development scenarios prepared in support of the proposal show the site redeveloped in conjunction with 36A Flood Street, Bondi, to accommodate approximately 8 multi-dwelling houses or 19 apartments, in line with the existing development standards (height and FSR) in WLEP 2012. Redevelopment of the site for residential purposes is consistent the Eastern [City] District Plan, the Waverley Local Strategic Planning Statement, Waverley Local Housing Strategy and Waverley 2032 – Waverley Community Strategic Plan (2022-2032) 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 and located close to existing public transport, social infrastructure, open space and recreational areas in a metropolitan locality where there is a growing demand for housing. Any future redevelopment of this site would be subject to the Development Application process. The current uses can continue to operate and function on the site under the proposed R3 rezoning. <p>The Department's assessment of the response:</p> <ul style="list-style-type: none"> The Department considers the Panel has adequately responded to the issues raised and notes that the proposal does not seek to amend the existing height and FSR controls that currently apply to the site under the Waverley LEP 2012. The sites existing uses are permissible (with consent) in the proposed R3 zoning under the Waverley LEP 2012.

Key issue(s) raised	Submissions (%)	Response and adequacy assessment of response
Public Hearing <ul style="list-style-type: none"> Several submissions made requests for a public hearing. 	13% (or 3 out of 23)	The Panel's Response: <ul style="list-style-type: none"> The LEP Plan Making Guideline states that the PPA can conduct a public hearing into any issue associated with a proposal, including in response to requests made by the public during exhibition. A public briefing was held for this Planning Proposal. Individuals and community groups who made submissions were notified and provided with an opportunity to speak to the Panel at the meeting. The Department's assessment of the response: <ul style="list-style-type: none"> The Department considers the Panel has adequately responded to the issues raised. An online public meeting was held by the Panel on 16 May 2023. Immediately after the public meeting, the Panel made its Determination (Attachment C).
Parking <ul style="list-style-type: none"> Concerns raised that there is not enough parking for new residents or visitors. 	9% (or 2 out of 23)	The Panel's Response: <ul style="list-style-type: none"> The car parking requirements of a development will be assessed as part of any future DA process. The supporting Future Development Scenarios submitted by the Proponent shows a future driveway access from Anglesea Street with provision for 8 x car spaces and 2 x visitor spaces (for an 8 dwelling townhouse scenario) or 30 x car spaces and 5 x visitor spaces (for a 19 dwelling apartment scenario). As the plans are still indicative / in concept form, any future proposed driveway access for the site and car parking requirements can be further resolved and assessed at a subsequent DA stage. The Department's assessment of the response: <ul style="list-style-type: none"> The Department considers the Panel has adequately responded to the issue. Any future development application for residential development on the site will be required to adhere to the car parking requirements stipulated in the Waverley DCP 2022 Matters pertaining to the detailed development design, including car parking provision, will be addressed in the assessment of any subsequent DA for the site.

Key issue(s) raised	Submissions (%)	Response and adequacy assessment of response
<p>Incorrect information</p> <ul style="list-style-type: none"> One submission identified the proposal as containing incorrect information, with No.36 Flood St wrongly identified as No.34. Another submission stated that the <i>'application refers to the Proposal as No.34 Flood St, and that No.34 Flood Street was the address of the cottage which became the kindergarten (next to the Sydney Talmudical College) building... so No.34 must refer to the driveway, as the aged units start at No.32 and the Sydney Talmudical College is clearly marked as No.36'</i>. 	9% (or 2 out of 23)	<p>The Panel's Response:</p> <ul style="list-style-type: none"> 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 been developed in conjunction with the adjacent property to the south at 36A Flood Street, which is under the same ownership and contains the Yeshiva College. No.36A Flood Street does not form part of this Planning Proposal application. The seniors housing development at No.26-32 Flood Street does not form part of this Planning Proposal. <p>The Department's assessment of the response:</p> <ul style="list-style-type: none"> The Department considers the Panel has adequately responded to the issues raised. While it is acknowledged that the site has been developed in conjunction with the land to the south at 36 Flood Street, Bondi, this adjoining site is not captured under this proposal, as it relates only to land at 34 Flood Street, Bondi.
<p>Demolition</p> <ul style="list-style-type: none"> One submission raised concerns with the demolition on site, noting the existing issues accessing Anglesea Street and that it is an area where children play. One submission noted that the original congregation were Holocaust survivors, and to allow it to be demolished it would be sacrilegious to their memory. 	9% (or 2 out of 23)	<p>The Panel's Response:</p> <ul style="list-style-type: none"> The Future Development Scenarios submitted by the Proponent shows a future driveway access from Anglesea Street with provision for 8 x car spaces and 2 x visitor spaces (for an 8 dwelling townhouse scenario) or 30 x car spaces and 5 x visitor spaces (for a 19 dwelling apartment scenario). As the plans are still indicative / in concept form, any proposed driveway access for the site and car parking requirements will be adequately considered and assessed at the DA stage. The traffic impact on the surrounding road network has not been addressed by the Proponent. Any redevelopment will need to demonstrate adequate traffic management and infrastructure capacity at the DA stage. This planning proposal does not seek demolition of the existing structures on site.

Key issue(s) raised	Submissions (%)	Response and adequacy assessment of response
		<p>The Department's assessment of the response:</p> <ul style="list-style-type: none"> The Department considers the Panel has adequately responded to the issues raised as the proposal does not seek to demolish or alter the existing buildings on the site. The schemes provided by the proponent show that the site can be adapted for residential uses permitted in the R3 zone. However, any matters relating to access to Anglesea Street and/or demolition of the existing buildings would need to be considered in the assessment of any future DA(s).
<p>Infrastructure and services</p> <ul style="list-style-type: none"> Concerns that the proposal will increase pressure on existing waste and electricity infrastructure. 	4% (or 1 out of 23)	<p>The Panel's Response:</p> <ul style="list-style-type: none"> Noted. Any redevelopment on site will need to demonstrate adequate servicing and infrastructure capacity. This can be addressed at the DA stage. <p>The Department's assessment of the response:</p> <ul style="list-style-type: none"> The Department considers the Panel has adequately responded to the issues raised.
<p>Streetscape character and trees</p> <ul style="list-style-type: none"> One submission highlighted the need to preserve existing green streetscape and increase the number of trees. 	4% (or 1 out of 23)	<p>The Panel's Response:</p> <ul style="list-style-type: none"> Noted. This matter can be addressed at DA stage. <p>The Department's assessment of the response:</p> <ul style="list-style-type: none"> The Department considers the Panel has adequately responded to the issue raised as matters pertaining to the need to preserve and respect existing character and streetscape will be considered in the assessment of any future DA for the site.
<p>Overshadowing and loss of sunlight</p> <ul style="list-style-type: none"> Concerns raised that the existing site is sufficiently shaded and new tall structures would exacerbate this natural condition. 	4% (or 1 out of 23)	<p>The Panel's Response:</p> <ul style="list-style-type: none"> The proposal is to rezone the site. The Future Development Scenarios provided to support the rezoning are indicative built form only. Any potential solar impacts and overshadowing should be adequately investigated and assessed at the DA stage.

Key issue(s) raised	Submissions (%)	Response and adequacy assessment of response
<ul style="list-style-type: none"> Concerns also raised about potential overshadowing impacts to adjoining residential land. 		<p>The Department's assessment of the response:</p> <ul style="list-style-type: none"> The Department considers the Panel has adequately responded to the issues raised as the proposal seeks to correct a zoning anomaly. The site's current height and density controls will remain the same and unchanged also. Potential impacts of new development on the site in relation to solar access and overshadowing are matters that will be addressed in the assessment of any future DA for the site.

3.1.2 Council's submission objecting to the proposal

Waverley Council in its submission reiterated the resolution of Council not to support the proposed LEP amendments, citing concerns about the potential loss of social infrastructure, the heritage significance of the existing development on the site, and the proposals lack of strategic merit.

The salient issues raised by Council, and the Panel are summarised in **Table 4**.

Table 4 Summary of key issues raised by Council

Key issue(s) raised	Response and adequacy assessment of response
<p>Strategic merit</p> <ul style="list-style-type: none"> Council is concerned the proposal does not demonstrate strategic merit as it is inconsistent with Council's policy position regarding SP2 Infrastructure and the Waverly Local Strategic Planning Statement (LSPS). Council noted that it's LSPS was adopted by Council and assured by the Greater Sydney Commission that the retention of the SP2 Infrastructure Zone was identified as an action when undertaking a review of the Local Environmental Plan. 	<p>The Panel's Response:</p> <ul style="list-style-type: none"> Council's policy to retain all land zoned SP2 Infrastructure for the purposes of retaining crucial social infrastructure in the area is noted. However, the proposed rezoning from SP2 to R3 appropriate as it is compatible with the site's existing use, whereby the R3 zone will permit for social infrastructure uses including a broader range of community infrastructure uses that are prohibited in the SP2 zone. The strategic justification of the proposed rezoning is further supported by guidance in the Department's Practice Note (PN10- 001 – Principle 2.2 'Rezoning existing 'special use' zones to adjacent prescribed zones') in which the proposal is seeking to apply a land use zone consistent with the adjacent and surrounding R3 land use zone. The Proponent's response as to how the Planning Proposal aligns with Planning Priorities E4 and E6 in the Eastern District Plan and the Waverley Housing Strategy and Local Strategic Planning Strategy (LSPS) is noted.

Key issue(s) raised	Response and adequacy assessment of response
<p>Council's justification was that many of the existing SP2 zoned sites in Waverley provide crucial social infrastructure.</p> <ul style="list-style-type: none"> Council raised concerns the proposal undermines Planning Priority 4 and Planning Priority 6 of the Eastern City District Plan. 	<ul style="list-style-type: none"> The proposal is consistent with the relevant strategic planning framework including the Eastern District Plan and LSPS, which forms part of the key justification for merits of progressing the planning proposal request. <p>The Department's assessment of the response:</p> <ul style="list-style-type: none"> The Department considers the Panel has adequately responded to the issue raised as the proposal seeks to correct a zoning anomaly to better reflect the sites existing uses and is consistent with the Eastern City District Plan and guidance provided in the Department's Practice Note PN10-001. The proposal seeks to correct an anomaly and apply a zoning (the R3 zone) that is compatible with the site's current use and consistent with the surrounding land. The existing land uses will remain permissible under the proposed R3 zone. The proposed zoning is broadly consistent with Planning Priority 6 of the LSPS and any inconsistencies of the proposal with Planning Priority 4 of the LSPS in relation to Council's aspiration to retain all SP2 Infrastructure zoned land is of minor significance. This was addressed in the Gateway assessment by the Department. With regard to PN10-001, which provide guidance on zoning public infrastructure land and states 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 SEPP which permits that type of infrastructure". For these reasons that the SP2 zone is inappropriate for the site as the current use is not an infrastructure use and the adjoining sites are predominately zoned R3. Further as and identified in the Department's Gateway assessment in accordance with PN11-002 – <i>Permitted and prohibited land uses in zones</i> the site does not meet the criteria specified in to be a 'strategic site' or major state infrastructure, given the site is less than 20 hectares and is primarily used as a 'place of public worship'. These matters were also considered in the Gateway assessment (Attachment B) and remain adequate for the purpose of this finalisation assessment.
<p>Loss of social infrastructure</p> <ul style="list-style-type: none"> Council highlighted that the site provides crucial social infrastructure and outlined the importance of retaining this infrastructure to support a resilient community through the 	<p>The Panel's Response:</p> <ul style="list-style-type: none"> The Planning Proposal does not impact the future use of the site for the purposes of retaining social infrastructure. These uses can still operate and function on the site under the proposed R3 rezoning.

Key issue(s) raised	Response and adequacy assessment of response
<p>provision of spaces in which people can gather.</p>	<ul style="list-style-type: none"> The proposed R3 zone will also allow for a wider range of community infrastructure uses on the site, given community facilities are prohibited in the SP2 zone under the WLEP 2012. <p>The Department's assessment of the response:</p> <ul style="list-style-type: none"> The Department's considers that the Panel has adequately responded to the issue raised as 'community facilities' and 'places of public worship' are permitted with consent in the proposed R3 zone. The Department also notes that the proposed rezoning will not impact the ability for the site to be used as an educational establishment in the future, as State Environmental Planning Policy (Transport and Infrastructure) 2021 permits educational establishments within the proposed R3 zone. This matter is further discussed in Section 5 of this report.
<p>Heritage significance</p> <ul style="list-style-type: none"> Council raised concerns the proposal places a risk to a 20th Century building (Seidler building) which Council officers believe has <i>"significant heritage value and a local and state level and have obtained Councillor support to submit an Interim Heritage Order to Heritage NSW and to commence a planning proposal for the heritage listing of the building"</i>. Council advised that on 7 February 2023, Councillors <i>"endorsed an application to be made to Heritage NSW for an Interim Heritage Order to be placed on the site and supported the proposal to seek an Independent Heritage Assessment to be undertaken for the site"</i>. 	<p>The Panel's Response:</p> <ul style="list-style-type: none"> An Interim Heritage Order (IHO 1 of 2023) was gazetted on 10 February 2023 in response to a resolution of Waverley Council. As noted, <i>"an IHO provides a signal of intent to commence a heritage process and provide immediate protection from demolition. As no development application for demolition is proposed, there is no immediate threat to the building and demolition could not occur under State Environmental Planning Policy (Exempt and Complying Development) 2008 due to the current SP2 zone. An IHO would not impact the planning proposal from proceeding to rezone the land from SP2 to R3 zone"</i>. The Planning Proposal can still proceed as it does not seek to demolish, alter, or make any changes to the current buildings on site and only seeks to rezone the land from SP2 to R3. <p>The Department's assessment of the response:</p> <ul style="list-style-type: none"> The Panel has adequately responded to the issue raised as an Interim Heritage Order is currently in place on the site however, this does not preclude the rezoning of the subject land, as the proposal not seek to demolish or alter the existing buildings on the site. Council has submitted a planning proposal to the Department for Gateway determination that seeks the local heritage listing of land at 34-36 Flood Street, Bondi, under the Waverley LEP 2012. This proposal is currently under assessment by the Department and is further discussed in Section 5 of this report.

3.1.3 Advice from agencies

In accordance with **Condition 4** of the Gateway determination, the Panel (as PPA) was required to consult with the government agencies listed below under section 3.34(2)(d) of the Act:

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

The Panel received a submission from Schools Infrastructure NSW (as part of the NSW Department of Education) and Transport for NSW on the proposal, the details of which are summarised below (**Attachment 1**). The Department notes that the submissions received from the agencies raised no issues, providing comment only.

Comments from Schools Infrastructure NSW

Schools Infrastructure NSW (SINSW) in its submission advised that *“it is likely that the number of students projected to be generated by the proposal can be accommodated by the surrounding schools”*.

SINSW also noted that while the proposal does not meet the new referral criteria for the proposal to be sent to SINSW, it requested that Council *“monitor and consider the cumulative impact of population growth on schools planning in the locality”*.

Comments from Transport for NSW

Transport for NSW (TfNSW) in its submission advised that it raised no objection to the planning proposal.

3.2 Department's Post-exhibition Assessment

3.2.1 Sydney Eastern City Planning Panel's resolved changes

On 17 May 2023 the Sydney Eastern City Planning Panel (in its capacity as PPA) recommended to the Minister that the planning proposal be made.

As part of the Panel's determination the Panel requested that the Department "*consider a site-specific provision protecting community/educational/religious facilities at basement and ground level*" when preparing the LEP amendment (**Attachment C**).

3.2.2 Correspondence received from Meriton's Karimbla Properties (the proponent) - June 2023

On 2 June 2023, the proponent submitted a letter from Planning Ingenuity Pty Ltd (dated 1 June 2023) to the Department for its consideration in the finalisation of the subject planning proposal (**Attachment D**).

The letter requested that a site-specific clause not be applied in the finalisation of the planning proposal. The key issues raised by Planning Ingenuity (PI) in support of this request are outlined as follows:

The application of the site-specific provision is inconsistent with Ministerial Direction 1.4

- It does not contain any unique features that would warrant a restrictive site-specific control to facilitate the provision of community facilities, places of public worship and educational establishments.
- The proposed rezoning is consistent with clause (1)(a) to (c) of Ministerial Direction 1.4, and notes that the proposed site-specific provision would be inconsistent with this Ministerial Direction.
- The inconsistency with Ministerial Direction 1.4 is not of minor significance and notes that SP2 zoned sites in Waverley LGA have been rezoned to other land use zones to facilitate redevelopment without the need to retain former or re-existing uses that are no longer needed, viable or suitable.

The Panel's statement to protect community/educational/religious facilities at 'basement and ground level' is ambiguous

- The Panel's statement in its decision of 17 May 2023 '*to protect the existing ground and basement level*' is ambiguous, noting that the existing development on the site includes the Synagogue (at ground level) and the Our Big Kitchen which is subterranean and not basement level given the slope of the site.
- Although the site has been developed in conjunction with land to the south, the site-specific clause can only be applied to land at 34 Flood Street, Bondi, due to the location of the current community and religious facilities.

The application of the site-specific provision is impractical and unreasonable

- It would perpetuate the impracticality of the existing split zoning across the broader site of 34 and 36 Flood Street and would compromise both the existing and potential non-residential uses within the site, as well as the future redevelopment of the broader site.
- The letter states "*a clause to mandate such use, where land is privately owned and a demand could not be demonstrated, would be an inequitable and unnecessary burden that would preclude the orderly and economic use of land*" (p.3).

The application of site-specific provision is inconsistent with PN10-001

- The application of a site-specific provision to maintain an obligation to provide community infrastructure on the site is inconsistent with PN10-001 as the site is not owned by a public entity, is not managed by an institutional entity and does not provide community infrastructure considered critical to the essential needs of the community.

Matters to be considered in the event that a site-specific provision is applied

- If the Department was to support an amendment to the proposal the following should be considered:
 - *“the non-residential component of any future development should be excluded from the calculation of GFA for the purposes of applying the maximum FSR development standard”;*
 - *“if any site-specific control to provide a non-residential land use is applied, that land use, particularly given the relatively low FSR control that is not sought to be amended, should be excluded from the calculation of GFA in any future redevelopment. Accordingly, the FSR and height development standards for the site would need to be increased as part of the LEP amendment”.*

3.2.3 Department’s Assessment

Following the receipt of the planning proposal for finalisation from the Panel the Department has:

- considered matters raised in the submissions received during exhibition;
- evaluated the Panel’s post-exhibition recommendation to consider a site-specific provision protecting community/educational/religious facilities at basement and ground level; and
- examined correspondence received on behalf of the proponent.

Based on this detailed assessment, the Department recommends that the planning proposal be progressed without further post exhibition changes for the following reasons:

- the proposal’s intent is to correct a zone anomaly, which will make the existing land uses permissible;
- the proposal (as exhibited) accords with the guidance provided in the Department’s LEP practice notes PN10-001 and PN11-002 above identified above in Section 3.1.2 as:
 - The planning proposal seeks to apply an R3 land use zone (a ‘prescribed zone’ under cl.3.34(1) of the SEPP (Transport and Infrastructure) 2021) which is consistent with the adjoining land, and ‘Places of Public Worship’, ‘Community Facilities’ and ‘Dwelling Houses’ and ‘Educational Establishments’ will remain permissible with consent.
 - The site does not meet the criteria specified in Practice Note PN10-001 to be a ‘strategic site’ or major state infrastructure, given the site is less than 20 hectares and is primarily used as a ‘place of public worship’.
- The Panel’s proposed site-specific provision to protect community/educational/religious facilities on the site is not supported as it:
 - is inconsistent with Ministerial Direction 1.4 ‘Site Specific Provisions’ on the basis that it would restrict development for permissible land uses on the site further to the development standards and provisions already contained Waverley LEP 2012. The objective of this direction is to discourage unnecessarily restrictive site-specific planning controls.
 - would deliver an inequitable planning outcome given the absence of an existing evidence base to justify the application of the prescriptive control to the site, which is privately owned; and
 - would be difficult to apply in practice as the site is currently developed in concert with the adjoining land at 36 Flood Street, Bondi.

The following reassesses the planning proposal (unamended from that exhibited) against relevant outstanding strategic matters and any remaining potential key impacts associated with the proposal.

The Department considers that the planning proposal (without amendment) submitted for finalisation:

- remains consistent with the Greater Sydney Region Plan and Eastern City District Plan per the original Gateway determination report;
- remains inconsistent with Planning Priority 4 of the Waverley Local Strategic Planning Statement in relation to Council's aspiration to retain all SP2 Infrastructure zonings. However, this inconsistency is considered of minor significance and is adequately justified as outlined in Section 3.3 of the Gateway determination assessment report;
- remains consistent with all relevant section 9.1 Directions, noting that the Gateway determination left consistency with Direction 4.4 Remediation of Contaminated Land unresolved – note that this matter has since been resolved, as previously outlined in **Section 3** of this report; and
- remains generally consistent with all relevant SEPPs as outlined by the Gateway determination assessment report.

It is also noted that the planning proposal accords with the guidance provided in the Department's LEP practice notes PN10-001 and PN11-002 as outlined in Section 3.7 of the Gateway determination assessment report and **Section 3.1.6** of this report.

The following tables identify whether the planning proposal is consistent with the assessment undertaken at the Gateway determination stage. Where the planning proposal is inconsistent with this assessment, requires further analysis or requires reconsideration of any unresolved matters, these are addressed in **Sections 3.2.4 to 3.2.7**.

Table 4 Summary of strategic assessment

	Consistent with Gateway determination report Assessment
Regional Plan	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No, refer to section 4.1
District Plan	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No, refer to section 4.1
Local Strategic Planning Statement	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No, refer to section 4.1 Note: The planning proposal remains inconsistent with the Waverley Local Strategic Planning Statement. This inconsistency is however considered justified and of minor significance (This matter is further discussed in Section 5.1.2 of this report).
Local Planning Panel (LPP) recommendation	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No, refer to section 4.1 Note: The planning proposal remains inconsistent with the Local Planning Panel's resolution of 25 May 2022 that it does not support the proposal proceeding to a Gateway determination.

	Consistent with Gateway determination report Assessment
Section 9.1 Ministerial Directions	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Note: The exhibited planning proposal removed references to repealed s.9.1 Ministerial Directions and included an assessment against the applicable 9.1 Ministerial Directions, consistent with Condition 1 of the Gateway. The documentation submitted in support of the planning proposal for finalisation also addresses the consistency of the proposal with Direction 4.4 'Remediation of contaminated land', in accordance with the requirements of Condition 2 of the Gateway (This matter is further discussed in Section 3).
State Environmental Planning Policies (SEPPs)	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Note: The exhibited planning proposal removed references to repealed SEPPs and included an assessment of the proposal against all relevant SEPPs (including SEPP (Transport and Infrastructure) 2021; SEPP (Resilience and Hazards) 2021; and SEPP No. 65 – Design Quality of Residential Apartment Development), in accordance with the requirements of Condition 1 of the Gateway determination (refer to Table 8 in Attachment A).

Table 5 - Summary of site-specific assessment

Site-specific assessment	Consistent with Gateway determination report Assessment
Social and economic impacts	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No The Department's position on this matter at Gateway has not changed (refer to p.17 of the Department's gateway determination assessment report in Attachment B).
Environmental impacts	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No The Department's position on this matter at Gateway has not changed (refer to pp.16-17 of the Department's Gateway determination assessment report in Attachment B).
Infrastructure	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No The Department's position on this matter at Gateway has not changed (refer to p.18 of the Department's Gateway determination assessment report in Attachment B).

3.2.4 Eastern City District Plan (2018)

As outlined in **Section 4.1.2**, Council has raised concerns that the planning proposal undermines Planning Priority E4 and Planning Priority E6 of the Eastern City District Plan, outlined below:

Planning Priority E4: *Fostering healthy, creative, culturally rich and socially connected communities*

Planning Priority E6: *Creating and renewing great places and local centres, and respecting the District's heritage*

The planning proposal was assessed at Gateway as being consistent with the relevant priorities and actions of the Eastern City District Plan, namely Planning Priority E3 '*Providing services and social infrastructure to meet people's changing needs*' and Planning Priority E5 '*Providing housing supply, choice and affordability, with access to jobs, services and public transport*'.

The Department has reviewed the planning proposal submitted for finalisation, against the provisions of the Eastern City District Plan, and upholds its decision at Gateway that the proposal is consistent with the relevant Planning Priorities and actions of the Eastern City District Plan.

3.2.5 Section 9.1 Ministerial Directions

Consistency with pre-exhibition Gateway conditions

As previously outlined in **Section 3** of this report, the exhibited planning proposal removed references to the repealed s.9.1 Ministerial Directions, consistent with the requirements of Condition 1 of the Gateway determination.

Ministerial Direction 1.4 Site Specific Provisions

As previously discussed, on 17 May 2023 the Sydney Eastern City Planning Panel's (in its capacity as PPA) determined to recommend to the Minister that the planning proposal be made with the following amendment:

- The Department "*consider a site-specific provision protecting community/educational/religious facilities at basement and ground level.*"

The Department has considered the Panel's decision and request, along with the concerns raised in the post-exhibition submission received (as outlined in Section 3.2.2 of this report) and has determined to progress the finalisation of the draft LEP without the post-exhibition amendment requested by the Panel as discussed in the report above.

Ministerial Direction 4.4 Remediation of Contaminated Land

As previously outlined in **Section 3** of this report, the Gateway Determination issued on 18 November 2022 conditioned that:

1. *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.*

A Preliminary Site Investigation (PSI report, dated April 2023) prepared by Geotechnique Pty Ltd, in support of the proposal (Refer to **Attachment K included in Attachment 1**). This finds that there is limited potential for contamination on the site given the past and present activities, however, identify the need for further sampling and testing in any subsequent development applications for the subject land.

The PSI report also acknowledged that the site could be made suitable (following successful remediation and validation) for the proposed R3 rezoning if any contaminants were identified, given that the site is surrounded by residential land uses.

The Department is satisfied that the draft LEP is consistent with this Direction.

3.2.6 State Environmental Planning Policies (SEPPs)

The exhibited planning proposal removed references to repealed SEPPs and included an assessment of the proposal against all applicable SEPPs (refer to Section B of the planning proposal in **Attachment A**), in accordance with the requirements of Condition 1 of the Gateway determination.

The planning proposal, as submitted to the Department for finalisation, remains generally consistent with all relevant SEPPs.

3.2.7 Interim Heritage Order & planning proposal for heritage listing on the site

An interim heritage order has been placed on the site by Council. On 6 June 2023, the Council's Strategic Planning and Development Committee recommended (amongst many things) that:

- A planning proposal seeking to list *34–36 Flood Street, Bondi (Lot 1 DP 1094020)*, as a *local Heritage Item in the Waverley LEP 2012* be sent to the Department for Gateway determination
- 36 Flood Street, Bondi, be nominated for State Heritage listing and Council write to the NSW Minister for Heritage to seek support in expediting the processing of this application;
- Council write to the NSW Minister for Planning and Public Spaces to seek an urgent meeting with the Mayor and senior Council officers, to request the refusal of the proposed rezoning of land at 34-36 Flood Street, Bondi; and request that a site-specific provision be included in the LEP amendment to protect the existing community/educational/religious facilities at basement and ground level, should the Minister or delegate decide to finalise the rezoning.

The planning proposal (PP-2023-1224) seeking to list 34-46 Flood Street, Bondi, as a local heritage item in Schedule 5 and on the Heritage Map of the Waverley LEP 2012, was submitted to the Department by Waverley Council on 8 June 2023 for Gateway determination.

This planning proposal is currently under assessment by the Department, and the heritage listing of this site should not prevent the rezoning of the property.

4 LEP Drafting

On 17 May 2023 the Panel (as PPA) determined to recommend to the Minister that the planning proposal should be made with amendment, with the planning proposal submitted to the Department on 8 June 2023 for finalisation (**Attachments A & C**).

The Department recommends that the draft LEP be made without further amendment, for reasons previously outlined in **Section 5** of this report.

As the draft LEP only requires mapping amendments, the amendment to the Waverley Local Environmental Plan 2021 can be made under the accelerated mapping amendments program and as such, can be made by the Department's Legal Services Branch.

On 5 July 2023, the Department submitted the planning proposal package to the Department's Legal Service Branch with a request for drafting.

The associated mapping amendments to the Waverley LEP 2012 have been prepared by the Department's GIS Team on behalf of the Panel (the PPA).

The Map Cover Sheet and Instrument were initially reviewed by the Department's GIS and PLUS Teams, and subsequently submitted to the Panel and Council on 19 July 2023 for review.

On 25 July 2023 the Panel, and the Department confirmed the Map Cover Sheet and Instrument (**Attachment LEP**).

5 Post-assessment consultation

The Department consulted with the following stakeholders after the assessment.

Table 6 Consultation following the Department's assessment

Stakeholder	Consultation	The Department is satisfied with the draft LEP
Mapping	Two maps (comprising 1 digital land use zoning map and 1 pdf minimum lot size map) have been prepared by the Department's ePlanning team and meet the technical requirements (Attachment Maps). On 25 July 2023 the final Map Cover Sheet (MCS) was received from the Department's legal team.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No, see below for details
Panel	The Panel was consulted on the terms of the draft instrument under clause 3.36(1) of the <i>Environmental Planning and Assessment Act 1979</i> (Attachment Consultation). The Panel confirmed on 25/07/2023 that it approved the draft and that the plan should be made (Attachment Confirmation)	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No, see below for details
The Department's Legal Services Branch	On 25/07/2023, the Department's Legal Services Branch provided the final Opinion that the draft LEP could legally be made. This Opinion is provided at Attachment LEP .	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No, see below for details

6 Recommendation

It is recommended that the Minister's delegate as the local plan-making authority determine to make the draft LEP (without amendment) under clause 3.36(2)(a) of the Act because:

- The draft LEP has strategic merit being consistent with the relevant provisions of the Greater Sydney Region Plan and Eastern City District Plan;
- It is consistent with the Gateway Determination and all the requirements of the conditions of Gateway have been met; and
- Issues raised during consultation have been adequately addressed and/or justified, and there are no outstanding agency objections to the proposal.



Laura Locke
Director, Eastern and South Districts
Planning and Land Use Strategy

26 July 2023



Amanda Harvey
Executive Director, Metro East and South
Planning and Land Use Strategy

26 July 2023

Assessment officer

Claire Mirow
Senior Planning Officer, Eastern and South Districts
(02) 9274 6472

Attachments

Attachment	Document
A	Planning Proposal (November 2022)
B	Gateway Determination and Gateway Assessment Report (November 2022)
C	PPA Post Exhibition Finalisation Public Meeting – Record of Decision (May 2023)
D	Planning Ingenuity Pty Ltd letter to the Department on behalf of the proponent – Finalisation of Planning Proposal Application for 34 Flood Street, Bondi (June 2023)
1	Post Exhibition Report (May 2023) – (Including attachments)
2	Waverley Council - Strategic Planning and Development Committee Meeting – Agenda - 6 June 2023
Maps	Final Map Amendments
Consultation	Consultation regarding Draft Instrument – July 2023
Confirmation	Confirmation regarding Draft Instrument – July 2023
LEP	Final LEP Instrument