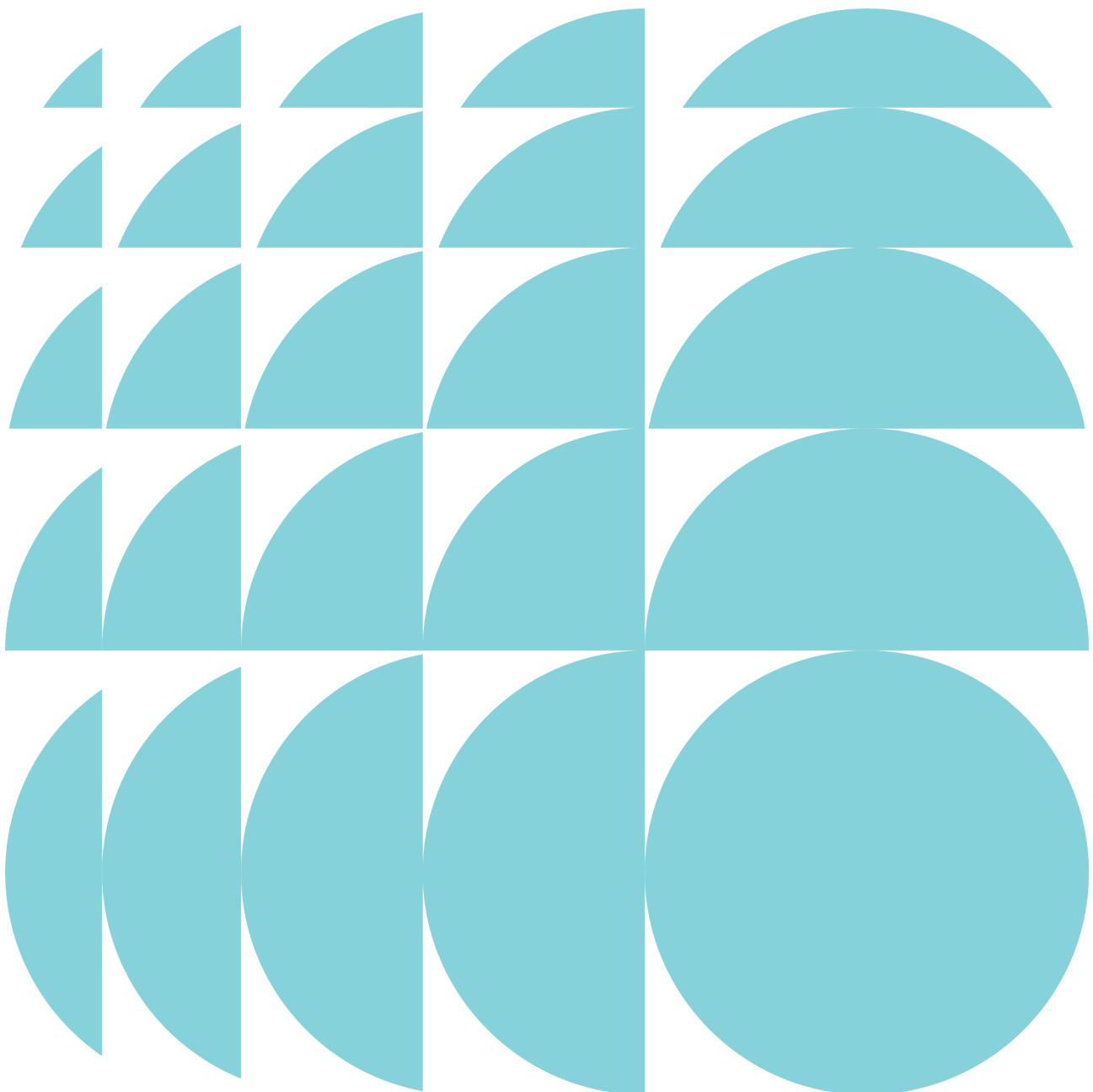


**Background Report - Request for Pre-Gateway Rezoning Review**

War Memorial Hospital - 125 Birrell Street,  
Waverley

Submitted to Department of Planning and  
Environment On behalf of Uniting

6 May 2019 | 15623



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16 04 2019

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## 1.0 Introduction

This report has been prepared by Ethos Urban on behalf of Uniting to accompany an amended planning proposal and Pre-Gateway rezoning review for the War Memorial Hospital at 125 Birrell Street, Waverley.

The planning proposal was submitted to Waverley Council on 4 July 2017 and is yet to be endorsed by Council. Accordingly, a Pre-Gateway rezoning review is requested on the fact that Council has failed to indicate its support 90 days after the planning proposal was lodged.

This report provides:

- A chronology of key milestones associated with the planning proposal to date (**Section 2.0**).
- A summary of amendments to the planning proposal since lodgement with Waverley Council (**Section to 3.0**).
- A response to the recommendation put forward by Council staff for endorsement of the planning proposal to Gateway (**Section 4.0**).
- Supplementary matters which have helped inform Uniting's decision to undertake a Pre-Gateway rezoning review (**Section 5.0**).

Overall, the planning proposal has been the subject of a 20-month council assessment. This assessment and final recommendation put forward by Council staff to progress the planning proposal to the Gateway, does not leave Uniting with a logical and flexible planning framework for the site and does not allow the vision for the site to be achieved.

This, combined with the following matters, has informed Uniting in its decision to request a Pre-Gateway rezoning review:

- An overly detailed and premature assessment of built form and design outcomes by Council staff, rather than a strategic merit assessment.
- A council assessment which has placed unreasonable focus on unsubstantiated concerns the site will be divested, which has undermined the objective assessment of the planning proposal and significant community consultation undertaken to date.
- The use of special use zoning to leverage a privately-owned site which is inconsistent to Council's zoning of equivalent facilities in the LGA.

## 2.0 Chronology

A summary of key milestones since first lodgement of the planning proposal is shown in **Table 1**.

**Table 1 - Planning proposal milestones to date**

Date	Milestone
4 July 2017	Planning proposal lodged with Waverley Council
17 August 2017	Council formal request for additional information issued to Uniting
8 September 2017	Initial meeting with Council staff
19 January 2018	Response to request for additional information submitted to Council
14 February 2018	Second meeting with Council staff
25 May 2018	Second response (amended planning proposal) for additional information submitted to Council
24 July 2018	Council staff and Councillors (closed) workshop
29 August 2018	Council staff (closed) design meeting
24 September 2018	Local Planning Panel meeting and advice
12 October 2018	Third meeting with Council staff
5 November 2018	Third response submitted to Council in response to Local Planning Panel and Council meeting
10 December 2018	3D model issued to Council staff
24 January 2019	Local Planning Panel final advice issued
1 March 2018	Planning proposal confirmed as agenda item on 5 <sup>th</sup> March Waverly Strategic Planning and Development Committee meeting
5 March 2019	Uniting issue submission to Councillors on Council staff recommendation
5 March 2019	Planning proposal considered and deferred at Waverly Strategic Planning and Development Committee
22 March 2019	Rezoning review requested by Uniting

It is noted that the planning proposal was requested to be deferred by Uniting at the 5 March Waverley Strategic Planning and Development (WSPDC) meeting. This was done to enable Councillors time to consider Uniting's response to the recommendation and report put forward by Council staff which was only made available to the public two business days before the meeting (refer to **Appendix J**).

### 3.0 Amendments to the Planning Proposal

#### 3.1 First Iteration of the Planning Proposal lodged with Council

The planning proposal was originally submitted to Council on 4 July 2017. It sought the following amendments to the WLEP 2012.

- Rezone the site from part SP2 Infrastructure (Health Service Facility) and part R3 Medium Density Residential to R3 Medium Density Residential (refer to **Figure 1**);
- Increase the maximum building height from part 9.5m and 12.5m to part 15m, 21m and 28m (refer to **Figure 2**);
- Increase the maximum permissible floor space ratio (FSR) from part 0.6:1 and 0.9:1 to 1.5:1 (refer to **Figure 3**); and
- An amendment to Schedule 1 to permit development for the purpose of business premises, food and drinks premises, function centre, retail premises and tourist and visitor accommodation.

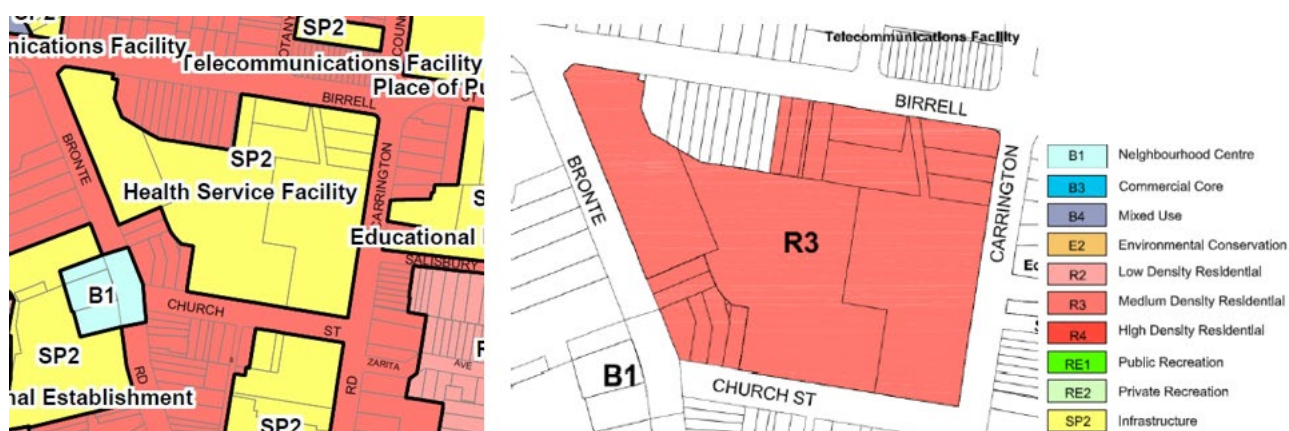


Figure 1 - Existing zoning (left) and proposed zoning under original iteration of the submitted planning proposal

Source: WLEP 2012 and Cox

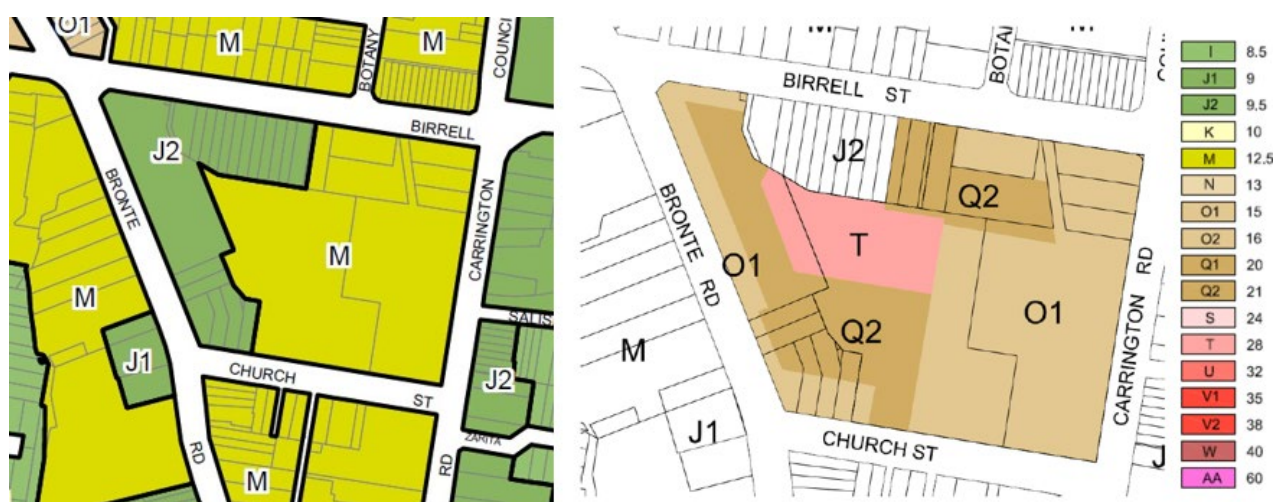
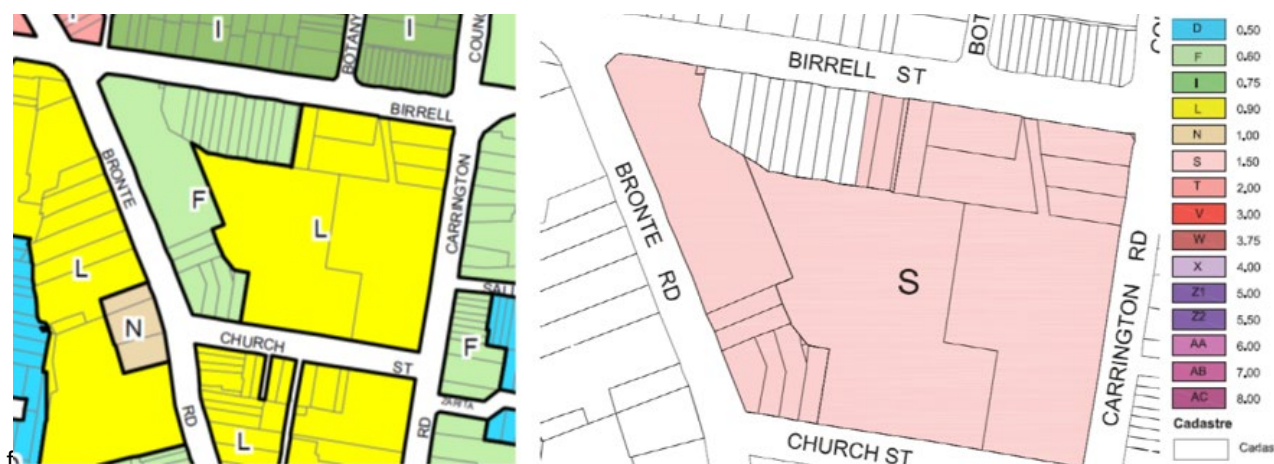


Figure 2 - Existing Height of Buildings (left) and proposed Height of Buildings under original iteration of the submitted planning proposal

Source: WLEP 2012 and Cox





**Figure 3 - Existing Floor Space Ratio (left) and proposed Floor Space Ratio under original iteration of the submitted planning proposal**

Source: WLEP 2012 and Cox

The initial zoning (R3 across the site) was proposed because:

- It was considered the most logical zoning for the site and captured the majority of land uses proposed for the site under the planning proposal;
- It sought to provide the site with a zone which is consistent with the existing zoning surrounding of the site; and
- It provided the community with clarity and transparency for the site's redevelopment and there was not direct raised concerns about the zoning proposed by the community.

The proposed FSR (1.5:1) was selected because:

- It provides an appropriate degree of flexibility for a range of options and layouts for the site;
- It would enable future development to be feasible to the point where the site can actually extend its role in providing social infrastructure to the Waverley community;
- Its reflects a realistic FSR for the site. Even if the site were to be developed under the illustrative Masterplan (as recommended by Council staff), it would require an FSR close to 1.5:1; and
- The community (following consultation prior to lodgement) raised no concern with an FSR of 1.5:1.

The initial heights proposed were selected because:

- They were derived from pre-lodgement studies which considered the heights of existing and adjoining development;
- They largely reflect the existing height intervals within the WLEP 2012; and
- They support a height typology considerate of key landscaped areas, pedestrian thoroughfares and heritage buildings of the site.

The ancillary uses proposed under Schedule 1 were initially selected because although not permissible under the R3 zone, they formed a suite of secondary uses capable of supporting the primary uses on the site, and support a more activated and holistic precinct.

They would support the day-to-day needs of residents and visitors and by aligning to the long-term vision for the site, would remove the need for further amendments to the WLEP 2012.

The initial iteration of the planning proposal was not supported by Council staff. Each following amendment and response to additional information (as detailed in the below sections) has sought to address the issues raised by Council staff in their assessment of the planning proposal.

### 3.2 Request for Additional Information 1

A formal Request for Additional Information (RFI) was issued by Council staff on 17 August 2017 (refer to **Appendix A**). Council staff identified several matters which required further clarification, following their initial assessment of the planning proposal.

A initial response to the RFI was prepared by Ethos Urban on behalf of Uniting and issued back to Council on 19 January 2018 (refer to **Appendix B**). A summary of comments and responses is shown **Table 2**.

**Table 2 - Council comments and response following first RFI**

Matter	Council Comment	Uniting Summarised Response
Inclusion of 119 Birrell Street in Planning Proposal	<ul style="list-style-type: none"> <li><i>We note that the planning proposal includes the property at 119 Birrell Street, Waverley.</i></li> <li><i>This address forms part of a semi-detached residence with 117 Birrell Street, which is not included in the planning proposal.</i></li> <li><i>Council officers would be unlikely to support the splitting of this semi-detached dwelling and recommend removing 119 Birrell Street from the planning proposal.</i></li> </ul>	Uniting is the owner of 119 Birrell Street and whilst it will continue to pursue the acquisition of 117 Birrell Street, it is of the view that 119 Birrell Street can be developed independent of 117 Birrell Street and as such, requests it remains part of the Planning Proposal.
Clarification on R3 zone	<ul style="list-style-type: none"> <li><i>The planning proposal seeks to change the SP2 zoning to be R3 zoning.</i></li> <li><i>This is the most contentious item of the planning proposal. Council retained the SP2 zone at this site and others across the LGA to protect community infrastructure.</i></li> <li><i>Despite the intentions of the current owner or future owners of the sites subject to the planning proposal, the zoning designation is Council's only lever to ensure that the site remains in – and potentially expands – its current role providing essential community infrastructure.</i></li> <li><i>An alternative option is that the zoning at this stage remain as SP2 with changes to the schedule of uses for the site to allow for all of the uses proposed.</i></li> <li><i>If the decision is to proceed with the R3 zone, please clarify the following: Why is the R3 zone the preferred approach? What can the R3 zone permit that cannot otherwise be provided with a change to the schedule of uses to the site that allow the proposed uses?</i></li> <li><i>Further justification of your preferred approach is necessary.</i></li> </ul>	The R3 Medium Density zone (R3 zone) is Uniting's preferred zoning option for the site. Uniting believes it can be demonstrated that the R3 zone is most suitable for the site, is reflective of best planning practice, is consistent with the Departmental Practice Notes, and supportable on merit.
Built-form impacts	<ul style="list-style-type: none"> <li><i>The initial urban design assessment is yet to be finalised, but our preliminary assessment raises questions about the appropriateness of the Q2 height of 21 metres along the street front of Birrell and Church Streets.</i></li> <li><i>The extension of the O1 height along these boundaries (as per Bronte Rd) might be more appropriate.</i></li> </ul>	The built form proposed is derived from a detailed design study which has considered heights of existing and adjoining development. Uniting welcomes the opportunity to discuss appropriate height controls with Council.
Affordable housing	<ul style="list-style-type: none"> <li><i>The planning proposal refers to the provision of affordable housing on site in the future. However, we note that there are no details of this land use in the section 4.4 'Outline Accommodation Study'.</i></li> <li><i>Please provide further details on these intentions in terms of the likely amount, ownership, management, tenants, tenure and any other relevant details.</i></li> <li><i>Council may request a Voluntary Planning Agreement or another relevant mechanism to lock-in these benefits.</i></li> </ul>	Uniting are committed to providing affordable housing on the site in accordance with relevant State and Council policies. Uniting are open to an agreement with Council at the appropriate time to lock in this community benefit.
Public benefit offer	<ul style="list-style-type: none"> <li><i>The concept plan provides a plaza to Bronte Road, opening up the site to the public.</i></li> <li><i>The concept plan also mentions that the facilities on-site could be used for community functions, services, uses and events.</i></li> <li><i>Additional details are required that identifies the means by which these public benefits will be secured.</i></li> <li><i>In our assessment Council will explore options to ensure that public benefits, such as the proposed plaza and community uses, are 'locked-in' for the community.</i></li> <li><i>This may include a Planning Agreement, Deed of Agreement or other appropriate mechanism.</i></li> </ul>	Uniting are committed to providing the community benefit envisioned for the site under the masterplan.
Commercial floorspace	<ul style="list-style-type: none"> <li><i>We note that 450 square metres of 'village shops' are proposed as a part of the proposed scheme. Please provide further details regarding:</i></li> </ul>	Uniting are open to discussion with Council to establish a retail Gross Floor Area cap to ensure the

Matter	Council Comment	Uniting Summarised Response
component	<ul style="list-style-type: none"> <li>– <i>The likely impacts of 450sqm of retail floorspace on the adjacent Bondi Junction and Charing Cross retail centres.</i></li> <li>– <i>How would any impact on neighbouring centres be mitigated?</i></li> <li>– <i>Advice on whether a retail floor space cap might be a potential mechanism to manage the intensity of that use and reduce any potential impacts on surrounding retail.</i></li> </ul>	existing retail patterns of Bondi Junction and Charing Cross are not adversely affected.

### 3.3 First Amendment to the Original Iteration of the Planning Proposal

The first amendment to the planning proposal was submitted to Council on 25 May 2018 (refer to **Appendix C**). It responded to the issues raised by Council staff during a meeting held on 14 February 2018. It also amended the zoning option for the site, in line with the preferred zoning of Council staff (as stipulated in the Council RFI letter dated 17 August 2017).

#### Key issues

The issues raised by Council staff prior to, and on 14 February 2018 meeting are summarised below. Email correspondence from Council staff, summarising these issues are provided at **Appendix D** and **Appendix E**.

- **Zoning**, including the retention of the existing zoning to secure the existing and proposed uses for the site.
- **Heritage**, including built form impacts on existing heritage items and surrounding heritage streetscape.
- **Residential amenity**, including visual intrusion.
- **FSR**, including a recommended FSR of 1.2:1 across the site based on the illustrative masterplan.
- **Transport**, including reducing the number of crossovers under the illustrative masterplan.
- **Views**, including the retention of views to the site's Norfolk Pines from Centennial and Queens Park.
- **Scale**, to ensure heights do not overwhelm the landmark qualities of the Edina (Vickery) tower and Norfolk Island Pines within the site.

#### Summary of amendments

From the above, Uniting proposed the following amendments to the planning proposal:

- The inclusion of the Birrell Street lots within the land that is subject to this Planning Proposal (refer to **Figure 4**);
- Zoning and land use amendments, including:
  - The retention of the existing zoning on the site, inline with Council's preferred zoning option for the site (part SP2 Infrastructure and part R3); and
  - Placing each proposed use for the site under Schedule 1 (as requested by Council staff in their letter dated 17 August 2017).
- Revised heights across the site (refer to **Figure 5** and **Figure 6**), including:
  - Reduced maximum building height at the Church Street frontage from 21m to 17m;
  - Removal of the 21m maximum height zone on Birrell Street to give a consistent 15m height along the length of Birrell Street; and
  - Reduce the area of the 28m-height zone.





Figure 4 - Birrell Street lots (identified in yellow hatching) proposed to be included in the land subject to the planning proposal (bordered in red)  
Source: Ethos Urban



Figure 5 - Height envelopes lodged with the initial iteration of the planning proposal  
Source: Cox

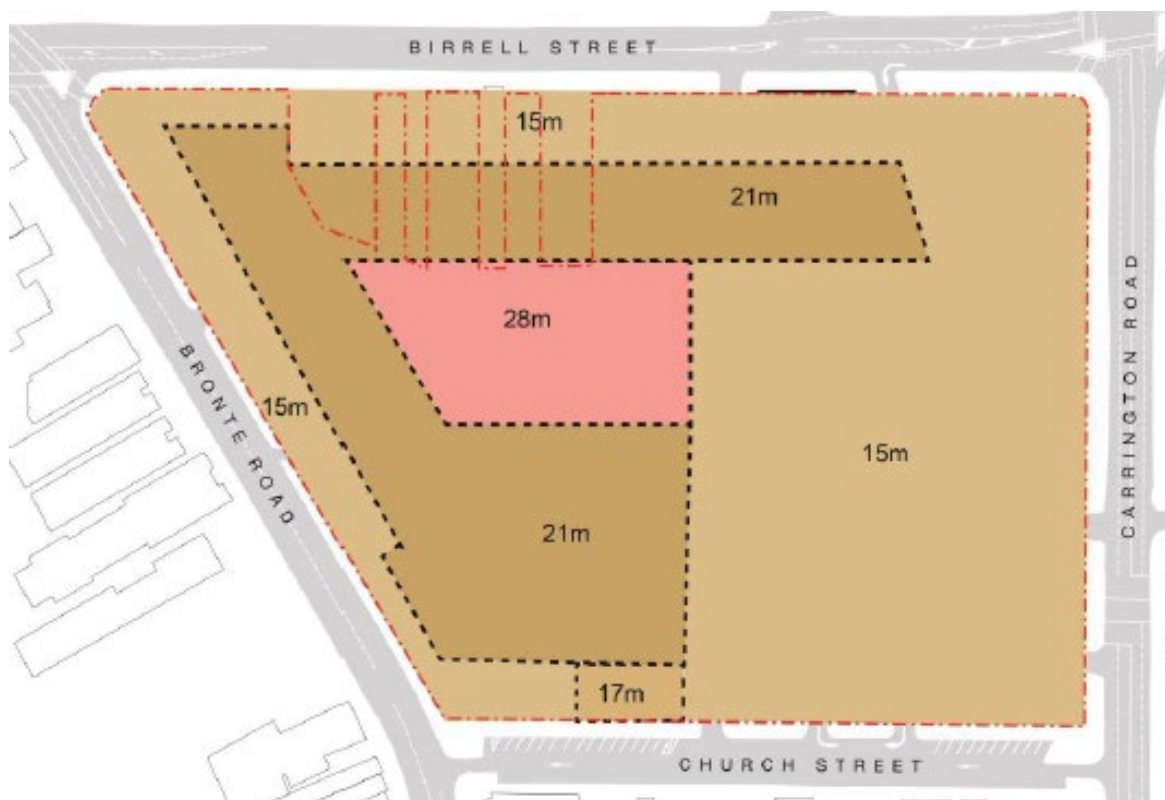


Figure 6 - Revised height envelopes proposed under the first amendment to the planning proposal

Source: Cox

The lots along Birrell Street were not part of the original iteration of the planning proposal. They were later included however, as the suggested approach by Council staff during the meeting (dated 14 February 2018).

Uniting is the predominant land owner of these lots along Birrell Street. Since being requested to obtain land owners consent (even though it is not legally required), Uniting has received the written consent of two of the three remaining lots still not in their ownership. Uniting has also had discussions with the owner of the remaining lot along Birrell Street. However, as Uniting understand due to unforeseen circumstances, the owner is not currently able to provide land owners consent

As detailed in **Section 3.1**, the original iteration of the planning proposal sought the rezoning of the site in its entirety to R3. This was chosen because it captured the majority of land uses proposed for the site and conformed to the existing zoning around the site.

The letter issued by Council staff (dated 17 August 2017) indicated that their preferred position was to retain the existing SP2 zoning on the site. This was based on the following position (noted in the letter):

*'Despite the intentions of the current owner or future owners of the sites subject to the planning proposal, the zoning designation is Council's only lever to ensure that the site remains in – and potentially expands – its current role providing essential community infrastructure.'*

Land use zoning is not intended to act as leverage over a site, especially one which is privately owned, and one in which other non-for-profit providers similar to Uniting are not subject to.

The same letter also stated:

*'An alternative option is that the zoning at this stage remain as SP2 with changes to the schedule of uses for the site to allow for **all** of the uses proposed.... What can the R3 zone permit that cannot otherwise be provided with a change to the schedule of uses to the site that allow the proposed uses?'*

This formed the rationale of the zoning and Schedule 1 amendment put forward by Uniting.

The retention of the existing SP2 zone did not reflect the initial position of Uniting. Uniting were however willing to concede and compromise on zoning on the basis of a particular outcome (i.e. being able retain the proposed uses under Schedule 1) stipulated by Council staff.

Council staff later withdrew their support for the alternative uses (which they themselves recommended in writing) after Uniting amended the planning proposal to satisfy Council staff.

### **3.4 Second Amendment to Original Iteration of the Planning Proposal**

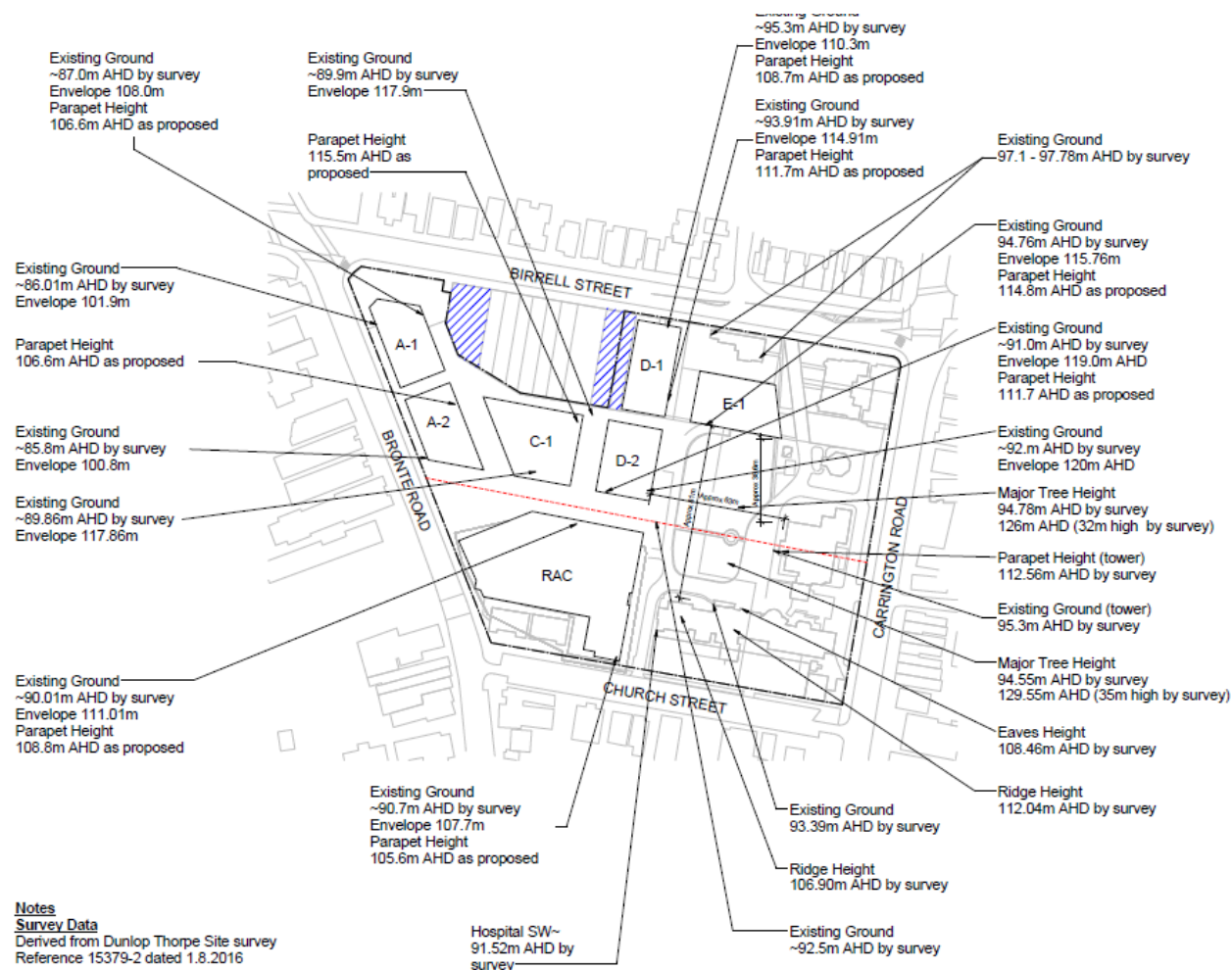
The second amendment to the planning proposal responded to another meeting held with Council staff (on 12 October 2018) and the advice of the LPP. The detailed response issued to Council is provided at **Appendix F**.

The LPP minutes and advice is provided at **Appendix G** and **Appendix H**.

In summary, the following amendments and additional information was provided to Council staff. The most pertinent are elaborated further below.

- Further justification on the proposed (FSR) with GFA metrics;
- The height of each proposed building under the illustrative masterplan relative to AHD information of the buildings and ground level (refer to **Figure 7**);
- A revised zoning alternative for the site, to include:
  - Retention of the existing zoning across the site;
  - Redistribution of existing R3 zoned land across the site into a single and consolidated portion of developable land; and
  - Introduction of a site-specific zone boundary provision.
- Preferred suite of additional permitted uses and associated caps for the site; and
- An update in relation to the lot acquisition along Birrell Street with accompanying letter issued to land owners.





**Figure 7 - Detailed assessment of existing and heights under the illustrative masterplan**

Source: Cox

## Further justification on the proposed FSR

The additional analysis undertaken by Cox, demonstrated:

- Provided the envelopes under the illustrative masterplan were to be developed with the heights proposed by Uniting, they would generate an FSR of 1.47:1.
- An FSR of 1.58:1 is achieved if the soon to be acquired lots along Birrell Street were included within the site area.
- Under the preferred heights of Council, the envelopes if developed, would generate an FSR closer to 1.5:1 (1.34:1 and 1.46:1) as opposed to an FSR closer to 1.2:1.

## Revised zoning alternative

The revised zoning was put forward by Uniting as it was raised as a possible zoning option for the site by the an LPP member during the LPP meeting.

The zoning option would retain the existing zoning on the site (as desired by Council staff) yet consolidate (not increase) the existing R3 zoned land into a more functional and developable portion of land (refer to **Figure 8**). It was not supported by Council staff even after being recommended as a suitable zoning option by LPP.

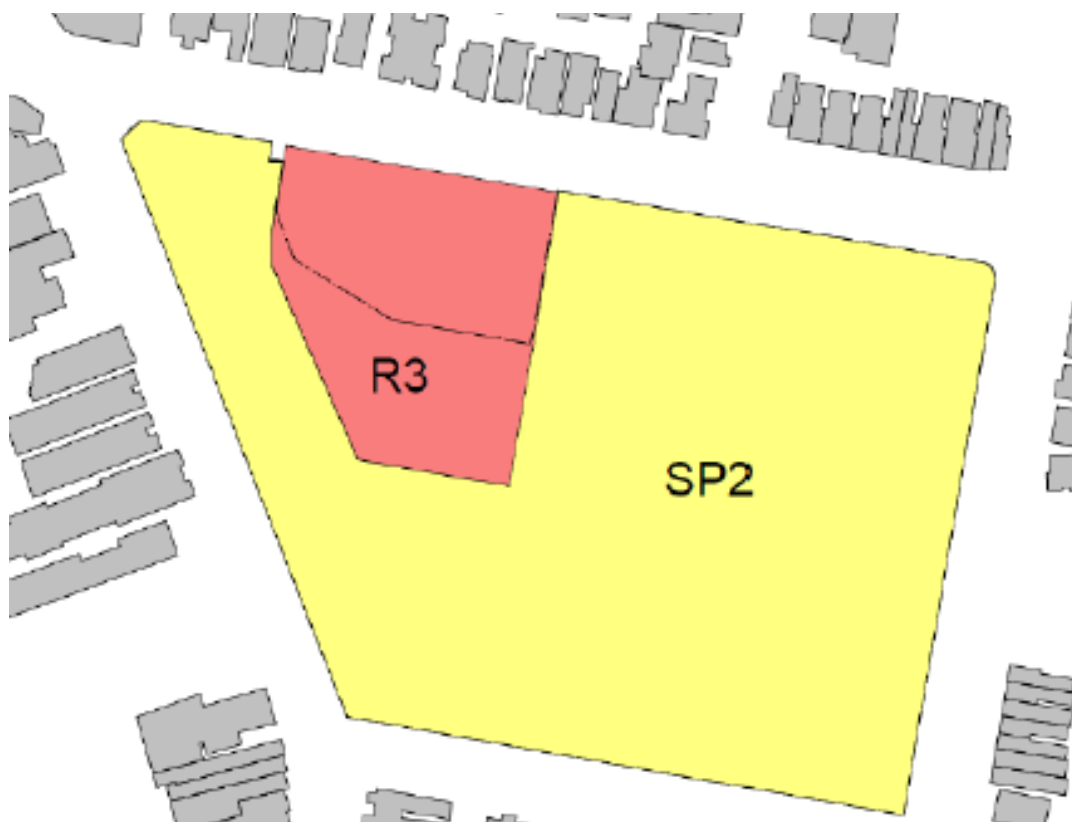
The introduction of the site-specific zone boundary was based on Clause 5.3 of the Standard Instrument (development near zone boundaries). It was put forward by Uniting in order to mitigate any permissibility issues which could arise from the retention of two zones across the site, and enable a logical built form outcome to be achieved (if required) with minor encroachment into the surrounding SP2 zone (the intended boundary is shown in

**Figure 9).** It only sought to provide a more feasible and workable portion of R3 land, and better utilise the existing zoning on the site, in line with the referred zoning option of Council staff.

Indicative drafting of a potential clause was put to, and rejected by Council staff. The site-specific zone boundary clause was drafted to ensure it would not enable:

- Additional gross floor area for residential flat buildings greater than that permitted in the R3 zone; and
- Not increase the existing quantum of R3 zoned land already on the site.

This was deliberately done to give Council staff certainty that such a clause could not be exploited to facilitate additional development of residential flat buildings.



**Figure 8 - Proposed zoning option with existing R3 zoned land redistributed across the site**

Source: Cox





**Figure 9 - Intent proposed of site-specific zone boundary**

Source: Cox and Ethos Urban

### **Additional uses under Schedule 1**

The overall number of additional uses Council staff have been willing to support under schedule 1 has continually reduced since they recommended it would be more appropriate to retain the current zoning on the site and place all the uses proposed under Schedule 1.

In addition to conceding on many of the uses, Uniting recommended a capping mechanism, as Council staff also recommended in writing (refer to **Table 2**) and agreed, during the meetings held, would provide an appropriate solution for the site.

Uniting demonstrated to Council staff that the proposed floor space caps would achieve a principle outcome of the vision of the site which is to activate the precinct and integrate with the surrounding community. This was done in light of the findings of the community consultation done prior to lodgement of the planning proposal.

They would also control the intensity of the additional permitted uses and ensure they remain subservient to the dominant uses proposed without adversely impacting existing patterns of retail, business and traffic, which was the concern of Council staff.

Council staff agreed with and appeared satisfied with the abovementioned rationale. They did not however support the caps or all of the (already heavily reduced) number of additional uses proposed by Uniting in their recommendation to the WSPDC on 5 March 2019.

## 4.0 Waverley Strategic Planning and Development Committee

Following the second formal amendment to the planning proposal, Council staff put forward their recommended version of the planning proposal for Council endorsement and Gateway progression at the 5 March WSPDC meeting.

The assessment report prepared by Council staff in support of the recommendation is provided at **Appendix I**. Uniting issued a response to the recommendation put forward by Council staff (refer to **Appendix J**) for consideration by the Councillors. Uniting did not support the recommendation as it is not considered to provide a flexible and logical planning framework for the site.

As detailed in **Section 2.0**, at the meeting, Uniting requested the matter to be deferred. This was done to enable Councillors time to consider Uniting's response to the recommendation and report put forward by Council staff, which was only made available to the public two business days before the meeting.

In the meeting however, it was resolved to defer the matter for two months, and not the next scheduled SPDC meeting.

### 4.1 Response to Council Staff Recommendation

The recommendation put forward by Council staff has been considered overly restrictive. It does not realise the vision for the site. The rationale for why each relevant recommendation put forward by Council staff is not supported by Uniting is detailed below.

#### ***(a) That the Planning Proposal only apply to the lots as identified in the original Planning Proposal submitted July 2017***

Land owners consent is not required for land to be included in a planning proposal.

As detailed above, the lots along Birrell Street were not part of the original iteration of the planning proposal. They were later included however, as the suggested approach by Council staff.

Uniting is the predominant land owner of these lots along Birrell Street. Since being requested to obtain land owners from Council staff consent, Uniting has received the written consent of two of the three remaining lots still not in their ownership.

Uniting have been open with Council staff in their intentions to acquire each of the lots along Birrell Street. Council staff have known this and have received Uniting's acquisition plan and a copy of the letters provided to the relevant land owners seeking their consent in writing. Council staff also agreed for themselves to seek to consent of the owners.

The LPP also instructed Council *to meet with the owners of the properties not owned by the applicant having a frontage to Birrell Street within the R3 Zone to determine whether those sites should be included in the planning proposal.*

Uniting has provided the details of the owners of the properties along Birrell Street as requested by Council staff, but it is unclear as to whether these meetings with the landowners were undertaken by Council.

Overall, the inclusion of these lots within the planning proposal is logical. All but one remaining land owner (due to unforeseen circumstances) is yet to provide their consent in writing **even though there is no legal requirement for this to be done.**

Including the lots will remove the need for further amendments to the LEP in the future. The land use zoning of these lots would not change from their inclusion within the planning proposal as they would retain their existing R3 zoning. They would be provided uplift in terms of height and FSR which would positively value these lots.

**(b) No alteration to the Land Zoning Map**

The preference of Council staff was to retain the SP2 zone. Following the meeting with the LPP and at their suggestion, Uniting proposed an alternative which redistributed its existing quantum of R3 zoned land across the site, to provide a more developable and logical portion of R3 zoned land (refer to **Figure 8**).

This was chosen as it consolidates the existing R3 zoning on the site to provide flexibility to facilitate a range of accommodation services in line with Uniting's vision for the site. It is not unreasonable to seek to better utilise the zoning in which the site already has and is entitled to. The schedule of uses was also amended to apply to each zone and mitigate any issues of permissibility which may arise from split zoning.

It was clearly emphasised to Council staff that the zoning alternative does not seek to increase the quantum of R3 zoned land on the site. Council staff did not support the alternative because an *altered zoning pattern provides a larger area of useable R3 zone which permits Residential Flat Buildings. An RFB on the site services a 'highest and best use' from a financial perspective and the current location of the R3 zone to the corner of Bronte Road and Church Street contains four heritage items which limit the amount of redevelopment available to these lots, and accordingly is unlikely to attract a significant built form that would be supported by Council...*(refer to page 77 of the SPDC Agenda).

The above summaries the view Council staff have taken in their assessment of this planning proposal in addressing their misconceived (and false) idea that the site will be divested, and their attempt to restrict development on the site.

It should also be noted that the heritage argument raised by Council staff is unsustainable. Heritage items are not a prohibition to development and heritage items can be demolished with consent. In other LGA's (such as the City of Sydney), the full value of development potential of heritage items is recognised through floor space trading mechanism.

**(c) No site-specific zone boundary flexibility clause**

Like detailed in **Section 3.4**, the proposed site-specific zone boundary clause was suggested to support the land use zoning alternative proposed. It sought to:

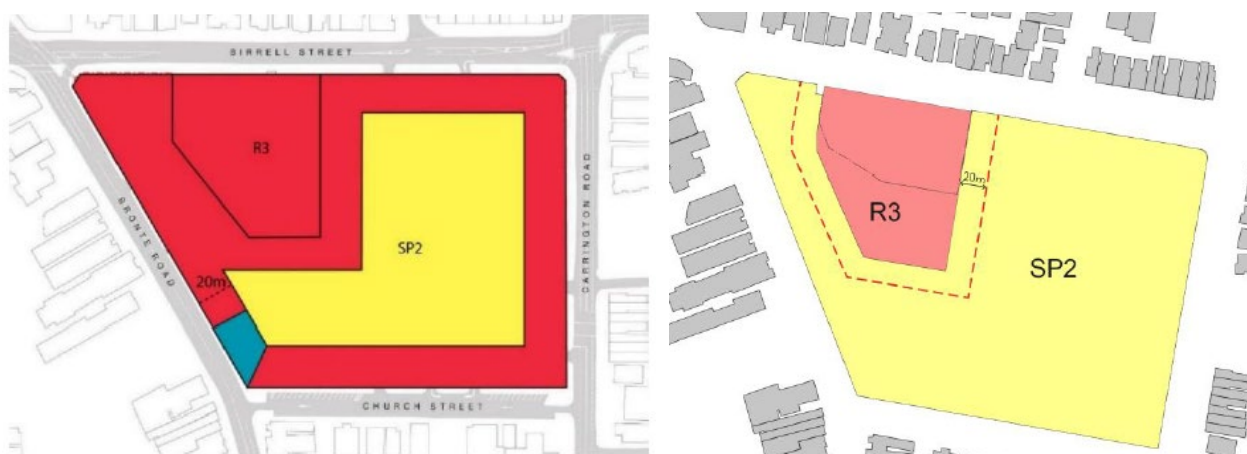
- mitigate any issues of permissibility which may arise from split zoning across the site; and
- provide a degree of flexibility in the case a more appropriate and logical built form outcome can be achieved with minor encroachment into the surrounding SP2 zone.

The proposed site-specific zone boundary clause did not seek to permit additional GFA for residential flat buildings greater than that permitted in the R3 zone. Again, this was done to address Council staffs apparent fear that the site would be overdeveloped or divested for residential purposes.

Council staff have provided a very literal interpretation of the potential clause and misrepresented the clause in their assessment report (refer to **Figure 10**) to reflect a 'land grab' to increase the amount of R3 zoned land across the site.

The intent of the draft provision was to relate only to R3 zoned land on the site (refer to **Figure 10**). The draft provision does not seek to use the R3 zoned land across the site's boundaries, outside of the site. Clause (1) of the draft provision provided to Council staff stated that such a provision was to apply to land between two zones on land identified as the War Memorial Hospital, not outside the site.

In addition, any logical development could not be provided within the long and narrow R3 portion of zoned land along Church Street, Carrington Road and Birrell Street without encroachment in the SP2 zone. Even then, issues of permissibility, in which Council staff to date have failed to recognise and provide any meaningful solution, would become an issue.



**Figure 10 - Council staff's incorrect interpretation of proposed site-specific zone boundary clause (left) and intended outcome (right)**

Source: Council Assessment Report (Pg 93) to WSPDC / Ethos Urban / Cox

**(d) The following Additional Permitted Uses only to apply across the site as follows:**

- i. Seniors housing**
- ii. Community facilities**
- iii. Centre-based child care facility**

Seniors housing, community facilities and centre-based childcare centres permitted as additional uses across the site are supported by Uniting.

Retail premises, business premises and hotel and motel accommodation were proposed to be capped in order to satisfy the concerns of Council staff. It is noted that Council staff raised a capping mechanism as a potential option for the site (refer to **Section 3.2**).

The cap was deliberately proposed to limit these uses to a scale which remains subservient to the primary uses of the site while also negotiating an appropriate outcome for the site and Uniting's intended service offering.

These uses are critical in activating and integrating the site and its residents with the community (and vice versa) and not creating a gated community.

After gaining in-principle support for the proposed caps, they were, as the recommendation indicates, not supported by Council staff. These additional uses are deliberately limited to support only the day-to-day needs of residents, activate the precinct and attract the community (in a controlled manner).

Council staff prefer to retain the site for its primary uses only. Uniting intends to 'open up' the site to the community for their use and engagement. This is considered a superior planning outcome.

Uniting also proposed the permissibility of serviced apartments and function centre under Schedule 1 across the site provided it could be demonstrated they are ancillary to and associated with the existing health services facility. These uses were deliberately chosen to support the broader connected vision for the site and provide appropriate accommodation for visitors of residents. Their inclusion within the planning proposal is logical and aligns to intended outcomes for the site.

These additional uses also reemphasise the need for a mechanism like the site-specific zone boundary proposed by Uniting (as mentioned above). The mechanism would provide a clear approval pathway and remove the ambiguity during DA assessment in the case such uses were to straddle different zones across the same site.

***(f) Increase the maximum permissible height from 9.5m and 12.5m, to 15m and 21m only***

Uniting has already conceded heights across the site in light of the concerns of Council staff and undertaken significant additional assessment. It considers the heights proposed acceptable.

The maximum height at the Church Street frontage has been reduced from 21m to 17m. The 21m height limit at the Birrell Street front was removed, to provide a consistent 15m height along the entire Birrell Street, and the 28m height envelope was reduced in size.

***(g) Increase the maximum permissible floor space ratio (FSR) from 0.6:1 and 0.9:1, to 1.2:1.***

The recommended FSR of 1.2:1 by Council staff has been based on an illustrative masterplan submitted with the planning proposal. It was intended to be illustrative only, intended to inform one potential built form outcome under the planning proposal.

It does not act as the primary tool to determine the appropriate FSR for the site. Notwithstanding, the analysis undertaken by Cox demonstrates that the illustrative masterplan does not even reflect an FSR of 1.2:1.

The FSR proposed for the site intends to provide flexibility to deliver the vision for the site and various options and layouts for the site.

***(h) New site-specific provisions to include:***

***Maximum site coverage to ensure open space provision.***

***i. Maximum site coverage to ensure open space provision.***

***ii. Minimum deep soil and landscaped area to ensure significant trees, biodiversity corridors, and heritage landscaped areas are protected.***

***iii. Include the site on the Key Sites Map and apply clause 6.9 Design Excellence.***

Maximum site-coverage, landscaping and deep soil provisions are not provisions appropriate for inclusion in an LEP. These are DCP controls, intended to support the finer-grain design and development of a site. Their potential inclusion with the LEP does not have merit and does not conform to standard practice. The site also is not identified to contain terrestrial biodiversity under the LEP.

These matters are not considered relevant to the strategic merit test for Gateway Determination.

## 5.0 Supplementary Matters for Consideration

The preceding sections recount the 20-month assessment by Council staff. The amendments made to the planning proposal since July 2017 have reflected a genuine attempt to address the concerns raised by Council staff and the Waverley Local Planning Panel (LPP).

The recommendation put forward by Council staff to progress the planning proposal to the Gateway still does not leave Uniting with a logical and flexible planning framework for the site and does not allow the vision for the site to be achieved.

This, combined with the following matters identified during the assessment process, has helped inform Uniting in its decision to request a Pre-Gateway rezoning review.

- An overly detailed and premature assessment of built form and design outcomes by Council staff, rather than strategic merit assessment (refer to **Section 5.1**).
- A council assessment which has placed unreasonable focus on unsubstantiated concerns the site will be divested, which has undermined the objective assessment of the planning proposal (refer to **Section 5.2**).
- The use of special use zoning to leverage a privately-owned site which is inconsistent to Council's zoning of equivalent facilities in the LGA (refer to **Section 5.3**).
- Uniting does not support the recommendation put forward by Council staff to progress the planning proposal to the Gateway (refer to **Section 4.1**).

### 5.1 An overly detailed and premature assessment of built form and design outcomes by Council staff, rather than strategic merit assessment

The 20-month long assessment undertaken by Council staff has been overly micromanaged, with a strong and premature focus on potential built form and design outcomes. This has been based on the illustrative masterplan submitted with the planning proposal.

The illustrative masterplan was intended to demonstrate to Council staff one potential built form outcome capable for the site under the statutory provisions proposed. It does not reflect the definitive outcome for the site.

The level of detailed assessment given to the planning proposal by Council staff is more appropriate to DA assessment and DCP controls, and is overwhelmingly in excess of the level of assessment needed for the strategic merit test of a planning proposal.

The level of detailed assessment has gone to the extent of:

- Preparation of detailed height studies of each building under the illustrative masterplan relative to existing buildings and Norfolk Pines on the site, and surrounding development;
- Preparation of view analysis of buildings under the illustrative masterplan; and
- Preparation of detailed floor space testing, over difference efficiencies, of each building under the illustrative masterplan.

Council staff have determined what they believe to be an appropriate FSR for the site (1.2:1) by determining the FSR of the illustrative masterplan. Like reiterated above, the masterplan was intended to be illustrative. It should not be relied upon as the principle tool to determine the appropriate FSR for the site.

It was submitted to provide one potential option for the site to illustrate one potential built form outcome. It is disappointing that Council staff have assessed this illustrative masterplan as a definitive and final development outcome for the site.

As has been demonstrated with the additional information provided to Council staff (refer to **Appendix F**), even if the envelopes in the illustrative masterplan were to be developed with the heights proposed by Uniting (at 85% efficiency), they would generate an FSR closer to 1.47:1 or 1.58:1 if the lots along Birrell Street were to be included.



An FSR of 1.5:1 aims to provide an appropriate degree of flexibility for a range of options and layouts for the site which can differ from the illustrative masterplan provided.

It is reiterated that if the site were to have an FSR of 1.5:1, it would contribute to community uses and provide significant community benefit. The willingness of Uniting to concede on its initial proposed zoning and retain the SP2 zone on the site will secure this community benefit and ensure it is provided. The SP2 zone will enable uses which will provide a recognised community benefit and can restrict other uses incapable of providing the same benefit.

On this basis, the proposed FSR for the site (1.5:1) was not considered unreasonable so as to ensure that the community uses which are proposed are feasible and can actually be realised to a point where the site can significantly extend its role in providing community benefit and social infrastructure to the Waverley LGA.

The need to recommend deep soil, site-coverage and landscaping provisions within the LEP reiterates the premature focus of detailed design issues, and overly stringent assessment of the planning proposal. These are clearly and unambiguously DCP provisions intended to support finer-grain design outcomes. They have no place in the LEP.

Council staff also recommend each of their recommended controls be incentive provisions capable of being achieved only if public benefit such as road upgrades, open space, minimum landscaped areas, 5-star green star rated buildings and a dedicated proportion of affordable housing is provided.

This represents the restrictive and overly stringent mechanisms Council staff have used to constrain the site. Many of these issues can be and should be dealt with during detailed DA assessment, not at the planning proposal stage.

## **5.2 A council assessment which has placed unreasonable focus on unsubstantiated concerns the site will be divested**

Council staff have made it clear in their assessment report that they believe the planning proposal will support the attractive divestment of the site.

Council staff have made this evident throughout the assessment process, which is based on their experience with other planning proposals within the LGA, and throughout their assessment report prepared in support of their recommendation to the WSPDC.

Council staff also appear to pre-empt the community concern which undermines the significant and positive community consultation undertaken prior to lodgement.

This has influenced and undermined the objective assessment of the planning proposal. The proposal should be assessed on its own merit, rather than through the lens of restricting development (especially residential flat buildings) on the site in the presumption it will be divested.

This planning proposal also should not be unduly influenced on Council's inability to secure the intended benefit and outcomes it intended for other previous planning proposals within the LGA.

Uniting has been providing services to the Waverley LGA for over 100 years. It has a long-standing commitment to the site and has a budget and funding set aside to ensure the vision for the site is achieved. There are no plans to divest the site and is ready to invest in the Waverley community.

The willingness of Uniting to accept retention of the SP2 zone on the majority of the site demonstrates their commitment to the site even though the SP2 zone does not provide a highest and best use from a market perspective.

Further, during the assessment of the planning proposal, Uniting have stated (in January 2019) that they are open to a public benefit offer or agreement with Council to 'lock-in' the substantial public benefit outlined in the planning proposal.

### **5.3 The use of special use zoning to leverage a privately-owned site which is inconsistent to Council's zoning of equivalent facilities in the LGA.**

Council staff have consistently advised Uniting that they require the retention of the SP2 zone because it is their only lever to retain community infrastructure and retain the site for its current use. However, Council's preconceived (and false) belief that the site will be divested does not justify Council's attempt to use the SP2 zone to leverage privately-owned land for community purposes.

Council staff (in their assessment report to the WSPDC also note that any reduction to the extent and effectiveness of the SP2 zone would fail to meet the need for seniors housing across the LGA, and that this need is critical and there are limited sites to fulfil this need.

From the above, the it is noted that:

1. There are no other providers similar to Uniting which are subject to a special use zone within the Waverley LGA.
2. The SP2 zone does not most appropriately reflect the primary purpose of the site. This is because Seniors Housing (unless it can be demonstrated to be incidental or ancillary to a Health Service Facility) is not permissible with consent in the SP2. Council staff are essentially relying on Schedule 1 to make the primary purpose of the site permissible.



## 6.0 Conclusion

This report has detailed the background and rationale which has helped to inform Uniting in its decision to undertake a Pre-Gateway rezoning review for the active planning proposal associated with the War Memorial Hospital at 125 Birrell Street, Waverley.

The planning proposal has been the subject of a 20-month long assessment period with Council staff and therefore, this rezoning review is requested on the fact that Council has failed to indicate its support 90 days after the planning proposal was lodged.

The assessment undertaken by Council staff seeks to use the special use zone to limit and leverage a privately-owned site. This has not left Uniting without a logical planning framework for the site which significantly inhibits their ability to deliver services and meet community needs, and realise the vision for the site overall.

The Council assessment has placed an unreasonable focus on unsubstantiated concerns the site will be divested, which has undermined the objective assessment of the planning proposal. The assessment by Council staff has also included an overly premature and detailed assessment of potential built form and design outcomes for the site, rather than focusing on the strategic merit of the proposal.

For these reasons, a Pre-Gateway review is requested.