

REPORT
PD/5.3/21.03

Subject: Planning Proposal - 439-445 Old South Head Road and 1 The Avenue, Rose Bay - Pre-Gateway Determination Assessment

TRIM No: PP-3/2020

Author: Patrick Connor, Strategic Planner

Director: Tony Pavlovic, Director, Planning, Environment and Regulatory Services

RECOMMENDATION:

That Council:

1. Not support the planning proposal for 439–445 Old South Head Road and 1 The Avenue, Rose Bay, to proceed to Gateway Determination, as the proposal lacks strategic and site-specific merit, and the proposed 25 m height and 2.5:1 floor space ratio (FSR) would:
 - (a) Be out of scale with the surrounding streetscape of Old South Head Road and the prevailing medium-density scale of surrounding development set by the existing 12.5 m height and 0.9:1 FSR development standards in the Waverley Local Environment Plan.
 - (b) Adversely impact the significance of the heritage item located on 443–445 Old South Head Road as it would grossly outsize it, thereby disrupting its setting and character.
 - (c) Reduce residential amenity for dwellings to the south with additional overshadowing from the excessive building bulk possible under the proposed amendments.
2. Notes that the Waverley Local Planning Panel unanimously recommended that the planning proposal not proceed to Gateway Determination, as the proposal lacks site-specific merit for the reasons outlined in the attachment to the report.

1. Executive Summary

Council has received a proponent-led planning proposal for 439-445 Old South Head Road and 1 The Avenue, Rose Bay (the Proposal). The Proposal is to increase the FSR on the subject site from 0.9:1 to 2.5:1 and the maximum permissible height from 12.5 m to 25 m. These proposed development standards more than double the existing controls and are considered to set a poor precedent for the area. The proposed controls are similar to those in Bondi Junction and should not be considered for this medium density residential area.

The Proposal seeks to maintain and restore the existing heritage item at 443–445 Old South Head Road as part of any redevelopment. The Proponent has outlined that they will provide 10% of the residential component of any development of the site for affordable housing through a voluntary planning proposal. The proposal does not implement any Planning Priorities or Actions of the Waverley Local Strategic Planning Statement, or any actions or recommendations of any other strategy adopted by Council. Accordingly, the proposal does not have strategic merit.

The Proposal is accompanied by a concept scheme that seeks to provide a mixed-use development with retail and neighbourhood shops, residential apartments above and a public space equating to 15% of the site area. Under the Standard Instrument LEP definitions, this typology of development would constitute shop-top housing, which is a prohibited use in the R3 Zone. The R3 Zone also does not permit commercial premises, which are also proposed. Effectively what would be permissible on the site is a residential development, with a separate neighbourhood shop in the heritage building. Regardless of these inconsistencies, an assessment of a planning proposal must assess the changes to the development standards and not the proposed concept scheme.

The proposed scheme is grossly out of context with the surrounding area as both the proposed height and FSR are more than double the current development standards. The development would adversely impact the surrounding residential amenity, as the residential flat buildings to the south of the site would be overshadowed, decreasing the residents' quality of life and decreasing the value of the buildings. Without the retail/residential mixed-use component, the public space will only service the residents of the building.

The proposed height and FSR of the development will adversely impact the visual amenity of the heritage item as a compliant development would exceed the height of the building by 17m. Having such a vast difference in size in the heritage building's curtilage will detract from the visual amenity of the heritage item adversely impacting its significance. This erosion of the significance of the item may jeopardise the future of the heritage building by increasing the development pressure on the item. Accordingly, the proposal does not have site-specific merit.

A redevelopment under the existing controls would result in a development that is in keeping with the built form context of the surrounding area and would not adversely impact on the amenity of the surrounding residential buildings.

Table 1. Proposed changes to Waverley LEP.

WLEP2012 Provision	Existing Control	Proposal
Zone	R3 Medium Density Residential	R3 Medium Density Residential
FSR	0.9:1	2.5:1
Height	12.5m	25m
Heritage	443-445 Old South Head Road	Maintain
	Existing Control	Proposal
Public space	NIL	15%

2. Introduction/Background

Affected land

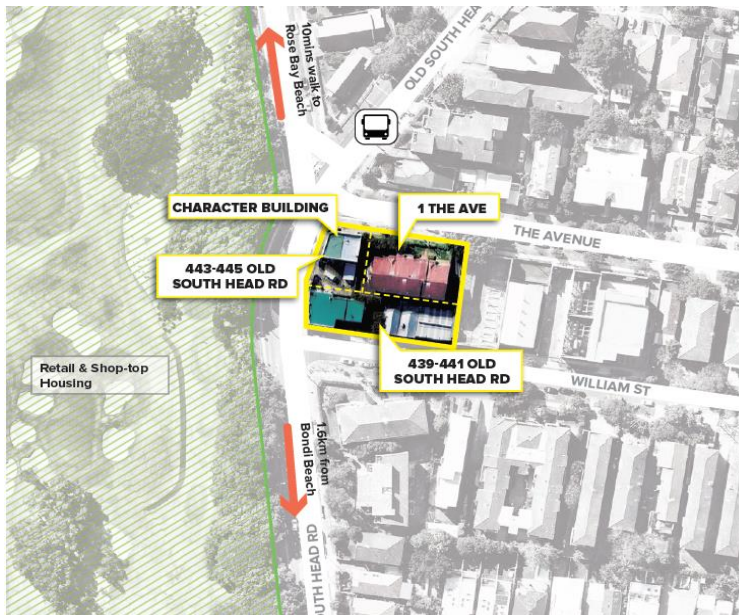


Figure 1. Site of the planning proposal: 439–445 Old South Head Road and 1 The Avenue, Rose Bay.
The Planning Proposal is located on the following lots:

- 439 – 441 Old South Head Road (Martial Arts Studio and Mechanic) – Lot 6 DP 4346 – 553 m.
- 443 – 445 Old South Head Road (Heritage Bakery) – Lot 1 DP 857668 – 294 m2
- 1 The Avenue (Residential Flat Building) – SP55776 – 836 m2

Figure 1 identifies the lots involved in the PP.

Existing development on the site

Each of the lots have separate existing uses.

439-441 Old South Head Road is currently used as a beauty therapy retail store and adjoining this to the east is a mechanic. The south-west corner of the site at the intersection of Old South Head Road and William Street is occupied by a single storey Inter-war corner shop which has undergone extensive alterations. It is a compact rectangular building with a rear extension which also includes a basement garage from William Street. There is a small self-contained flat above the garage, accessible from the rear yard. The building consisted of three separate shops originally, which are now consolidated into a single commercial enterprise.



Figure 2. Existing building on 439-441 Old South Head Road, Rose Bay (beauty therapy store).

The single storey mechanic's workshop facing William Street consists of two roughly square and equal sized buildings, which have been consolidated into a single workshop over time. The building was associated with the motor trades; first as a car mechanic repair shop, then as a panel beater and a spray painter.



Figure 3. Existing building at 439-441 Old South Head Road, Rose Bay (mechanic).

443-445 Old South Head Road is currently used as a bakery which is heritage listed. The building is a two-storey inter-war shop-top terrace and sits on the north-west corner of the site. The shop-top terrace originally operated as the Soos Bakery from 1958 until recently. During this time it operated on an industrial scale as it serviced bread to all of Greater Sydney. Currently, the Soos Bakery has ceased operating and in its place Jesse's Bakery operates, this does not bake on a large scale but instead operates as a café/takeaway use.



Figure 4. Existing retail use and shop top housing located at 443-445 Old South Head Road.



Figure 5. Existing retail use and shop top housing located at 443-445 Old South Head Road.

1 The Avenue, Rose Bay currently operates as a three-storey residential flat building. This residential flat building (RFB) was constructed in the 1990s and is a contemporary face brick building with a tile covered gable roof. The RFB comprises nine residential units. Although the RFB is strata-subdivided, all units are owned in single ownership. This is pictured in Figure 6.



Figure 6. Existing residential flat building at 1 The Avenue, Rose Bay.

3. Relevant Council Resolutions

Nil.

4. Discussion

A planning proposal is the only means of achieving the proposed changes sought to the development standards of the Waverley LEP. The proposed variations to the development standards would result in a 100% increase in height and a 177% increase in FSR. It is considered that these variations are too large to be considered as part of a Clause 4.6 variation as part of a DA under the existing LEP standards. As a Clause 4.6 variation to development standards would not be considered, the only means of changing the LEP controls on the site would be through a planning proposal.

The sites are currently zoned R3 Medium Density Residential in which shop-top housing is listed as a prohibited use. It is currently unclear how the proponent intends to provide the proposed concept scheme as there is no additional permitted use proposed or rezoning to a zone in which shop-top housing is permissible. A planning proposal is the only means by which either of these options could be achieved, however neither are currently proposed as part of the PP.

In the Waverley LEP 2012, shop-top housing is defined as: 'one or more dwellings located above ground floor retail premises or business premises.'

As illustrated in Figure 8, the concept scheme clearly illustrates one or more dwellings located above ground floor retail premises or business premises. It should also be reiterated that retail is a commercial premises use, and commercial premises are not permissible in the R3 Medium Density Residential Zone.

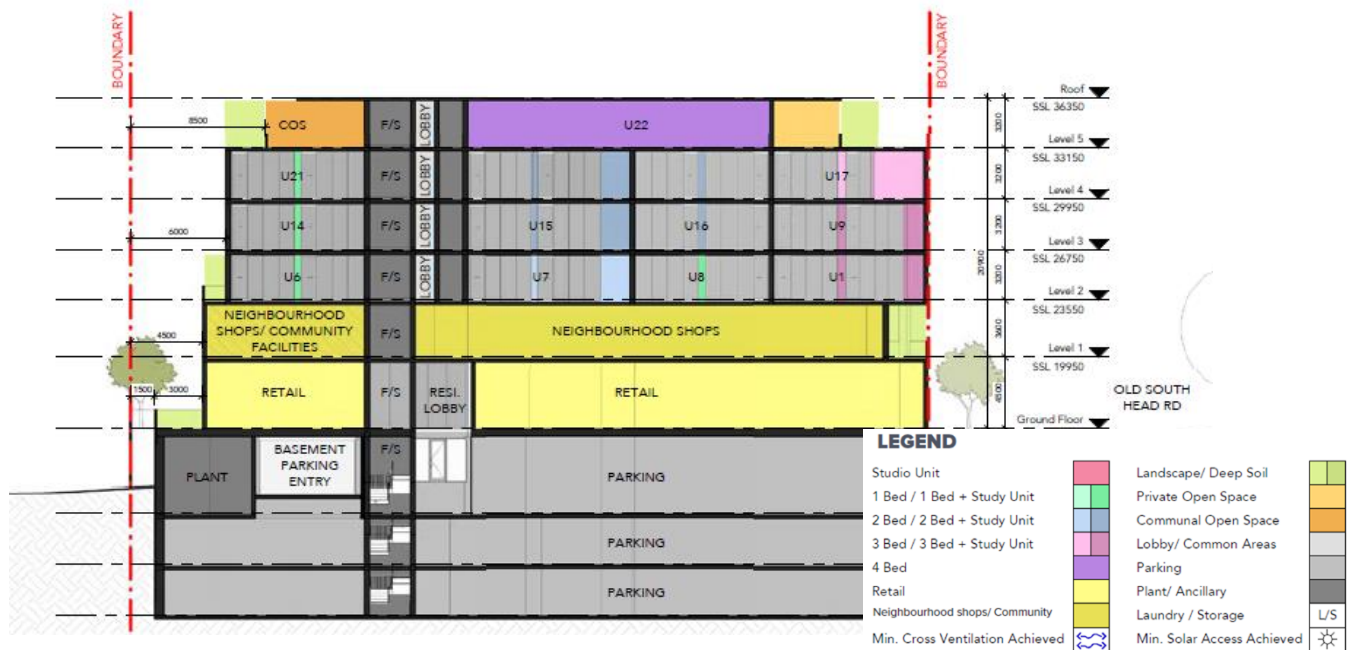


Figure 7. Planning proposal concept scheme.

In a formal request for further information, further clarification was sought as to how the concept scheme would be delivered, noting that shop-top housing is a prohibited use in the R3 Medium Density Residential Zone. This issue has not been resolved by the Proponent. The Proposal provides no proposed mechanism to ensure the delivery of any retail or non-residential uses, and therefore provides no certainty for Council that a future development application would provide any uses that are not residential. Accordingly, a site with a R3 Medium Density Residential Zone would be expected to deliver a development that is predominantly residential.

Under the current controls it is considered that a maximum height of 12.5m will preserve the environmental amenity of neighbouring properties and public spaces. The idea of the activated space is supported. The lower scale building wall height proposed creates a more inviting space with greater access to sunlight, daylight and sky-exposure. The proposed height of 25 m is twice the size of the current controls and will be an anomalous development largely out of context with the surrounding area. The surrounding residential flat buildings are four storeys in height; the proposed 25 m will allow for a six-seven storey development. A justification is provided in the Proposal that the nine-storey development at 355 Old South Head Road is precedence for developments that exceed the 9.5 m HOB limit. This development is out of context with the surrounding development in the area. This building was constructed more than 30 years ago and pre-dates Council's strategic studies such as the LSPS, Community Strategic Plan and importantly Waverley LEP 2012, making it a legacy building that should not be utilised as justification for contemporary development. This development is anomalous along Old South Head Road and should not be seen as a precedent by which to try and shape the future of Old South Head Road.

The proposed bulk permissible under the proposed 2.5:1 FSR will be significantly larger than any building within the surrounding area. The proposed FSR is nearly three times the size of the existing 0.9:1 FSR and with the consolidation of the three sites, will create a bulk that is only seen in the towers in Bondi Junction. Council has reviewed the controls of the LEP in the LSPS and LHS and it has identified that the existing controls on these sites remain suitable as the site has not been identified for uplift. The bulk and scale of the development will be incongruous with all surrounding development and will have a considerable visual impact on Old South Head Road, Williams Street and The Avenue. In addition, recent changes to the development standards on the Woollahra side of the Rose Bay Old South Head Road to the north of the subject site, have demonstrated that a four storey shop-top housing development is feasible and more in keeping with the character of the area.



Figure 8. 355 Old South Head Road.

Whilst the proposal includes the intention to retain the heritage listed site and undertake repairs to the building, it also includes the intention to develop a building to a bulk and scale that far exceeds that of the heritage item. This will in turn diminish the significance of the building and the curtilage.

Repairing the fabric of the item is supported as this will help to preserve the item. Redevelopment under existing controls would be most beneficial for protecting this heritage item as it would ensure repairs and retention of the fabric whilst not compromising the curtilage of the item thereby protecting its significance.

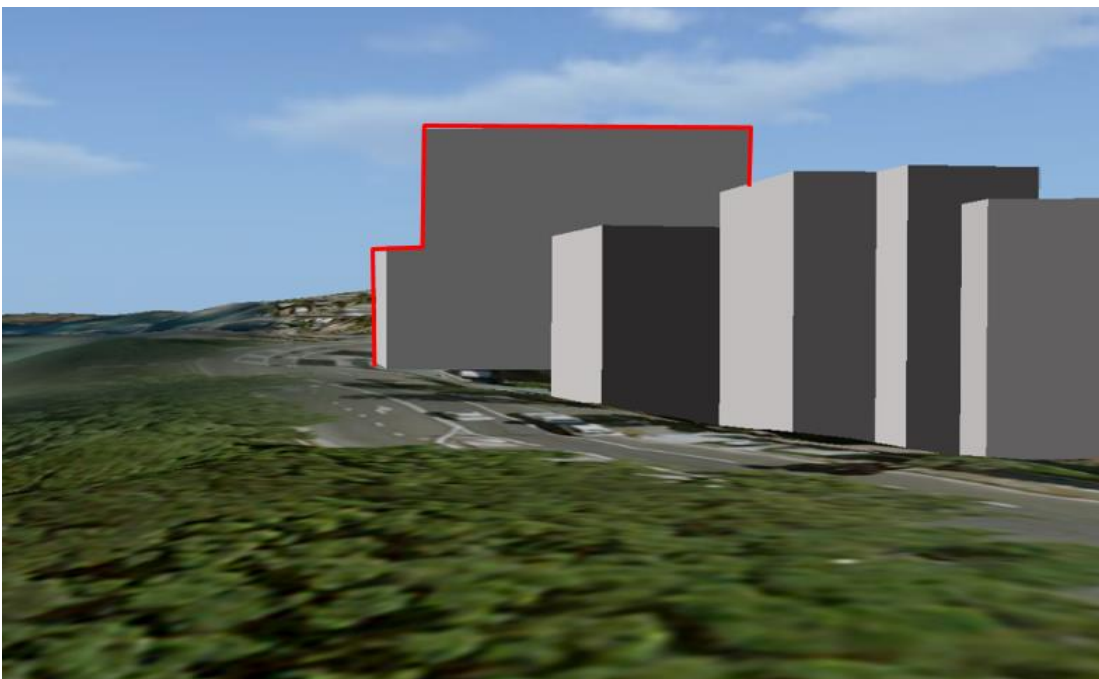


Figure 9. View of a compliant envelope (under the proposal) achieving 25m in height and 2.5:1 FSR looking north along Old South Head Road.



Figure 10. View of a compliant envelope (under the proposal) achieving 25m in height and 2.5:1 FSR looking east from the Royal Sydney Golf Course.

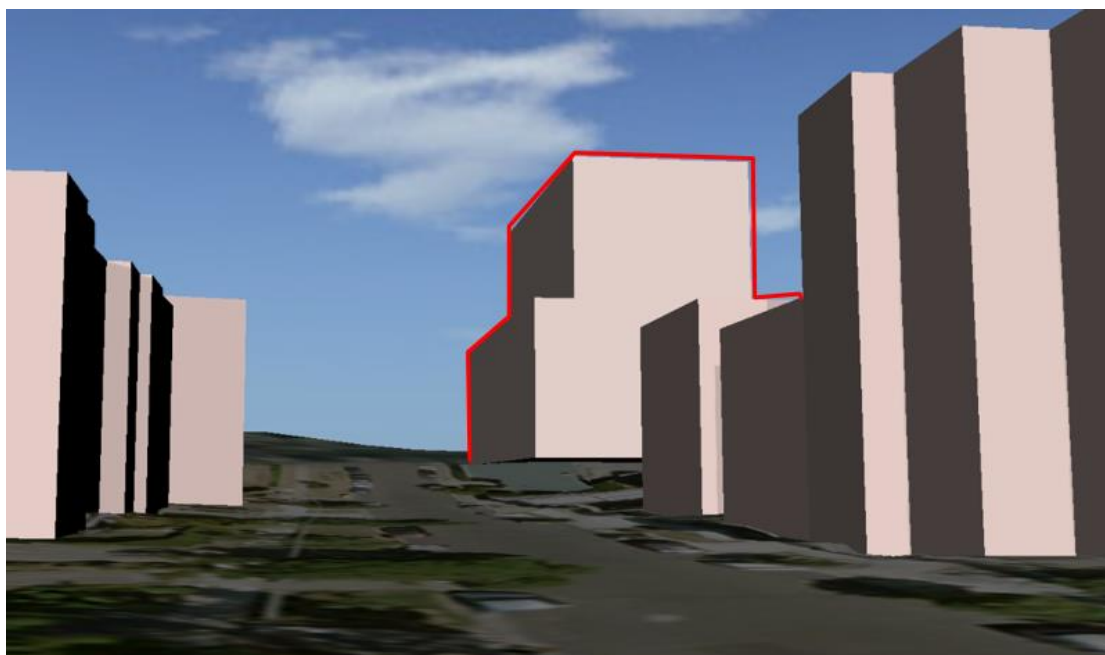


Figure 11. View of a compliant envelope achieving 25m in height and 2.5:1 FSR looking west along Williams Street.

In summary, the Proposal lacks strategic and site-specific merit, and the proposed 25 m height and 2.5:1 FSR would:

- Be out of scale with the surrounding streetscape of Old South Head Road and the prevailing medium density scale of surrounding development set by the 12.5 m height and 0.9:1 FSR.

- Adversely impact the significance of the heritage item located on 443-445 Old South Head Road as it would grossly outsize it and disrupt its setting and character.
- Reduce residential amenity for dwellings to the south with additional overshadowing.

Waverley Local Planning Panel

The Proposal was presented to the Waverley Local Planning Panel on 16 February 2021, and the Panel advised that the Proposal not be supported by Council for the reason that it does not demonstrate strategic or site-specific merit, and provided the following advice:

In particular, the Panel is concerned that the Planning Proposal does not include a change to the existing R3 Zoning (or an additional permitted use listing). However, the Concept includes two floors of non-residential uses to activate a public open space. The Proponent proposes to achieve these non-residential uses through existing use rights and the limited range of permissible uses in the R3 Zone. The Panel does not agree that the Concept would be effectively achieved through the retention of the existing zoning (without additional permitted uses).

The proposed increase in floor space ratio and height standards is based on the achievement of this mixed-use Concept. Even if this were able to be achieved, the Panel finds that the resultant bulk and scale of the Planning Proposal is excessive and is not justified within its existing context. Furthermore, the proposed increase in floor space ratio and height would adversely impact upon the heritage item and residential amenity of surrounding development.

Resolution

The Panel advises Council that:

1. *It does not support the Planning Proposal for 439-445 Old South Head Road and 1 The Avenue, Rose Bay proceeding to Gateway determination, as the Proposal lacks strategic and site-specific merit for the reasons outlined in the Report. The proposed 25m height and 2.5:1 FSR standards would:*
 - *Be out of scale with the surrounding streetscape of Old South Head Road, and the prevailing medium density scale of surrounding development set by the 12.5m height and 0.9:1 FSR,*
 - *Adversely impact the significance of the heritage item located on 443-445 Old South Head Road, and*
 - *Reduce residential amenity for dwellings to the south with additional overshadowing.*

Furthermore, the Planning Proposal in its current form does not adequately address land use issues to facilitate the Proponent's vision for a mixed-use development. The appropriateness of a neighbourhood centre would need to be considered in the broader context of centres across Waverley.

2. *Any amended/future planning proposal for the site should also be supported by a site-specific DCP and/or Additional Local Provisions to ensure that the positive aspects of the proposal such as the public open space and affordable housing would be delivered.*

The minutes of the WLPP are attached to this report.

5. Financial impact statement/Time frame/Consultation**Financial impact statement**

There have been no upfront or recurrent costs associated with this planning proposal other than staff costs associated with the administration, assessment and exhibition of the proposal and these have been provided for within the budget.

Consultation

This Proposal is not recommended to proceed to public exhibition.

6. Conclusion

It is recommended that Council does not support the Planning Proposal lodged at 439–445 Old South Head Road and 1 The Avenue, as the Proposal lacks strategic and site-specific merit, and the proposed 25 m height and 2.5:1 FSR would:

- Be out of scale with the surrounding streetscape of Old South Head Road and the prevailing medium density scale of surrounding development set by the 12.5 m height and 0.9:1 FSR.
- Adversely impact the significance of the heritage item located on 443–445 Old South Head Road as it would grossly outsize it and disrupt its setting and character.
- Reduce residential amenity for dwellings to the south with additional overshadowing.

7. Attachments

1. WLPP - 16 February 2021 - Minutes [↗](#) .

**MINUTES OF THE WAVERLEY LOCAL
PLANNING PANEL MEETING HELD BY
VIDEO CONFERENCE ON WEDNESDAY, 16 FEBRUARY 2021**

UNDER SCHEDULE 2, PART 5, ITEM 26 OF THE
ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979 (NSW)

PLANNING PROPOSAL: 439-445 Old South Head Road, Rose Bay

Panel members present:

Annelise Tuor (Chair)

Peter Brennan

Jocelyn Jackson

Sandra Robinson (Community Rep)

Declarations of interest:

Nil.

Site visit and briefing

The Waverley Local Planning Panel (Panel) has independently viewed the site and surrounding area from the public domain and/or electronically and was briefed by the following representatives of Council and representatives of the proponent on the Planning Proposal:

Jaime Hogan	Waverley Council
Emma Rogerson	Waverley Council
Patrick Hay	Waverley Council
Francisco Motta	Waverley Council
Sophie Litherland	Willow Tree Planning
Greg Gilyou	Evolve Project Management
Antonio Pozzi	Hatch (Roberts Day)
Stephen Moore	Hatch (Roberts Day)
Isha Negi	Team2 Architects

Following the briefing the Panel considered the Planning Proposal under Schedule 2, Part 5, Item 26 of the Environmental Planning and Assessment Act 1979.

Resolution

The resolution provided by the Panel as follows was unanimous.

Annelise Tuor

Chair

PP-3/2021 - 439-445 Old South Head Road, Rose Bay

Reasons

The Panel has considered an assessment report of the Planning Proposal prepared by Council Officers (the Report), the documentation provided by the Proponent, including a concept design (the Concept), the site view and briefings. For the reasons in the Report, the Panel considers that Council should not support the Planning Proposal in its current form.

In particular, the Panel is concerned that the Planning Proposal does not include a change to the existing R3 Zoning (or an additional permitted use listing). However, the Concept includes two floors of non-residential uses to activate a public open space. The Proponent proposes to achieve these non-residential uses through existing use rights and the limited range of permissible uses in the R3 Zone. The Panel does not agree that the Concept would be effectively achieved through the retention of the existing zoning (without additional permitted uses).

The proposed increase in floor space ratio and height standards is based on the achievement of this mixed-use Concept. Even if this were able to be achieved, the Panel finds that the resultant bulk and scale of the Planning Proposal is excessive and is not justified within its existing context.

Furthermore, the proposed increase in floor space ratio and height would adversely impact upon the heritage item and residential amenity of surrounding development.

Resolution

The Panel advises Council that:

1. It does not support the Planning Proposal for 439-445 Old South Head Road and 1 The Avenue, Rose Bay proceeding to Gateway determination, as the Proposal lacks strategic and site-specific merit for the reasons outlined in the Report. The proposed 25m height and 2.5:1 FSR standards would:
 - (a) Be out of scale with the surrounding streetscape of Old South Head Road, and the prevailing medium density scale of surrounding development set by the 12.5m height and 0.9:1 FSR,
 - (b) Adversely impact the significance of the heritage item located on 443-445 Old South Head Road, and
 - (c) Reduce residential amenity for dwellings to the south with additional overshadowing.

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Furthermore, the Planning Proposal, in its current form, does not adequately address land use issues to facilitate the Proponent's vision for a mixed-use development. The appropriateness of a neighbourhood centre would need to be considered in the broader context of centres across Waverley.

2. Any amended/future planning proposal for the site should also be supported by a site-specific DCP and/or Additional Local Provisions to ensure that the positive aspects of the proposal such as the public open space and affordable housing would be delivered.

REPORT
PD/5.4/21.03

Subject: Planning Proposal - 45-57 Oxford Street, Bondi Junction - Pre-Gateway Determination Assessment

TRIM No: PP-4/2020

Author: Emma Rogerson, Strategic Planner

Director: Tony Pavlovic, Director, Planning, Environment and Regulatory Services

RECOMMENDATION:

That Council:

1. Does not support the planning proposal for 45–57 Oxford Street, Bondi Junction, to proceed to Gateway Determination, as the proposal lacks site-specific merit, and the proposed 26 m height and 2.5:1 floor space ratio (FSR) development standards would:
 - (a) Be in conflict with the objectives of the recently adopted Waverley Local Strategic Planning Statement and Bondi Junction Urban Design Review, which identify this portion of West Oxford Street as required to retain a ‘village character’.
 - (b) Overshadow and produce visual bulk/a sense of enclosure and unwarranted noise for southerly neighbours.
 - (c) Be out of scale and character with the surrounding low-density streetscape to the south and west of the site, particularly along Mill Hill Road and West Oxford Street.
 - (d) Diminish the character and amenity of the heritage items on the site, the directly adjoining Mill Hill Heritage Conservation Area and the contributory items within the Area by imposing such an increased scale of development where Denison Street and Mill Hill Road meet Oxford Street.
 - (e) Be unnecessary given the strong merits of DA-127/2013 to achieve the intended outcome of a mixed-use transitional building under current controls.
 - (f) Detrimentially reduce the availability of on-street parking.
2. Notes that the Waverley Local Planning Panel unanimously recommended that the planning proposal not proceed to Gateway Determination, as the proposal lacks site-specific merit for the reasons outlined in the attachment to the report.

1. Executive Summary

This report informs Council of the receipt of a planning proposal from Evolve Consulting Pty Ltd (the Proponent) for 45–57 Oxford Street, Bondi Junction. The proponent-led planning proposal (the Proposal) and associated documentation was submitted to Council on 3 December 2020. The planning proposal seeks to amend the Waverley Local Environmental Plan 2012 (WLEP2012) in relation to the subject site by increasing the maximum permissible Floor Space Ratio (FSR) and Height of Building (HOB) as follows: