



IRF23/427

Gateway determination report – PP-2023-102

20 Illawong Avenue, Tamarama

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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
Report to Waverley Council's Strategic Planning and Development Committee – 5 April 2022
Waverley Strategic Planning and Development Committee Meeting Minutes – 5 April 2022
Letter from General Manager of Waverley Council – LPP exemption – 24 January 2023
Planning Proposal – 20 Illawong Avenue, Tamarama (PP-2023-102) – 17 January 2023
Planning Portal Application Form (PP-2023-102) - 17 January 2023

1 Planning proposal

1.1 Overview

Table 2 Planning proposal details

LGA	Waverley
PPA	Waverley Council
NAME	20 Illawong Avenue, Tamarama
NUMBER	PP-2023-102
LEP TO BE AMENDED	Waverley Local Environmental Plan (LEP) 2012
ADDRESS	5 Tamarama Street, Tamarama [previously formed part of a larger property known as 20 Illawong Avenue, Tamarama (SP1737)]
DESCRIPTION	Lot 1 DP 1188291
RECEIVED	17/01/2023
FILE NO.	EF22/10991 (IRF23/427)
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 subject site previously formed part of a larger landholding known as 20 Illawong Avenue, Tamarama. It was advertised for sale and recently subdivided to create a separate lot, being 5 Tamarama Street, Tamarama (the site the subject of the planning proposal).

This outcome has been brought to the attention of Waverley Council (Council) by members of the community, who were concerned that a new residential flat building could be developed on the land given its R3 Medium Density Residential zoning. The key concern was that this potential form of development would be out of character with Tamarama Street, which is zoned R2 Low Density Residential, and could lead to negative impacts on the neighbouring properties.

The planning proposal seeks to align the planning controls applicable to the site with that of the adjoining properties along Tamarama Street, to ensure consistent low-density residential character and streetscape is maintained. Despite this reasoning, the planning proposal documentation submitted for Gateway determination does not clearly set out its objectives and intended outcomes in plain English.

The planning proposal states that “the application of the R3 Medium Density Residential Zone under the LEP renewal process is inconsistent with the capacity and environmental constraints of the land, the existing road network within Illawong Avenue and Tamarama Street and the character of the current subdivision” (p. 6). It is unclear what the “capacity and environmental constraints” of the site are; additional explanation of the issues with the local road network and subdivision pattern should be given.

Additionally, the ‘Intended Outcomes’ section of the proposal is written as an explanation of provisions relating to the statutory controls to be amended, which are:

- Amend the zoning of the subject area from R3 Medium Density Residential to R2 Low-Density Residential.
- Amend the floor space ratio (FSR) applying to the subject area to 0.5:1; and
- Amend the height of the building’s development standard to 8.5m.

A Gateway condition is recommended to require revision to the proposal to include objectives and intended outcomes in plain English, consistent with the Department’s *LEP Making Guideline* (September 2022).

1.3 Explanation of provisions

The planning proposal seeks to amend the Waverley LEP 2012 in relation to the subject site as follows:

- Amend the zoning from R3 Medium Density Residential to R2 Low Density Residential;
- Amend the floor space ratio (FSR) standard from 0.6:1 to 0.5:1; and
- Amend the height of buildings standard from 9.5m to 8.5m.

The above will be achieved by amending the relevant maps of the LEP. The proposed controls and change of zoning for the site is clearly outlined in the planning proposal.

Table 3 Current and proposed controls

Control	Current	Proposed
Zone	R3 Medium Density Residential	R2 Low Density Residential
Maximum height of buildings (HOB)	9.5m	8.5m
Floor space ratio (FSR)	0.6:1	0.5:1
Minimum subdivision lot size	325m ²	325m ² (no change)

1.4 Site description and surrounding area

The planning proposal applies to a parcel of land which previously formed part of 20 Illawong Avenue, Tamarama (SP1737) (**Figure 1**).

A development application (DA-125/2012) for this site for alterations and additions to the existing residential flat building, construction of a new building with five apartments, and land subdivision relating to the above property was approved by Council and had since been activated. It is understood that the larger part of this site was registered for subdivision on 15 September 2022 as Lot 1 in DP 1188291 and is now known as 5 Tamarama Street, Tamarama. The subject planning proposal refers to the other lot created by this subdivision - 20 Illawong Avenue, Tamarama.

According to Council Officer's report to the Waverley Strategic Planning and Development Committee (SPDC) meeting of 5 April 2022, the site was identified informally and interchangeably as 7B and 5 Tamarama Street. At the time of writing this report, the new site address and land subdivision have not been reflected in the NSW Planning Portal Spatial Viewer. To provide clarity to the public, a Gateway condition is recommended for Council to confirm the address of the subject site with supporting evidence (such as a registered subdivision plan) and update the planning proposal title to reflect the accurate address of the site. However, for the purposes of this report it is referred to as 20 Illawong Avenue, Tamarama.

This site is approximately 368 square metres (sqm) in area, is rectangular shaped, and has a street frontage to Tamarama Street of approximately 12.19 metres (m). The site is currently undeveloped and vacant.

The immediate locality surrounding the site along Tamarama Street is predominantly characterised by detached and semi-detached dwellings of one or two storeys in height, with the adjacent development at 20 Illawong Avenue being an eight-storey residential flat building. The site is located approximately 1.6 kilometres (km) from Bondi Junction strategic centre and Bondi Junction train station, and approximately 5.6 km from Sydney Central Business District (CBD).

In the Council officer's report to the SPDC, there was a discussion on whether the permissible FSR from the subject land has already been 'utilised' towards the approved development under DA-125/2012. Council officers confirmed that the above development application did not include the subject land in the FSR calculation for the works to the existing residential flat building and the proposed building at 20 Illawong Road.

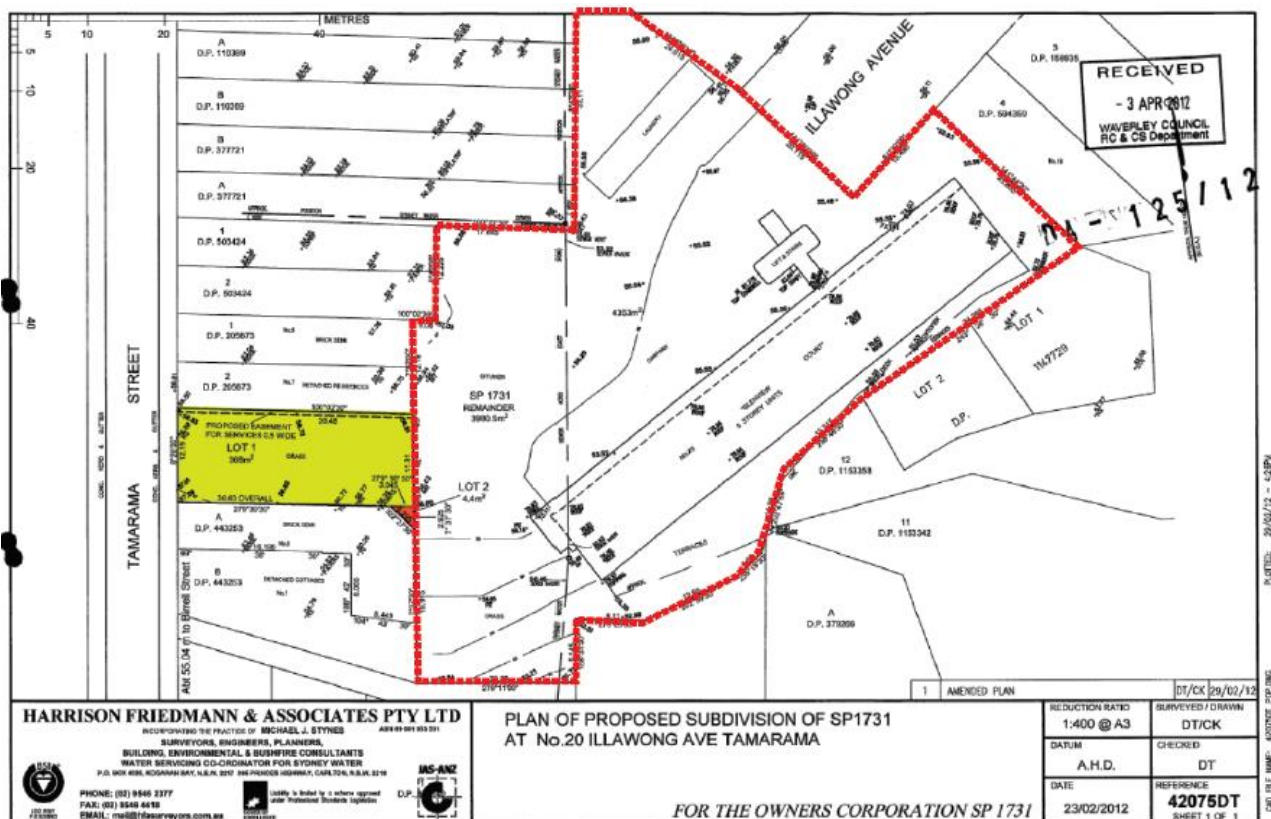


Figure 1: Draft survey plan showing the subject site (highlighted in yellow), which previously formed part of 20 Illawong Avenue, Tamarama (marked in red). (Source: Waverley Council)



Figure 2 Subject site (outlined in red) and surrounding context (source: Six maps 2023)

1.5 Mapping

The planning proposal seeks amendments to the following LEP maps relating to the site:

- Land Zoning Map (Sheet LZN_004)
- Floor Space Ratio Map (Sheet FSR_004)
- Height of Buildings Map (Sheet HOB_004)

Council has provided extracts of the above map tiles; however, they do not clearly identify the subject site. To facilitate community consultation, a Gateway condition is recommended to require extracts of relevant existing and proposed LEP maps that clearly identify the subject site to be included in the planning proposal.

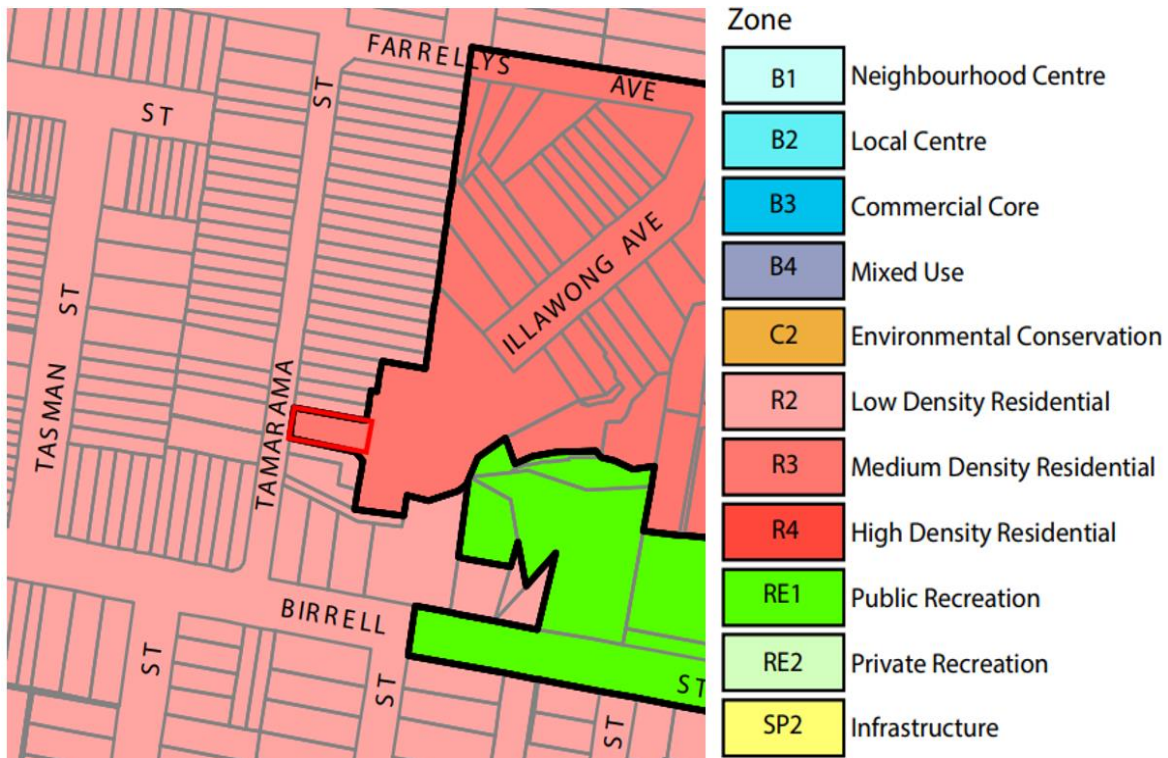


Figure 3 - Current Land Zoning Map, with the site outlined in red (source: Waverley LEP 2012).

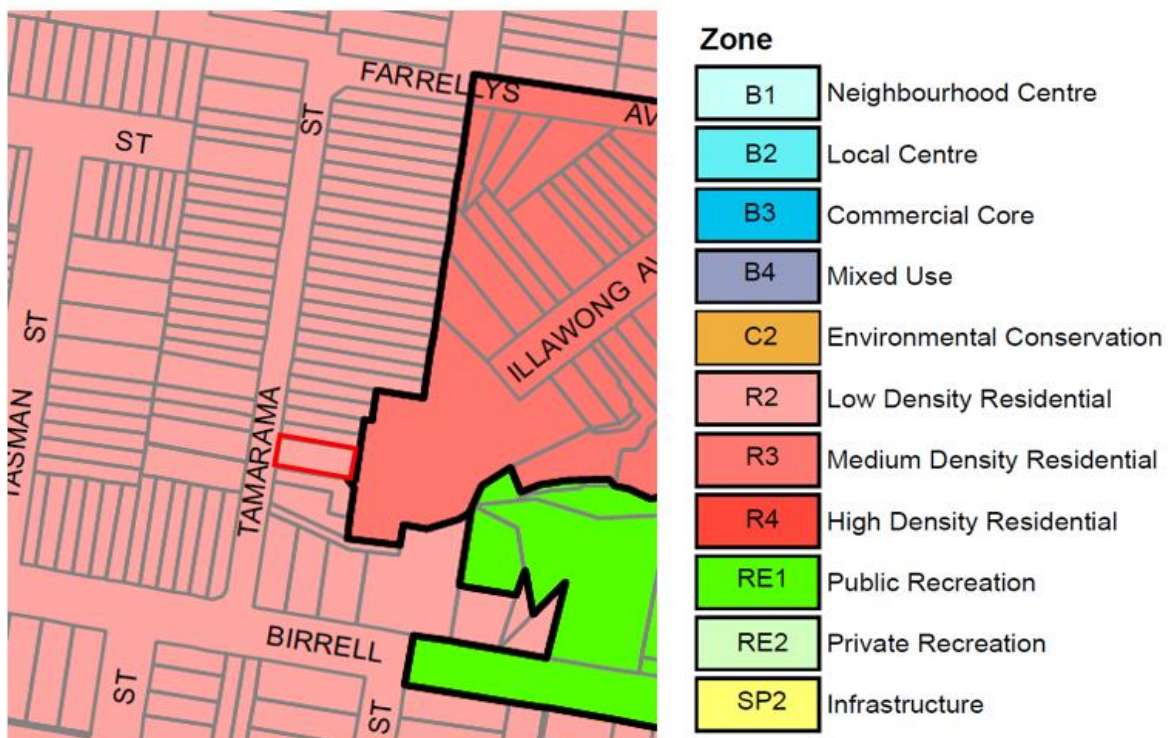


Figure 4 - Purposed Land Zoning Map, with the site outlined in red (source: adapted from mapping submitted by Council).

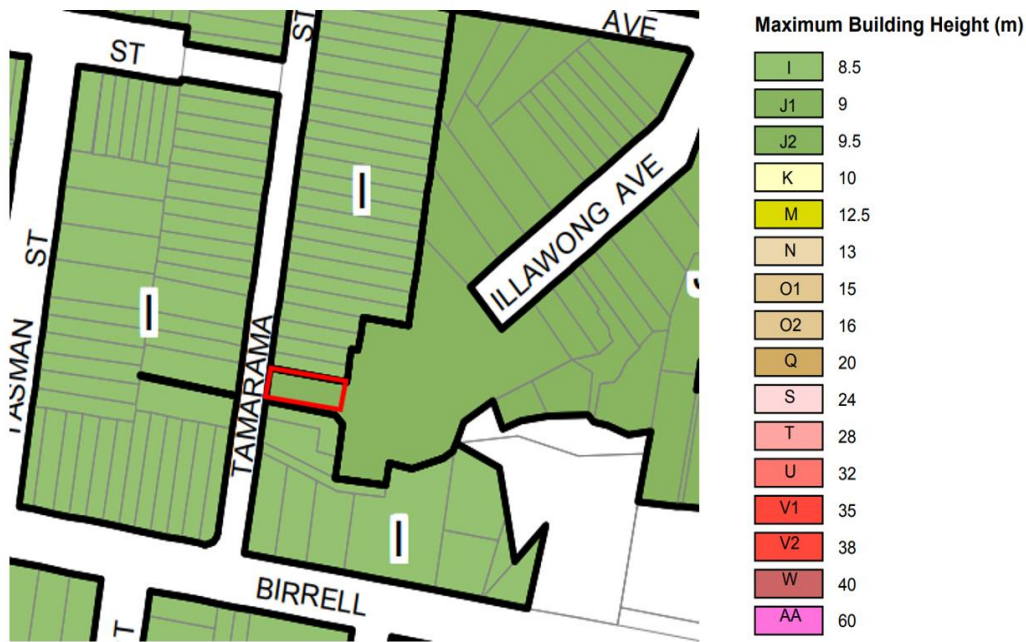


Figure 5 - Current Height of Buildings Map (at 9.5m – J2), with the site outlined in red (source: Waverley LEP 2012).

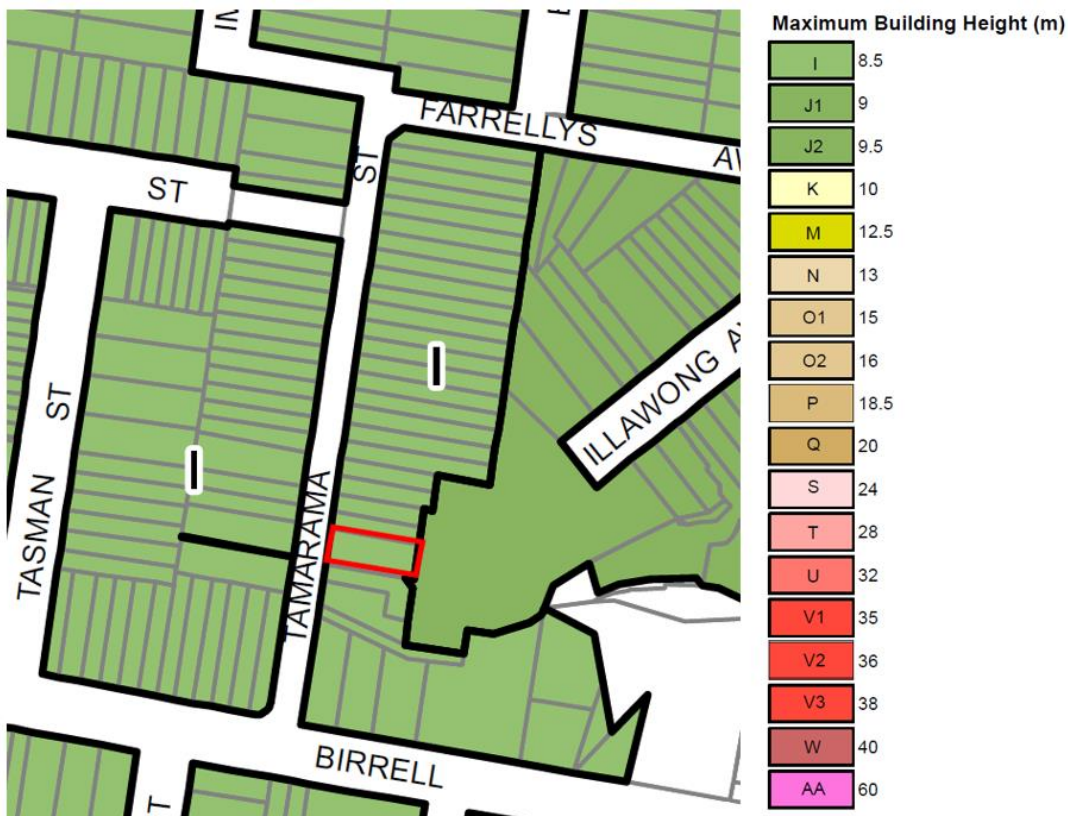


Figure 6 - Proposed Height of Buildings Map (at 8.5m – I), with the site outlined in red (source: adapted from mapping submitted by Council).

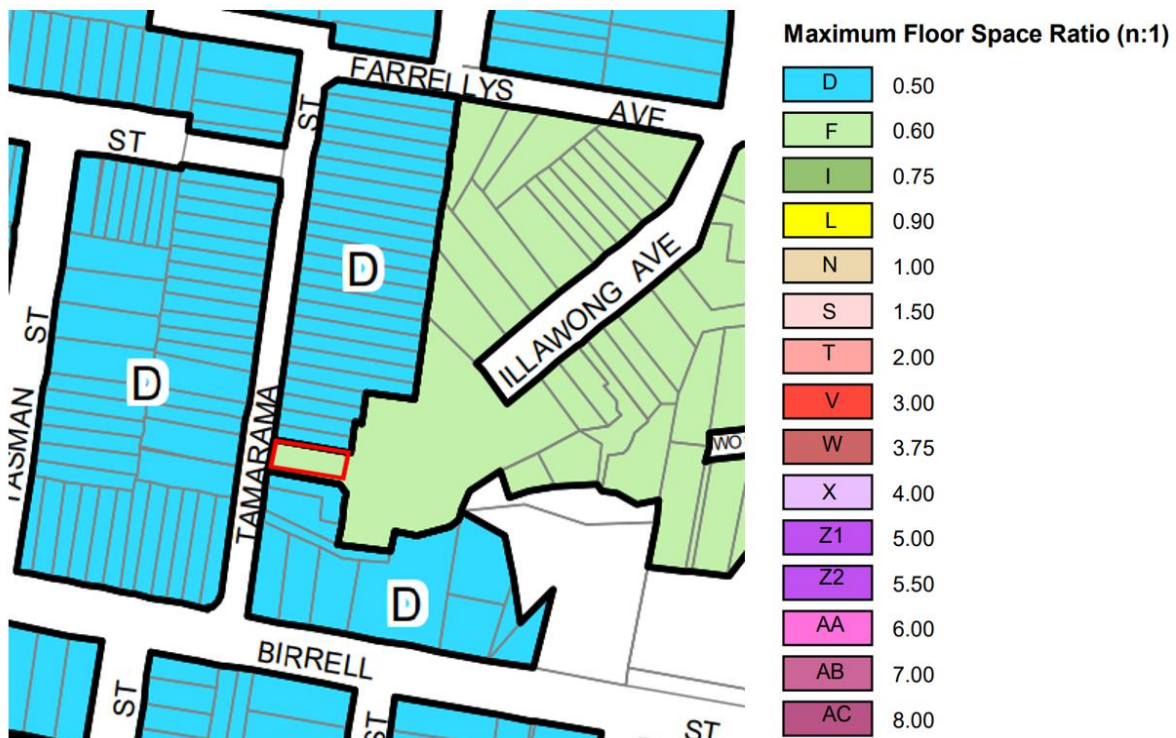


Figure 7 - Current Floor Space Ratio Map, with the site outlined in red (source: Waverley LEP 2012).

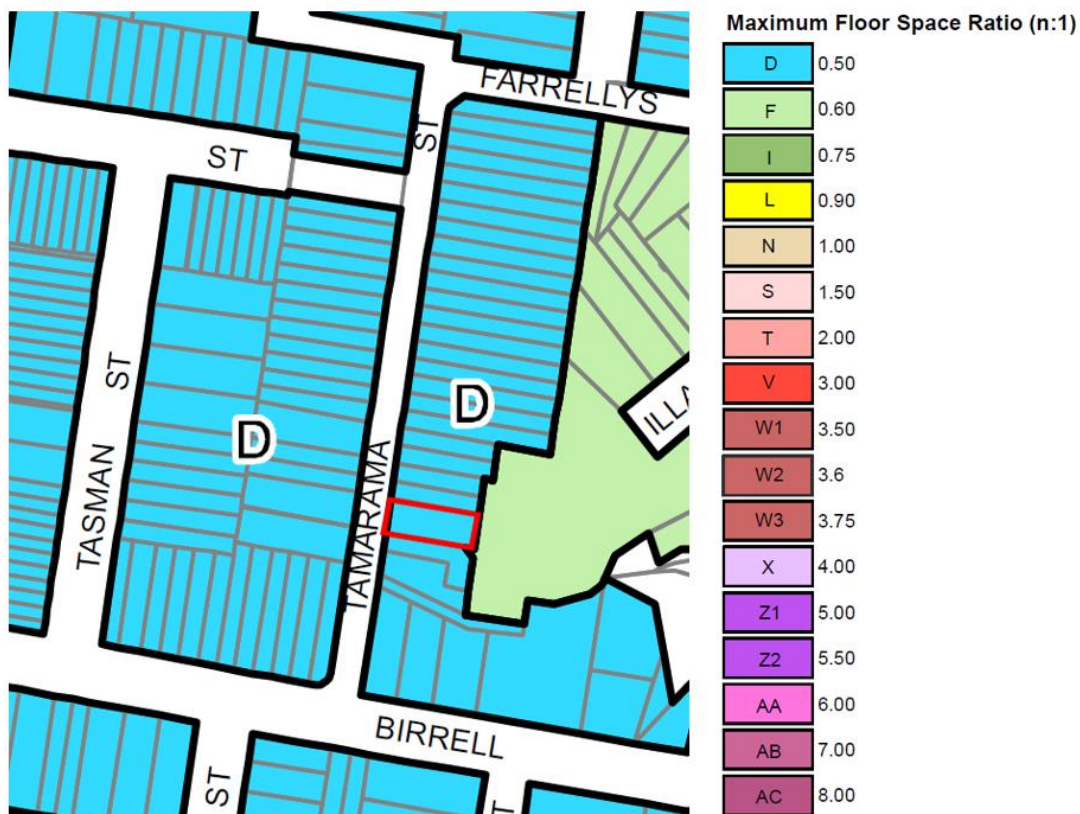


Figure 8 - Proposed Floor Space Ratio Map, with the site outlined in red (source: adapted from mapping submitted by Council).

1.6 Background

The impetus for the proposal is a result of the local community raising concerns about potential impacts on the streetscape and local amenity if a residential flat building is to be developed on the subject site, which has been advertised for sale. A brief chronology of the proposal is as follows:

Date	Event
4 March 2022	A subdivision certificate was lodged with Council (SC-8/2022) relating to the subject site, which has been advertised for sale. Community members raised concerns that the site could permit the development of a residential flat building due to the R3 Medium Density Residential zoning of the land.
5 April 2022	The Waverley Strategic Planning and Development Committee (SPDC) resolved to prepare a planning proposal to rezone the site. The resolution was contrary to the Council officer's recommendation in its report to not pursue a planning proposal, as the existing controls are likely to ensure any future development would be appropriate for the streetscape, among other reasons.
5 August 2022	A Section 3.22 application for expedited amendment to the Waverley LEP 2012 relating to the site was lodged by Council.
27 October 2022	The Department issued a letter to Council, requesting withdrawal of the Section 3.22 application, as the proposal, which seeks to reduce the development potential of the site, should be subject to community consultation as part of the planning proposal process. Council subsequently withdrew the application.
29 November 2022	A planning proposal (PP-2022-4143) seeking the same LEP amendments relating to the site as the previous Section 3.22 application was lodged by Council for Gateway determination.
7 December 2022	<p>The Department advised Council via email that the planning proposal (PP-2022-4143) is inadequate and does not meet the minimum requirements for Gateway determination. The proposal was discontinued and did not proceed.</p> <p>The advice outlined a range of matters that the Council should address as part of an updated planning proposal. This includes revisiting the key arguments for the proposal, being adverse changes to the local character and amenity impacts, such as traffic, parking and overshadowing.</p> <p>It appears to be difficult to argue that a site of 368 sqm would accommodate a significant number of parking spaces. Additionally, the applicable FSR and DCP controls for residential flat buildings, manor houses and multi-dwelling housing appear to be more stringent than dwelling houses and dual occupancies. The proposal also needs to address the Local housing Strategy.</p>
17 January 2023	A revised planning proposal (PP-2023-102, the subject of this report) was lodged by Council.

2 Need for the planning proposal

The planning proposal is a result of the SPDC's resolution of 5 April 2022 to amend the planning controls for the subject site. As outlined in the background section above, the proposal was in response to the local community's concerns about the potential redevelopment of the site for a new residential flat building.

By way of background, the planning proposal states that the subject area has had a history of low-density residential zoning. Prior to the implementation of the Standard Instrument LEP, the subject site was zoned '2(a) Residential - Low Density', with the remainder of the original lot (being 20 Illawong Avenue, Tamarama) zoned '2(b) Residential - Medium Density' under the Waverley LEP 1996 (**Figure 9**). However and despite this, the split zonings were not carried over when the Waverley LEP 2012 was made, and the subject site was zoned R3 Medium Density Residential as part of 20 Illawong Avenue, Tamarama.

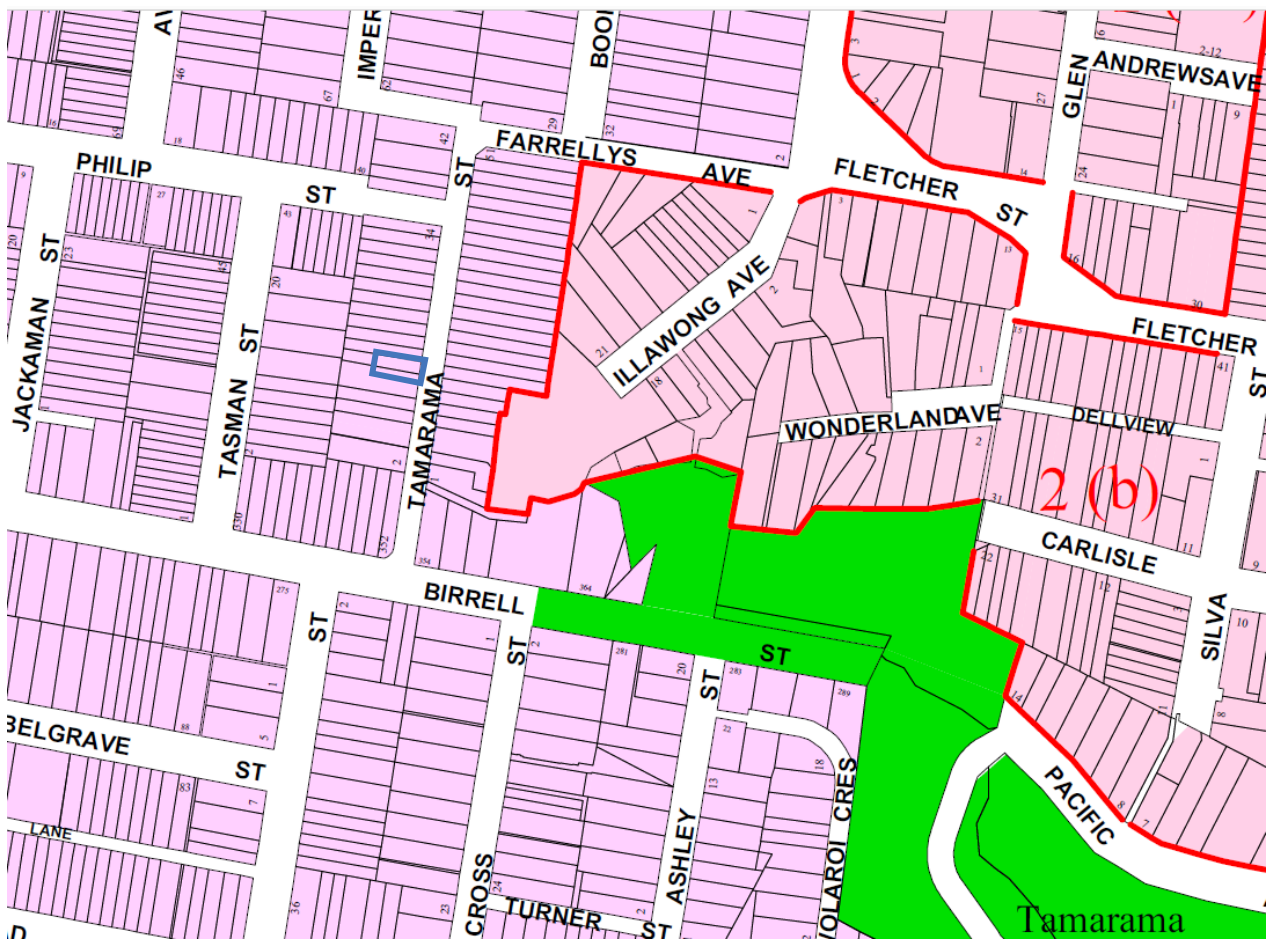


Figure 9 Extract of land zoning map of Waverley LEP 1996; note the subject site (outlined in blue) was zoned 2(a) (source: the planning proposal).

3 Strategic assessment

3.1 District Plan

The site is within the Eastern City District. The Greater Sydney Commission (currently Greater Cities Commission) released the Eastern City District Plan on 18 March 2018. The plan contains planning priorities and actions to guide the growth of the district while improving its social, economic and environmental assets.

The planning proposal is broadly consistent with the planning priorities for liveability and sustainability in the District Plan as outlined below.

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

Table 4 District Plan assessment

District Plan Priorities	Justification
Liveability E5: Providing housing supply, choice and affordability, with access to jobs, services and public transport.	<p>The planning proposal states that it “<i>is inconsistent with this Planning Priority as the change in zone from R3 to R2 reduces the number of permissible residential building types for the subject land and will likely reduce housing supply.</i>”</p> <p>It also states that it is inconsistent with Objective 10 <i>Greater Housing Supply</i> of the Greater Sydney Region Plan.</p> <p>However, the proposal does not demonstrate whether the inconsistency is justified.</p> <p>The proposed downzoning from R3 to R2 would reduce the range of residential uses permissible on the site. However, due to the small lot size (368sqm) and narrow frontage (12.19m), the types of residential development achievable on the site would be limited regardless of the zoning.</p> <p>As will be discussed in Section 4 of this report, medium density residential development permitted in the existing R3 zone, such as multi-dwelling housing, manor house and residential flat building, could not be carried out without significant deviation/departure from Council’s DCP controls. Additionally, Complying Development standards for these forms of development are also not achievable due to the non-compliance with relevant requirements in the State Environmental Planning Policy (Exempt & Complying Development) 2004 (Codes SEPP).</p> <p>While dual occupancies are permissible in both R2 and R3 zones, the site does not meet the minimum lot size requirements under Council’s DCP or the Codes SEPP (for Complying Development).</p> <p>Based on the above, the most plausible residential development on the site would be a dwelling house (with or without a secondary dwelling), which is permitted in both R2 and R3 zones. As such, the potential impact on housing supply and choice is considered to be insignificant due to the limited capacity of the site to comply with relevant local planning or State Government controls for these denser forms of development.</p>

	<p>In this way the development capacity of the site is aligned with low density development. Hence, the proposed R2 zone reflects the site's capacity for development.</p> <p>A Gateway condition is recommended to require the planning proposal to further address consistency with Objective 10 of the Region Plan and Planning Priority E5 of the District Plan, by considering the types of residential development that would be feasible on the site.</p>
Planning Priority E6: Creating and renewing great places and local centres, and respecting the District's heritage	<p>The planning proposal does not address this Planning Priority.</p> <p>The Planning Priority aims to recognise and celebrate the character and heritage of the district. The proposal is consistent with this Planning Priority as it seeks to recognise and reinforce the low-density residential character of the area by aligning the planning controls for the site with the surrounding properties. The proposed planning controls will better reflect the development potential of the site and facilitate development that is consistent with the character of Tamarama Street.</p> <p>A Gateway condition is recommended to require the planning proposal to address Planning Priority E6.</p>
<p>Sustainability</p> <p>Planning Priority E16: Protecting and enhancing scenic and cultural landscapes.</p> <p>Action 63: Identify and protect scenic and cultural landscapes</p>	<p>The planning proposal acknowledges that the Waverley LGA is a dense and highly urbanised area, which means that both built structures as well as natural features define the scenic or visual quality of the LGA.</p> <p>A building height of 9.5m currently applies to the subject site, which the planning proposal argues may disrupt the wider Tamarama Street streetscape that is otherwise subject to an 8.5m control. The additional metre under the existing control may just be able to facilitate a three-storey building or allow a building with a greater height than others along the street, which may in turn affect the established streetscape. The proposal would better ensure the future development would be compatible with the scale and character of the locality, and hence is consistent with this Planning Priority.</p>

3.2 Local

The proposal states that it is consistent with the following local plans and endorsed strategies, except for certain aspects. The table below considers the consistency of the proposal with relevant local plans and strategies:

Table 5 Local strategic planning assessment

Local Strategies	Justification
Waverley Local Strategic Planning Statement (LSPS)	<p>The planning proposal states it is consistent with Planning Priority 5: <i>increase the sense of well-being in our urban environment</i>.</p> <p>The proposal states on page 9 that it is consistent with Planning Priority 6: <i>Facilitate a range of housing opportunities in the right places to support and retain a diverse community</i>; whereas on page 10 it states it is inconsistent.</p> <p>The proposal would reduce the range of housing related uses permissible on the site as a result of the rezoning to R2. The proposal should have further addressed this priority and provide justifications having regard to the site constraints, which are unlikely to support</p>

Local Strategies	Justification
	<p>medium density residential uses despite its existing R3 zoning. As will be discussed in detail in Section 4 below, the potential impact on housing supply is likely to be insignificant due to the site constraints.</p> <p>A Gateway condition is recommended for the planning proposal to include further information to address Planning Priority 6, and to ensure the discussion is coherent across the document.</p>
Waverley Local Housing Strategy (LHS)	<p>The planning proposal states it is inconsistent with the following:</p> <ul style="list-style-type: none"> Priority H2: <i>Encourage a range of housing options to support and retain a diverse community</i>, as the rezoning from R3 to R2 will “<i>limit the range of housing options in Waverley LGA</i>”. However, the proposal does not include any further explanation as to how the stated inconsistency is justified. As discussed above, the Department considers that there would be limited impact on housing supply and diversity as a result of the proposal. <p>A Gateway condition is recommended for the planning proposal to include further information to address Priority H2.</p> <p>The planning proposal states it achieves the following Priority:</p> <ul style="list-style-type: none"> Priority H5: <i>Ensure the new development is consistent with the future character</i>, as the current zoning for this lot is not aligned with the character of the street. The proposed R2 zone and development standards would better align with the properties surrounding the site and the character of the area.
Waverley Community Strategic Plan 2022-2032 (CSP)	<p>The planning proposal states it achieves the following strategy in the CSP:</p> <ul style="list-style-type: none"> 2.6.2. <i>Ensure new development provides a high standard of design quality and does not adversely impact the amenity of neighbours or the wider community</i>, as it may “<i>facilitate the retention of the character of the area with R2 Low-Density Residential</i>”. <p>The Department is satisfied with this conclusion.</p>

3.3 Local planning panel (LPP) recommendation

Council did not refer the planning proposal to the Waverley LPP for advice. As part of the supporting materials for the proposal, Council included a letter dated 24 January 2023 signed by its General Manager, stating the proposal is “*consequential*” in nature due to the recent subdivision of the site from a larger R3-zoned land parcel, and that the referral to the Waverley LPP would “*not provide any additional value as Council has already thoroughly considered the matters and made their resolution*”.

The Section 9.1 Ministerial Direction for Local Planning Panels provides that planning proposal prepared after 1 June 2018 are required to be referred to the LPP for advice, unless the Council’s general manager determines that the proposal relates to:

- (a) *The correction of an obvious error in a local environmental plan,*
- (b) *Matters that are of a consequential, transitional, machinery or other minor nature, or*
- (c) *Matters that council’s general manager considers will not have any significant adverse impact on the environment or adjoining land.*

Council’s general manager forms the opinion that part (b) of the Direction is satisfied.

The proposal is not considered to result in any material impact on the development potential of the site. The Department concurs that the rezoning and changes to development standards are of a

minor nature and would not have any significant adverse impact on the environment or adjoining land.

3.4 Section 9.1 Ministerial Directions

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

Table 6 9.1 Ministerial Direction assessment

Directions	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
5.1 Integrating Land Use and Transport	Consistent	<p>The objective of this Direction is to ensure that urban land use locations improve accessibility for active and public transport and reduce car dependence.</p> <p>The planning proposal states the subject area is close to public transport and frequent bus services thus the proposal is consistent with the direction.</p> <p>The site is located within walking distance from bus stops with services running between Clovelly and Bondi Junction. The proposal would not result in any significant impact on housing supply and diversity due to the constraints of the site. The proposal is not inconsistent with the provisions of this Direction.</p>
6.1 Residential Zones	Inconsistent	<p>The key objective of this Direction is to encourage a variety and choice of housing types to provide for existing and future housing needs. Clause (1)(a) of the Direction requires that a planning proposal must include provisions that will broaden the choice of building types and locations available in the housing market. Clause (2)(b) further stipulates that a planning proposal must not contain provisions which will reduce the permissible residential density of land.</p> <p>The proposed rezoning of the subject land from R3 to R2 will, by nature, reduce the range of permissible residential land uses. The proposed reduction to the FSR and building height standards would also reduce the residential density. As such, the proposal is inconsistent with the Direction. This inconsistency has been acknowledged in the planning proposal but with no supporting justifications.</p> <p>Notwithstanding, the proposal would not result in any significant impact on the housing delivery potential of the site, due to its small lot size (368 sqm) and narrow frontage (12.19m) being incompatible with or unable to readily comply with the development controls for denser forms of currently permitted residential development.</p> <p>The proposed R2 zone will continue to permit dwelling house and dual occupancy development. The FSR for a dwelling house or dual occupancy is the same at 0.7:1 under both the R2 and R3 zones pursuant to Clause 4.4A of the Waverley LEP 2012. This FSR is higher than the proposed base FSR of 0.5:1, which will be identified on the LEP Map.</p>

Directions	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
		<p>Although the site is currently zoned R3, due to site constraints, medium-density residential development, such as a dual occupancy, multi-dwelling housing, manor house or residential flat building, is unlikely to be feasible via the DA and/or complying development pathways. As will be discussed in Section 4 of this report, the above medium-density residential uses could not comply with one or more controls under Council's DCP and/or the Codes SEPP.</p> <p>Under the existing R3 zoning, an FSR of 0.6:1 (as identified on the LEP map) applies to residential flat building, manor house and multi-dwelling housing development. This is lower than the FSR of 0.7:1 for a dwelling house (and dual occupancy), which would remain permitted under the proposed R2 zone.</p> <p>The proposed reduction to the height of buildings by 1m from 9.5m to 8.5m is minor in nature and the proposed control will still be able to accommodate a 2-storey building. This height limit mirrors that permitted for the remainder of Tamarama Street – supporting consistent streetscape character outcomes.</p> <p>Based on the above, the proposed rezoning change is unlikely to have any material impact on housing supply and diversity, as the most plausible type of residential uses would be a dwelling house regardless of zoning. There is also a possibility for a secondary dwelling to be developed on the site. As such, the proposal's inconsistency with the Direction is of minor significance.</p> <p>The proposal would better reflect the development potential of the site, and rationalise the planning controls to align with that applicable to other properties along both sides of Tamarama Street. This would provide more clarity and certainty to the community and the development industry and would contribute to maintaining or enhancing the existing character of the area.</p> <p>A Gateway condition is recommended for the planning proposal to include further information to justify the inconsistency with the Direction given that this is absent in the planning proposal report by council despite merit outlined above.</p>

3.5 State environmental planning policies (SEPPs)

The planning proposal would not hinder the application of the relevant SEPPs, which can be considered in detail as part of any future development applications for the site.

4 Site-specific assessment

4.1 Environmental

The planning proposal would not adversely affect any critical habitat or threatened species, populations or ecological communities or their habitat as the site is within an established urban area and is not identified as having any ecological significance. The proposal would facilitate development that maintains the low-density residential character of the locality by aligning the planning controls for the site with that of the adjoining properties along Tamarama Street.

4.2 Social and economic

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

Table 7 Social and economic impact assessment

Social and Economic Impact	Assessment
Social	The planning proposal is unlikely to result in any adverse social impact. Amending the zoning and development standards will provide the community with greater certainty about the nature and scale of development that could be achievable on the site.
Economic	<p>Despite the rezoning to R2, which will reduce the range of land uses permitted with consent on the site, and the reduction to the FSR and building height standards, the proposal is unlikely to result in any significant economic impact. The small land area and applicable planning controls mean that a dwelling house would remain the most feasible type of residential development for the site and the likelihood of having medium density residential development would be low. Dwelling houses are a permitted use under both the existing R3 and the proposed R2 zoning. Refer to further discussion below.</p> <p>The proposal would provide a better reflection of the types of development that could feasibly be accommodated on the site, considering its land size constraint and other applicable controls under the DCP. This would in turn provide more certainty and clarity to the community and development industry.</p>

To further illustrate the likely impacts on development potential for the site, a comparative analysis of planning controls under the existing R3 Medium Density Residential and R2 Low Density Residential is provided below. This analysis builds on information provided in the planning proposal.

Table 8 - Comparison of key planning controls between R2 and R3 zones for various types of residential development

	R2 Low Density Residential	R3 Medium Density Residential	Comments
Dwelling House	<ul style="list-style-type: none"> Height: 8.5m FSR: 0.7:1 (as per Cl. 4.4A of Waverley LEP 2012) 	<ul style="list-style-type: none"> Height: 9.5m FSR: 0.7:1 (as per Cl. 4.4A of Waverley LEP 2012) 	<ul style="list-style-type: none"> 1m building height difference Same FSR applies
Dual Occupancy	<ul style="list-style-type: none"> Height: 8.5m FSR: 0.7:1 (Cl. 4.4A of Waverley LEP 2012) Minimum lot size (Waverley DCP 2022): 450sqm (attached) and 600sqm (detached) Minimum lot size (Section 3B.8 of Codes SEPP): 400sqm 	<ul style="list-style-type: none"> Height: 9.5m FSR: 0.7:1 (Cl. 4.4A of Waverley LEP 2012) Minimum lot size (Waverley DCP 2022): 450sqm (attached) and 600sqm (detached) Minimum lot size (Cl. 3B.8 of Codes SEPP): 400sqm 	<ul style="list-style-type: none"> 1m building height difference Same FSR applies The site does not meet the minimum lot size requirements under Council's DCP and the Codes SEPP.
Multi-Dwelling Housing	<ul style="list-style-type: none"> Not Permitted 	<ul style="list-style-type: none"> 9.5m height 0.6:1 FSR Minimum lot size for multi-dwelling housing (terraces) (Cl. 3B.33 of the Codes SEPP): 600sqm Minimum lot width for multi-dwelling housing (terraces) (Cl. 3B.33 of the Codes SEPP): 21m 	<ul style="list-style-type: none"> Although multi-dwelling housing is permitted in the R3 zone, it is subject to a lower FSR than dwelling houses. Multi-dwelling housing is unlikely to be feasible due to the small lot size and narrow frontage of the site. The site does not meet the minimum lot size and lot width requirements for multi-dwelling housing (terraces) in the Codes SEPP for complying development.
Manor House	<ul style="list-style-type: none"> Not Permitted 	<ul style="list-style-type: none"> 9.5m height 0.6:1 FSR Minimum lot size (Cl. 3B.21 of the Codes SEPP): 600sqm 	<ul style="list-style-type: none"> Although manor houses are permitted in the R3 zone, it is subject to a lower FSR than dwelling houses. The site does not meet the minimum lot size requirement of the Codes SEPP for complying development.

	R2 Low Density Residential	R3 Medium Density Residential	Comments
Residential Flat Building	<ul style="list-style-type: none"> Not Permitted 	<ul style="list-style-type: none"> 9.5m height 0.6:1 FSR Minimum site frontage (Waverley DCP 2022): 15m 	<ul style="list-style-type: none"> Although residential flat buildings are permitted in the R3 zone, it is subject to a lower FSR than dwelling houses. The site does not meet the minimum street frontage requirement of the DCP.

Based on the above analysis, the following is noted:

Although several types of medium density residential uses would become prohibited through the rezoning to R2, the likelihood of the site being developed for such uses under the existing R3 zoning is low as:

- Multi-dwelling housing:** Under the existing R3 zoning, the FSR for any multi-dwelling housing is 0.6:1 (as per the FSR Map), which is lower than that applies to a dwelling house, being 0.7:1, pursuant to Clause 4.4A *Exceptions to floor space ratio* of the Waverley LEP 2012.

The Codes SEPP provides that multi-dwelling housing (terraces) is complying development if specific requirements are met. The subject site does not meet the minimum lot size (600 sqm) and minimum lot width (21m) requirements under Clause 3B.33 of the Codes SEPP, and as such complying development is not an option for this type of use for the site.
- Manor house:** Clause 3B.1A of the Codes SEPP provides that manor houses are permissible in the R3 zone, where residential flat building or multi-dwelling housing or both are already permitted.

Like the above, the FSR for any manor house is 0.6:1 (as per the FSR Map), which is lower than that applies to a dwelling house, being 0.7:1, pursuant to Clause 4.4A of the Waverley LEP 2012.

The Codes SEPP provides that certain manor house development may be pursued through the complying development pathway. Notwithstanding, the site does not satisfy the minimum lot size requirement under Clause 3B.21 of the SEPP, being 600 sqm, to undertake a complying development.
- Residential flat building:** Council's DCP 2022 sets out the minimum site frontage for a residential flat building at 15m. The subject site has a width of 12.19m only and does not meet the above requirement. The FSR for any residential flat development is 0.6:1 (as per the FSR Map), which is lower than that applies to a dwelling house, being 0.7:1, pursuant to Clause 4.4A of the Waverley LEP.

As for other types of residential uses:

- Dual occupancy:** The proposed R2 zoning will continue to permit dual occupancy development. Pursuant to Clause 4.4A of the Waverley LEP, an FSR of 0.7:1 applies to this type of development, which is the same as that for dwelling houses. However, the site does not satisfy the minimum lot size requirements of the DCP 2022, which are 450 sqm and 600 sqm for attached and detached dual occupancies respectively.

The Codes SEPP provides that dual occupancies may be pursued via the complying development pathway if specific requirements are met. Clause 3B.8 of the Codes SEPP specifies a minimum lot size of 400 sqm for complying development. As such, the site is not able to be developed for a dual occupancy through a complying development. Based on the above, it is also unlikely that an attached dual occupancy may be developed on the site.

- Dwelling house: A dwelling house is the type of residential use that would be subject to a higher FSR, being 0.7:1, and would be more readily capable of meeting the relevant DCP controls. Such a use is permitted under both the existing R3 and the proposed R2 zoning.
- Secondary dwelling: The R2 zoning table under the Waverley LEP does not permit secondary dwellings. However, Clause 52 of the SEPP (Housing) 2021 provides that secondary dwelling is permitted with consent, provided the maximum FSR under another environmental planning instrument is not exceeded, and the total floor area of the secondary dwelling is no more than that specified in another environmental planning instrument or 60 sqm, whichever is the greater. Clause 5.4(9) of the Waverley LEP provides that the total floor area of any secondary dwelling is the greater of 60 sqm or 30% of the total floor area of the principal dwelling. Secondary dwelling will remain a development option under the proposed R2 zoning.

Accordingly, despite the smaller range of residential uses permitted on the site under the proposed R2 zoning and the slightly reduced height of building standard (from 9.5m to 8.5m), it is unlikely that there would be any significant change to the housing delivery potential and diversity on the subject land. This is attributed to the site constraints of having a small lot size (under 400 sqm) and narrow frontage, which do not facilitate other forms of residential development.

The proposal would more appropriately reflect the actual development potential of the site, and would provide more clarity to the community and industry as to what could feasibly be developed. The proposal would also ensure the zoning and development standards align with the other lots along the street and rationalise the controls.

The planning proposal states that a future development with an R3 zoning “*could change the character and have a negative impact on the surrounding neighbourhood*”. It further outlines concerns relating to an increase in traffic and parking demand and overshadowing of surrounding dwellings. The above argument is reviewed as follows:

- The Waverley DCP 2022 specifies minimum and maximum parking requirements for a dwelling house of 1 and 2 spaces respectively for areas outside the 800m catchment of Bondi Junction. There are no minimum parking requirements for medium density residential development; the DCP sets out maximum parking rates of 1 space for 1-bedroom, 1.2 space for 2-bedroom and 1.5 space for 3-bedroom units. Due to the small lot area of 368 sqm, it would not be able to accommodate a large number of parking after taking into account minimum dimensions for driveway, access aisle and parking bays under the Australian Standard. As discussed above, it is unlikely that the site would be able to facilitate medium density residential developments.
- A higher FSR of 0.7:1 applies to dwelling house and dual occupancy developments, as compared to the FSR for other uses, being 0.6:1 under the current zoning. As discussed above, a dwelling house (and also potentially a secondary dwelling) remains the most plausible development on the site. It is unlikely that a medium density residential building would be constructed.
- Nevertheless, the proposed reduction of the building height by 1m may ensure any future building would be more consistent with the scale of other buildings along Tamarama Street by aligning the height control, and may have a small but positive impact on solar access to the neighbouring properties.

A Gateway condition is recommended to require the planning proposal to include further explanation of the potential impacts on development potential for various types of residential uses, having regard to the FSR and height of buildings standards in the LEP, the relevant controls in the DCP including but not limited to building envelope, setbacks, landscaping and car parking, and the applicable provisions in the Codes SEPP. The condition should also require the discussion about traffic and parking impacts and overshadowing to be revised in response to the findings of the above analysis.

Commercial uses

Under the R2 zone, certain commercial, tourist accommodation and recreation uses are not permissible, but are currently permissible in the R3 zone. They include: 'advertising structure', 'kiosk', 'local distribution premises', 'backpackers' accommodation', 'hotel or motel accommodation', and 'recreation facilities (indoor)'.

Certain social infrastructure uses, such as 'medical centre' and 'educational establishment', are also prohibited under the proposed R2 zone. However, this issue is remedied by the *State Environmental Planning Policy (Transport and Infrastructure) 2021*, which permits 'health services facilities' and 'educational establishment' subject to consent in the R2 zone (note: R2 zone is one of the 'prescribed zones' for these types of infrastructure uses under the SEPP).

Given the predominant residential character of the area, and that the proposal only affects a small lot, the reduction to the range of permissible non-residential development is considered to be minor.

4.3 Infrastructure

The planning proposal does not involve any amendments to the planning controls that will facilitate intensified development. The proposal would not result in any additional demand for infrastructure.

5 Consultation

5.1 Community

Council proposes a community consultation period of 28 days, which is equivalent to 20 working days. The exhibition period proposed is considered appropriate and forms a condition of the Gateway determination.

5.2 Agencies

The proposal does not specify which agencies will be consulted. Given the nature of the planning proposal, agency consultation is not deemed necessary.

6 Timeframe

Council proposes a nine-month timeframe to complete the LEP. The planning proposal is classified as "standard" under the LEP Making Guideline. The Department recommends a timeframe of **seven months** to ensure it is completed in line with its commitment to reduce processing times. A Gateway condition to the above effect is recommended. It is also recommended that the Gateway determination include conditions requiring Council to exhibit and report on the proposal by specified milestone dates.

7 Local plan-making authority

Council has advised that it would like to exercise its functions as a local plan-making authority.

Given the nature of the proposal, the Department recommends that Council not be authorised as the local plan-making authority for this proposal.

8 Assessment summary

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

- It is broadly consistent with the planning objectives and priorities of the Greater Sydney Region Plan, Eastern City District Plan and Council's local strategic plans. It will not undermine the planning priorities relating to housing supply and diversity, as the changes to the zoning and planning controls would not have any material impact on the development potential of the site.
- The inconsistency with section 9.1 Direction – 6.1 Residential Zones is considered to be of minor significance and is justified. However, further information should be provided in the planning proposal to address the inconsistency.
- It will better reflect the development potential of the site and provide clarity and certainty to the community and development industry.
- It will rationalise the planning controls and ensure the low-density residential character and amenity of the area are maintained or enhanced.
- It will not result in any unreasonable adverse environmental, social or economic impacts on the locality.

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

- Provide further information to demonstrate the proposal's likely impacts on development potential having regard to the relevant planning controls;
- Adequately address the Greater Sydney Region Plan, Eastern City District Plan, relevant local strategic planning documents and Section 9.1 Ministerial Directions with any inconsistency justified;
- Clarify the property address;
- Clarify the objectives and intended outcomes of the proposal; and
- Provide suitable mapping and make administrative changes to facilitate community consultation.

9 Recommendation

It is recommended the delegate of the Secretary:

- Agree that the inconsistency with Section 9.1 Ministerial Direction 6.1 - Residential Zones remains unresolved and will require further justification.

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

1. Prior to exhibition, the planning proposal is to be revised to:
 - a) Provide further explanation of the likely impacts on development potential for various types of residential uses, having regard to the development standards in the Waverley LEP 2012; the relevant controls in the Waverley DCP 2022, including but not limited to building envelope, setbacks, landscaping and car parking; and the applicable provisions in the State Environmental Planning Policy (Exempt and Complying Development Codes) 2004; the existing discussion about potential traffic and parking impacts and overshadowing should be revised in response to the above;
 - b) Ensure accuracy of the planning controls described in Table 3 of the planning proposal and rectify any errors, such as the relevant floor space ratio controls.

- c) Set out the objectives and intended outcomes of the planning proposal in plain English in accordance with the Department's Local Environmental Plan Making Guideline (September 2022), noting that the above are different from an explanation of provisions;
 - d) Confirm the correct street address and property details of the subject site with supporting evidence, such as a subdivision plan registered with the NSW Land Registry Services, and update the planning proposal title accordingly;
 - e) Include extracts of the existing and proposed land zoning, floor space ratio and height of buildings maps that clearly identify the subject site and the proposed mapping changes;
 - f) Provide information to further address Objective 10 *Greater Housing Supply* of the Greater Sydney Region Plan, taking into consideration the types of residential uses that would be feasible on the site;
 - g) Regarding the Eastern City District Plan,
 - i. Provide information to further address Planning Priority E5 *Providing housing supply, choice and affordability, with access to jobs, services and public transport*, taking into consideration the types of residential uses that would be feasible on the site; and
 - ii. Address Planning Priority E6 *Creating and renewing great places and local centres, and respecting the District's heritage*;
 - h) Provide information to further address Planning Priority 6 *Facilitate a range of housing opportunities in the right places to support and retain a diverse community* of the Waverley Local Strategic Planning Statement, taking into consideration the types of residential uses that would be feasible on the site, and ensure the discussions are coherent across different parts of the proposal;
 - i) Provide information to further address Priority H2 *Encourage a range of housing options to support and retain a diverse community* of the Waverley Local Housing Strategy, taking into consideration the type of residential uses that would be feasible on the site;
 - j) Provide information to justify the inconsistency with Section 9.1 Ministerial Direction – 6.1 Residential Zones; and
 - k) Update the project timeline in accordance with the timeframes stated in the Gateway determination.
2. The planning proposal should be made available for community consultation for a minimum of 20 working days.
 3. The planning proposal must be exhibited not more than two months from the date of the Gateway determination.
 4. The planning proposal must be reported to Council for a final recommendation not more than five months from the date of the Gateway determination.
 5. The timeframe for completing the LEP is to be seven months from the date of the Gateway determination.
 6. Given the nature of the proposal, Council should not be authorised to be the local plan-making authority.



22 February 2023

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1 March 2023

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