

REZONING REVIEW – Briefing Report

Date of referral	2 March 2021 (accepted on 25 March 2021)	
Department ref. no	RR_2021_71	
LGA	Waverley	
LEP to be amended	Waverley Local Environmental Plan 2012	
Address	439-445 Old South Head Road and 1 The Avenue, Rose Bay	
Reason for review	<input checked="" type="checkbox"/> Council notified the proponent it will not support the proposed amendment	<input type="checkbox"/> Council failed to indicate support for the proposal within 90 days, or failed to submit the proposal after indicating its support
Is a disclosure statement relating to reportable political donations under s10.4 of the Act required and provided?	<input type="checkbox"/> Provided <input checked="" type="checkbox"/> Not required Comment: No donations or gifts to disclose.	

1. SUMMARY OF THE PROPOSAL

The Rezoning Review request relates to a Planning Proposal for 439-445 Old South Head Road and 1 The Avenue, Rose Bay to amend the Waverley Local Environmental Plan (LEP) 2012 by:

- amending the maximum building height control from 12.5m to 25m across the entire site; and
- amending the maximum floor space ratio (FSR) control from 0.9:1 to 2.5:1 across the entire site.

The planning proposal aims to facilitate a mixed-use development with a range of commercial, community and residential accommodation uses. The proposal was supported by a concept scheme that features the following:

- A mixed-use development of part six and part seven storeys.
- Retention of the local at 443-445 Old South Head Road.
- 22 dwellings of various sizes.
- 1,850m² of retail / commercial / community facilities.
- A public plaza facing The Avenue amounting to 20% of the site area (this figure was provided in the planning proposal report; the Place Design Justification Report states that the plaza equates to 15% of the site area).

- The planning proposal states that it would provide affordable housing but no details were included. In the proponent's response (dated 5 February 2021) to the Council's request for information, there is a statement that "*A draft VPA Offer is to be prepared... through allocation of affordable housing in accordance with the Waverley Local Housing Strategy 2020 at a rate of 10%*".
- Creation of 130 jobs on the site (this figure was provided in the planning proposal report; the Place Design Justification Report states that more than 70 jobs will be created).

Council notes that the mixed-use development as envisaged in the concept scheme is unachievable under the proposed controls, as *shop top housing* is a prohibited use in the R3 Medium Density Residential zone. The site would be required to be rezoned, or provide an additional permitted use in order to permit *shop top housing*.

1.1 Background

- **4 December 2019**

The proponent held discussions with members of the Rose Bay precinct committee regarding the Planning Proposal (See **Attachment D and E15**). The committee representatives raised concerns regarding traffic and parking, development height and scale and the potential for flooding. The committee agreed the area is quite walkable but noted car ownership in the area seems to be increasing rather than decreasing. The committee made comments regarding several aspects of the proposed concept design, including support for incorporating a co-working space and community floorspace into the design.

- **11 November 2020**

The proponent submitted the Planning Proposal to Waverley Council.

- **16 November 2020**

Council accepted the Planning Proposal.

- **25 November 2020**

The proponent provided a presentation to Council Officers on the Planning Proposal to discuss the key points of the Proposal and field any initial questions. There were no initial questions and Council resumed the assessment of the Proposal.

- **21 January 2021**

Council wrote to the proponent requesting additional information, including details on affordable housing contribution, open space provision, sustainability measures and permissibility of the proposed land use. (See **Attachment D**)

- **5 February 2021**

The proponent responded to Council with additional information. (See **Attachment D**)

- **16 February 2021**

Waverley Local Planning Panel (WLPP) considered the Planning Proposal and recommended it not proceed to Gateway due to a lack of strategic and site-specific merit. The Panel raised concerns including the scale of the development, impact on the heritage item on the site, amenity impacts on residential uses to the south, and land use permissibility.

- **26 February 2021**

Council's assessment report was published online. (See **Attachment D**)

- **2 March 2021**

Council's Strategic Planning and Development Committee considered the planning proposal and resolved not to support the proposal to proceed to Gateway due to a lack of strategic and site-specific merit. (See **Attachment E17** for Council's Decision Notice)

- **11 March 2021**

The proponent lodged a Rezoning Review application with DPIE.

1.2 Locality and context

The subject site is located at 439-445 Old South Head Road and 1 The Avenue, Rose Bay in the Waverley local government area (see **Figure 1**). It sits approximately 6km east of the Sydney CBD in a low to mid-rise mixed-use area. According to the proposal, the surrounding land uses include “old style residential flat buildings, dwelling houses, business premises, cafes, shops and significant green open spaces and community facilities such as the Royal Sydney Golf Club, Woollahra playing fields, tennis courts and bowling greens”. Additionally, the “Rose Bay RSL, Woollahra Sailing Club and Rose Bay Beach are located less than 1km north of the Site”.

The site is located within 50m of a bus stop and is considered by the proponent to be highly accessible via public and active transport modes, resulting in an anticipated lack of private car dependency and ownership by future residents.

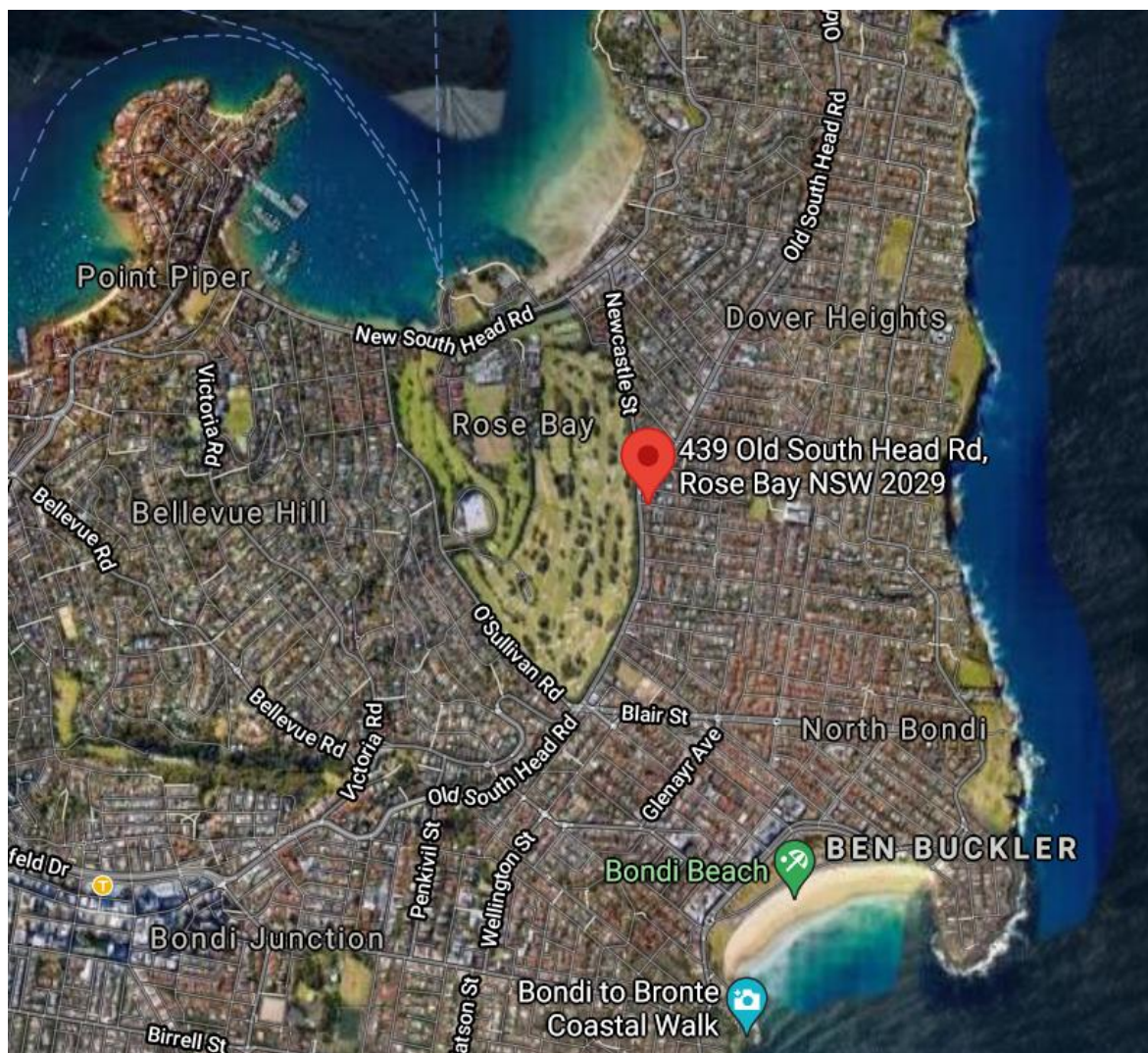


Figure 1: Location of subject site in context (Source: Google Maps)

Part of the site is heritage listed (archaeological item of local significance) in the Waverley LEP 2012, known as SOOS Bakery, 445 Old South Head Road. (See section 1.3 below)

1.3 Site description

The subject site encompasses three properties (Lot 1 DP 1176337, Lot 6 DP 4346 and SP 55776) and is located at 439-441 & 443-445 Old South Head Road and 1 The Avenue, Rose Bay. The site is 1,736m² in total area and has three street frontages (see **Figure 2**). The Old South Head Road frontage is 36m, The Avenue frontage is 47m and the William Street frontage is 49m.



Figure 2: Aerial image of site showing existing lot layout (Source: Planning Proposal)



Figure 3: Aerial view of the existing buildings on the subject site (Source: Planning Proposal / Six Maps)

443-445 Old South Head Road is the location of an archaeological heritage site. (See **Figure 4**) The two-storey inter-war shop top terrace is currently operating as SOOS bakery and Jesse's Café. The proponent has advised that the units above the bakery are currently occupied.

1 The Avenue is the location of a three-storey walk-up residential flat building.

439-441 Old South Head Road includes two buildings: a martial arts studio facing Old South Head Road, and a motor mechanic's workshop facing William Street. (See **Figures 5, 6 and 7**) The Department notes that both businesses are currently in operation.

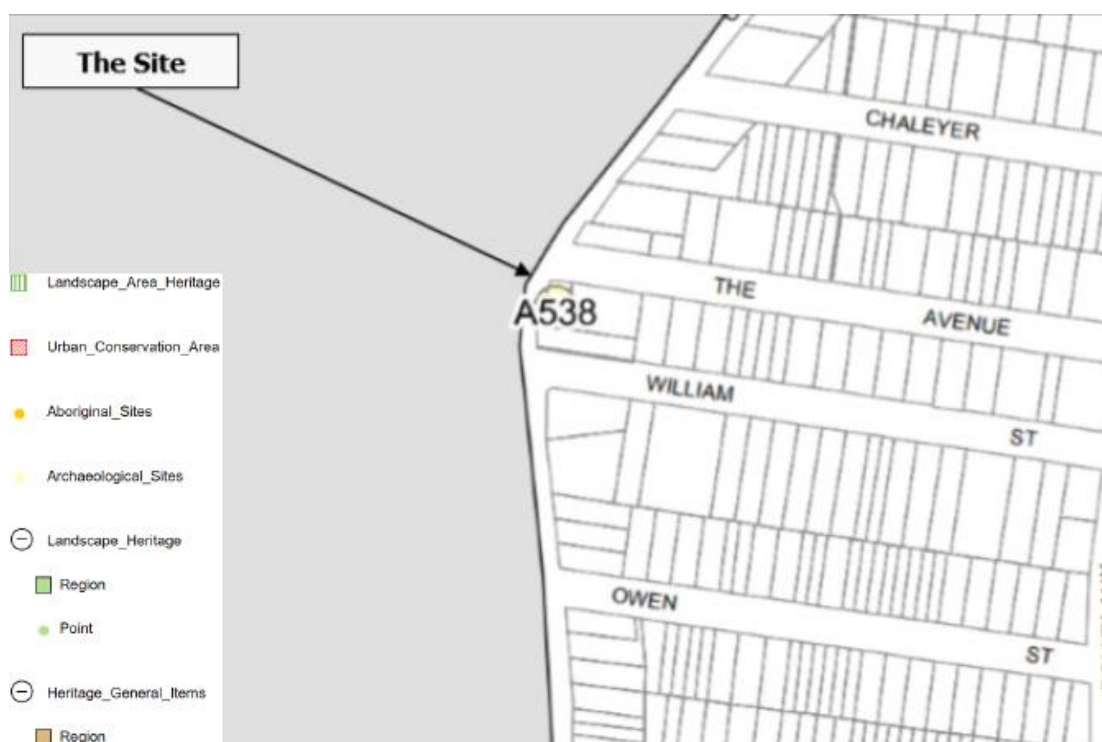


Figure 4: Extract from Waverley LEP 2012 Heritage Map (Source: Council Comments)



Figure 5: Street view from corner of Old South Head Road and William Street, showing the martial arts studio (439-441 Old South Head Road) with the bakery in the background (Source: Google Maps)



Figure 6: Street view from Old South Head Road towards The Avenue, showing SOOS Bakery (443-445 Old South Head Road) and the three-storey apartments (1 The Avenue) in the background (Source: Google Maps)



Figure 7: Street view along William Street towards Old South Head Road, showing the motor mechanic business (439-441 Old South Head Road) (Source: Google Maps)

1.4 Current planning provisions

Under the Waverley LEP 2012, the following controls apply to the site:

- R3 Medium Density Residential zone (**Figure 8**);
- Maximum building height of 12.5 metres (**Figure 9**);
- Maximum FSR of 1.5:1 (**Figure 10**); and
- Archaeological Site of local significance – SOOS Bakery, 445 Old South Head Road, North Bondi (item number A538) (**Figure 4**).

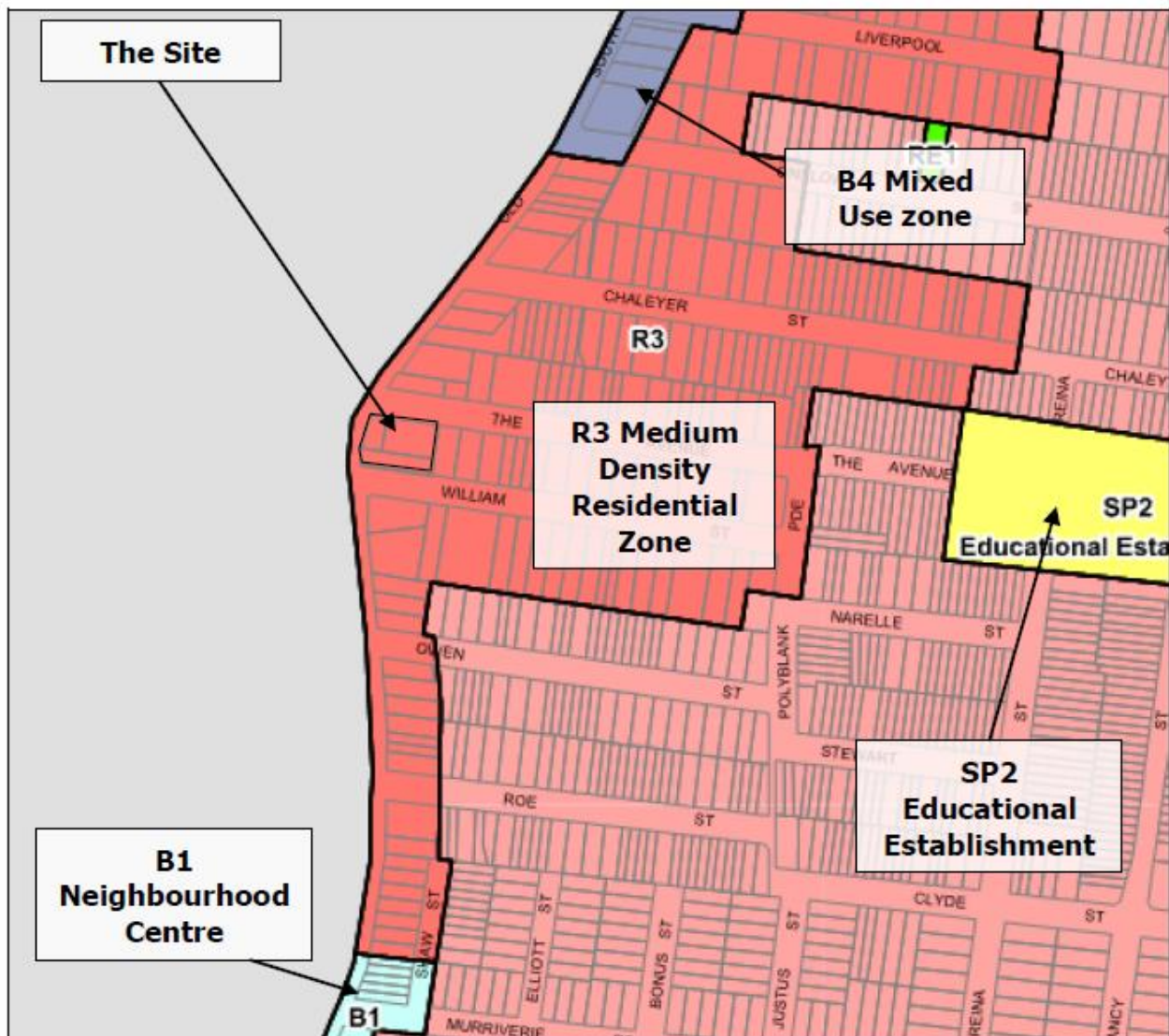


Figure 8: Land Use Zoning Map (Source: Planning Proposal)

A range of land uses including attached dwellings, community facilities, multi-dwelling housing, residential flat buildings and neighbourhood shops are permitted with consent in the R3 zone. Shop top housing is prohibited in the R3 zone.

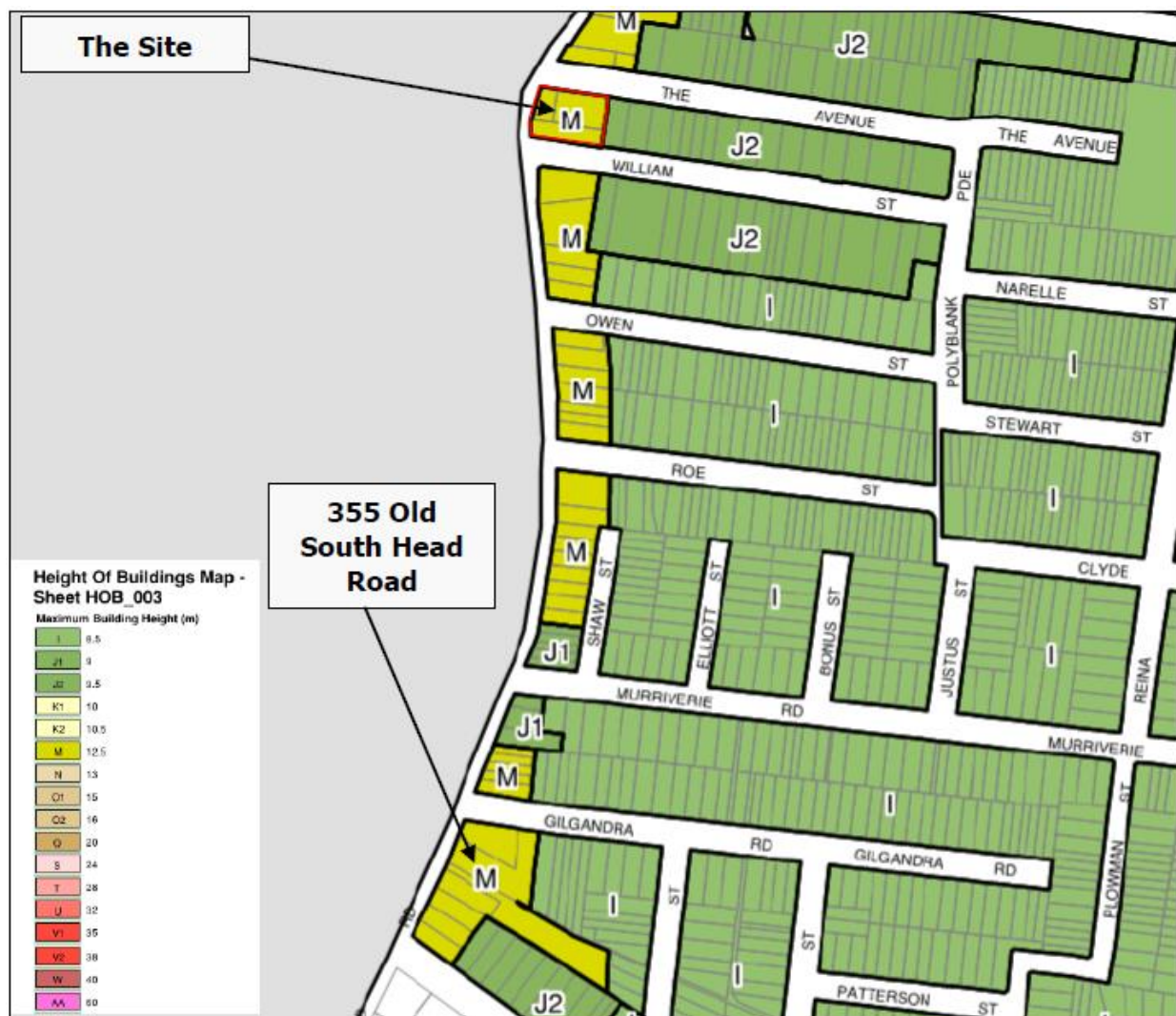


Figure 9: Maximum Height of Buildings Map (Source: Planning Proposal). Note: the planning proposal makes reference to a 9-storey residential flat building at No. 355 Old South Head Road as a precedent that deviates from the current planning controls. The Department notes this building appears to have been constructed in the 1970's.

The site which is subject to a 12.5m height control, adjoins properties under a 9.5m height control to the east. Properties to the north and south of the site also have a maximum height of 12.5m.

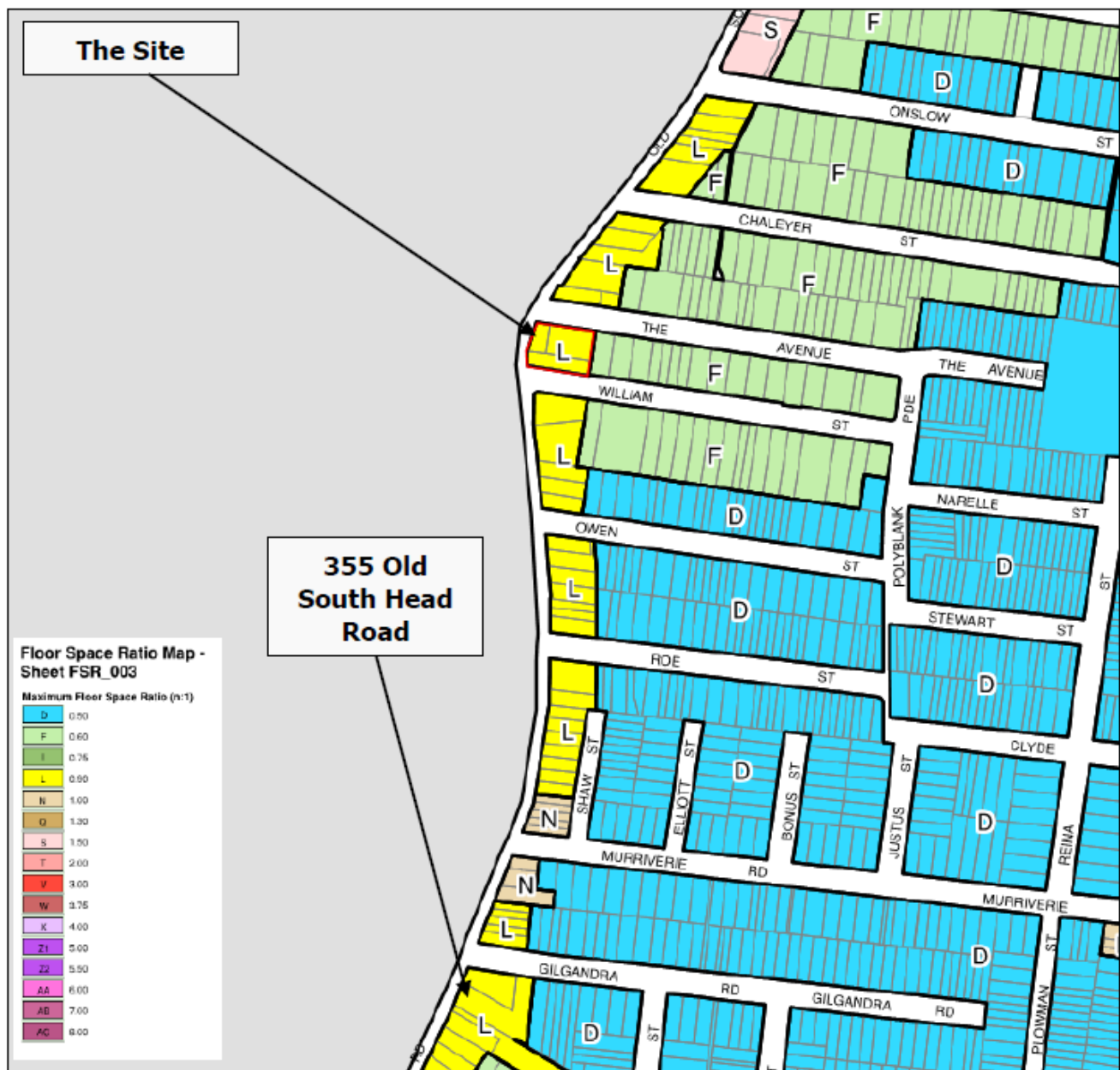


Figure 10: Maximum Floor Space Ratio Map (Source: Planning Proposal)

The site and the properties to the north and south are subject to a 0.9:1 FSR control. The properties to the east are designated 0.6:1 FSR.

1.5 Proposed planning provisions

The Planning Proposal seeks to amend the Waverley LEP 2012 to:

- increase the maximum building height from 12.5m to 25m (**Figure 11**); and
- increase the maximum floor space ratio (FSR) from 0.9:1 to 2.5:1 across the entire site (**Figure 12**).

The R3 Medium Density Residential land use zone remains unchanged.

Table 1: Comparison between existing and proposed planning controls

Control	Current	Proposed
Zone	R3 Medium Density Residential	R3 Medium Density Residential (no change)
Maximum building height	12.5m	25m
Maximum FSR	0.9:1	2.5:1

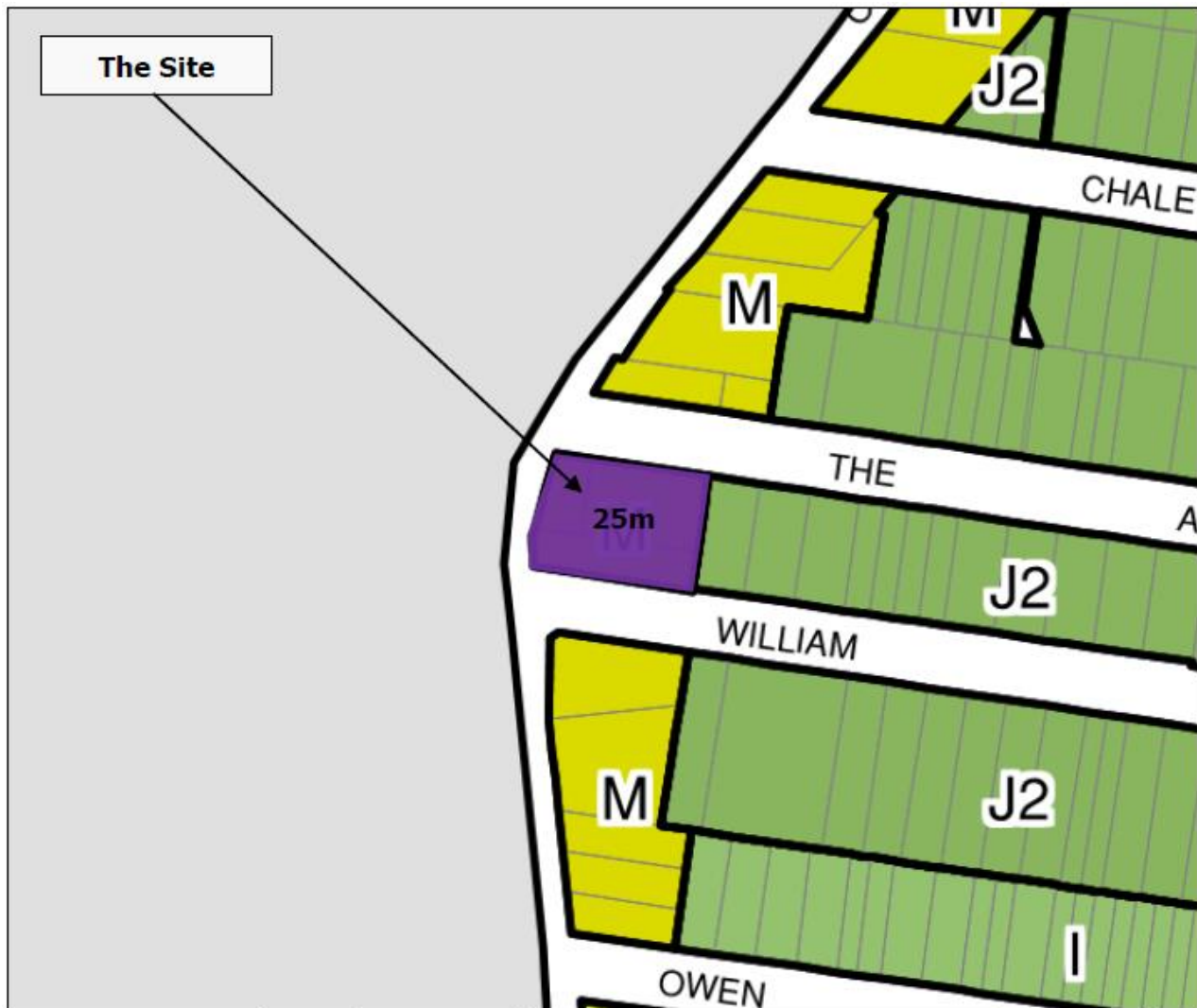


Figure 11: Proposed Maximum Height of Buildings Map (Source: Planning Proposal)

"U" has been annotated on the proposed map to illustrate an FSR of 2.5:1 for the Site.

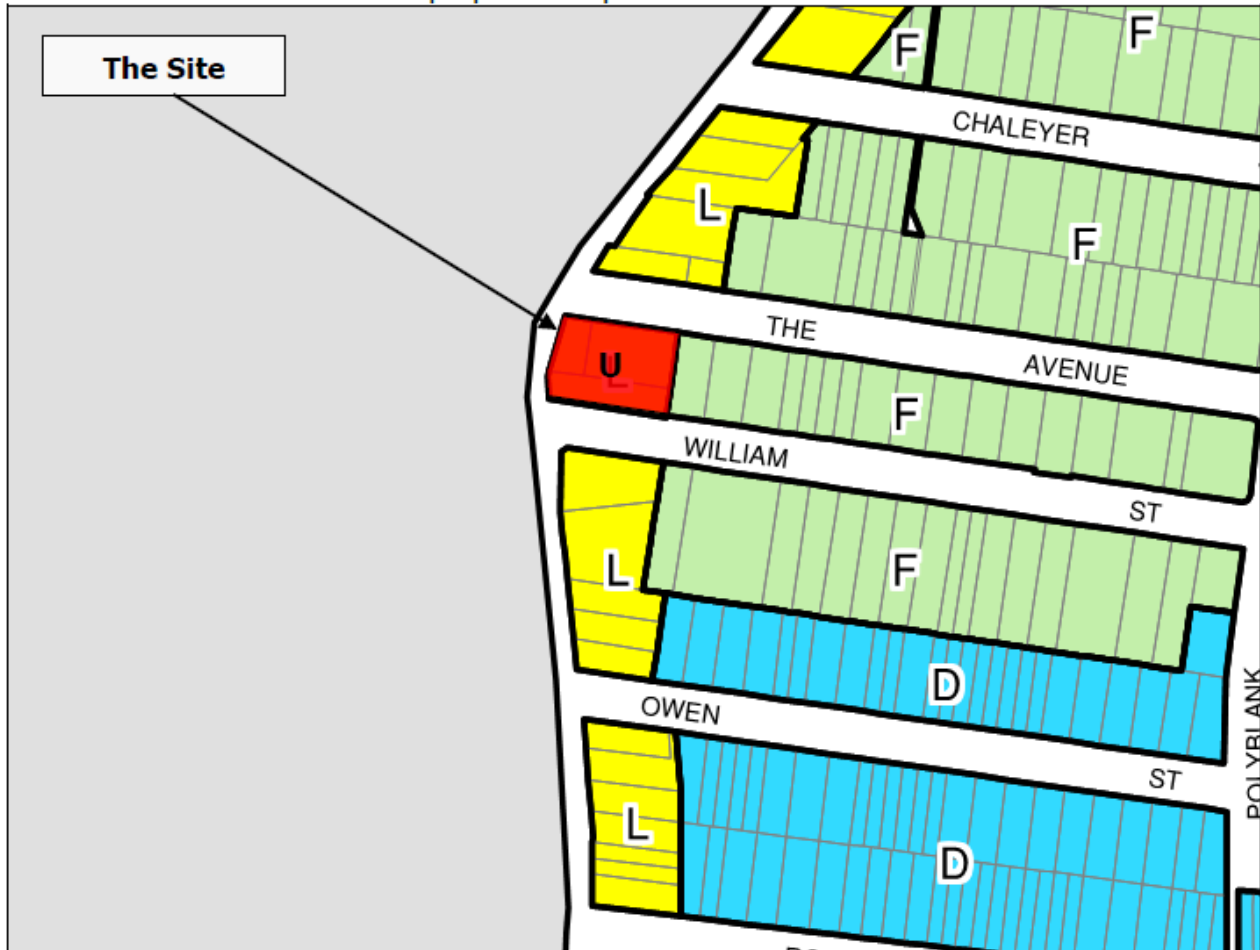


Figure 12: Proposed Maximum Floor Space Ratio Map (Source: Planning Proposal)

The Planning Proposal states that the site has significant revitalisation potential, but the existing “controls are unlikely to enable a high quality nor financially viable redevelopment outcome” on the site.

Proposal includes a development concept design (see section 1.7 below) for a 6-storey built form which follows the natural topography of the site by massing the tallest elements on the western side (overlooking the golf course) and the lower rise elements on the eastern side as a transition into the surrounding area. The Place Design Justification Report (urban design report) has included shadow diagrams which demonstrate the impact of the proposed concept development.

The Planning Proposal states that FSR also needs to be amended in order “to support an appropriate density of employment generating uses and residential accommodation on the Site” and to correspond with the proposed increase in height. The urban design report (**Attachment E5**) includes built form massing and modelling to demonstrate the suitability of the proposal.

The Proposal further states that “*To ensure a viable development which can retain the existing heritage item whilst revitalising this corner site and delivering significant public benefit in the form of the provision of a public plaza and placemaking, additional height and FSR is sought to provide a built form which capitalises on the expansive views across the Sydney Royal [sic] golf course. Such additional height will allow for the existing heritage to be*

retained and provide a north facing public plaza which benefits from a northern aspect along The Avenue.”

1.6 Objectives of the proposal

The planning proposal identifies its objectives as follows:

“to enable an appropriate range of land uses to allow for the revitalisation of this corner Site whilst also retaining existing heritage. This intended outcome would be achieved with respect to the following secondary objectives:

- Introduce a development that complements a range of surrounding land uses, integrates with the variety of built form densities, retains existing heritage and capitalises on its location with sweeping views across the Royal Sydney Golf Course.
- Provide a micro-hub local centre which retains the existing heritage character of the Site, whilst also accommodating additional residential accommodation and shop uses. The proposal will provide a north-facing public domain plaza to allow social engagement which benefits from [sic] a northern aspect. The proposal will foster spaces where people can connect whether they live in the building or want to utilise the start-up/workspaces or frequent the existing café.
- Deliver additional, and more diverse, housing supply to accommodate the growing local community.
- The proposal will provide enhanced employment opportunities, accommodation which is located immediately adjacent existing public transport.
- Create a green and active network through pedestrian and cycle links connecting the development to Rose Bay local ferry terminal and Rose Bay local centre.
- Enable placemaking initiatives to improve key corridors such as Old South Head Road.
- Promote the productive and sustainable use of land through appropriate development typologies and scales.
- Activate the Site and public domain at street level through the provision of active ground floor uses, public open space with northern aspect and high-quality architectural design.
- Augment the amenity of the Site without compromising the ongoing operations of surrounding land uses to provide an outlook to vast green open spaces located immediately adjacent the Site known as The Royal Sydney Golf Club and the Site fronts the identified Green Grid.”

1.7 Development concept

The Planning Proposal includes a concept development design, illustrating a potential mixed-use development for the site under the proposed built form controls (refer to **Table 2** for details of the concept scheme.) However, Council has already identified the proposed concept development would not be permissible under the proposed retention of the R3 zone as *shop top housing* is not permissible within this zone (see section 3 of this report).

The concept development design is of a 6- to 7-storey built form (a height of 6 storeys is stated in the planning proposal. The Department notes that the concept architectural drawings include a part basement which would bring the total height to 7 storeys at certain section of the development) with active street frontages and employment opportunities located on the ground and first floors and with residential apartments above. The development would follow the topography of the land as it slopes downward from west to east (away from the golf course).

The design includes the retention and adaptation of the heritage listed SOOS Bakery, including a recess in the adjoining built form to ensure the bakery remains visible. The design also includes a public plaza beside the bakery (along The Avenue frontage).

The proposed concept development is depicted below (**Figures 13 to 16**).



Figure 13: Photomontage of concept design public plaza oriented towards The Avenue
(Source: Planning Proposal)



Figure 14: Virtual model illustrating the concept scheme as seen from corner of Old South Head Road and The Avenue (Source: Planning Proposal)

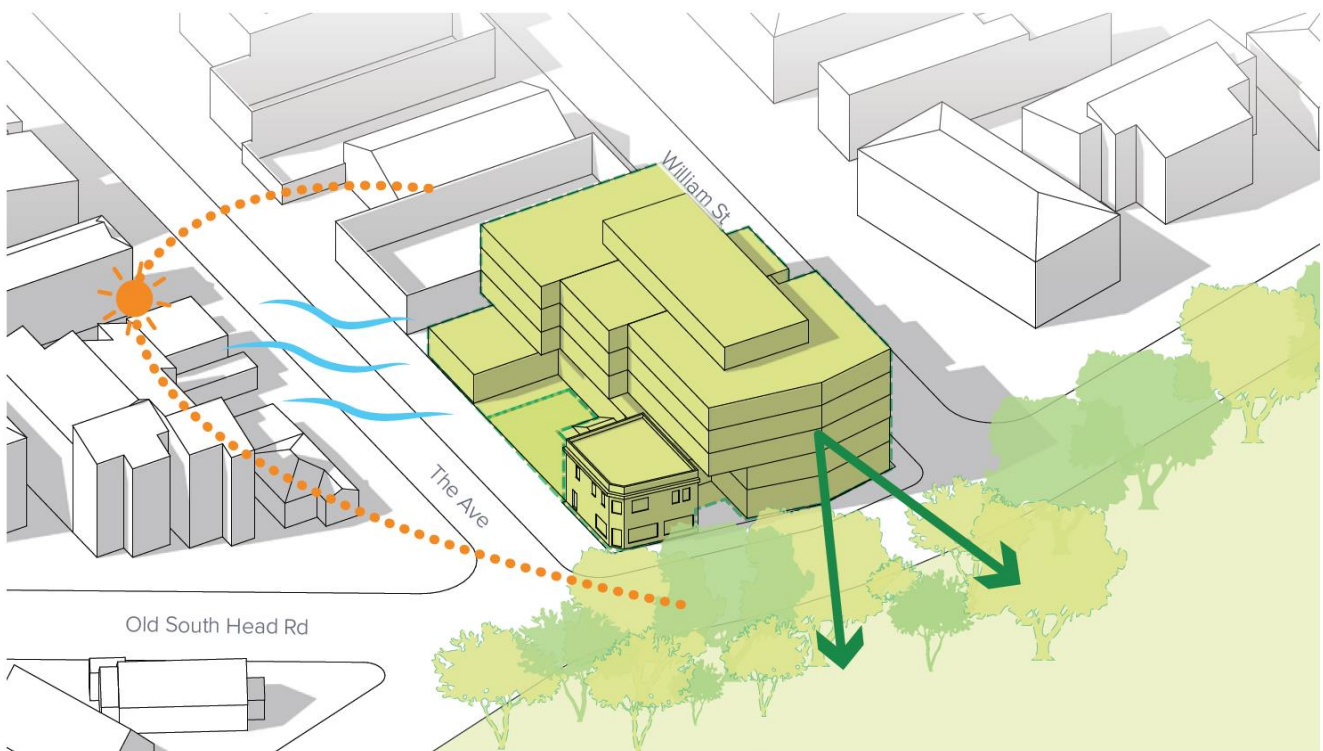


Figure 15: 3-D model illustrating the building envelope and massing of the concept scheme (Source: Place Design Justification Report)



Figure 16: Ground floor plan of the concept scheme illustrating the location and configuration of the public plaza (Source: Place Design Justification Report)

The gross floor area of the proposal is 4,301.55m² with 1,850.4m² allocated to employment generating uses. There are a total of 22 residential units proposed with a mix of studio, 1, 2, 3 and 4-bedroom units, some with studies. There are a total of 51 car parking spaces included at basement levels.

Table 2: Key data relating to the conceptual development scheme for the site

Element	details
Site area	1,736m ²
Total gross floor area (GFA)	4,301.55m ²
Residential GFA	2,451.15m ²
Non-residential GFA	1,850.4m ²
FSR – total	2.47:1
Height	25m (up to 7 storeys)
Total residential units	22 dwellings
Car parking	51 spaces at basement levels
Public plaza	20% of site area (according to planning proposal; 15% according to urban design report)

2. INFORMATION ASSESSMENT

Does the proposal seek to amend a zone or planning control that is less than five years old?

No. The Waverley LEP 2012 commenced on 26 October 2012.

2.1 Strategic merit test

Consistency with the relevant regional plan outside the Greater Sydney region, district plan within the Greater Sydney region, or corridor/precinct plans applying to the site, including any draft regional, district or corridor/precinct plans released for public comment.

Proponents will not be able to depend on a draft regional, district or corridor/precinct plan when the Minister for Planning and Public Spaces or the Department of Planning, Industry and Environment have announced that such a plan will be updated before being able to be relied on.

The proposal includes comments regarding its alignment with the Region and District Plans, summarised below:

Greater Sydney Region Plan

The proposal does not include comments relating to the specific objectives of the Region Plan. It does include the following general comments about the Region Plan's overall directions. It is argued that:

- The planning proposal is aligned with the Region Plan's promotion of the sympathetic adaptive reuse of heritage items.

- The planning proposal is aligned with the Region Plan’s goal to embrace opportunities for urban renewal where the location in question has the capacity and is supported by existing and proposed infrastructure.
- The planning proposal is aligned with the creation of the 30-minute city “owing to the immediate proximity of the site to services, transport infrastructure and employment”.
- The planning proposal is aligned with the Region Plan’s support of housing and employment provision.

Eastern City District Plan

The proposal does not include comments relating to the specific planning priorities of the District Plan. It does include the following general comments about the District Plan’s overall directions:

Infrastructure and Collaboration

- The development would support local-scale growth in both jobs and housing in a location supported by existing infrastructure “in accordance with Action 3” (Note: Action 3 in the District Plan states: “*Align forecast growth with infrastructure.*”).

Liveability

- The envisioned mixed-use development would result in “enhanced place making” and street activation outcomes which would encourage activities in the new public plaza.
- The proponent states that the provision of additional dwellings will improve housing affordability and choice.
- The proponent states that the proximity of the envisioned development to existing public transport infrastructure and open space will result in “a highly walkable, cyclable and vibrant mixed-use environment”.

Productivity

- The proposed mixed-use development would deliver a range of shops, flexible community facilities in a highly amenable and walkable precinct serviced by existing bus infrastructure.”
- The envisioned development would include dedicated employment floorspace.

Sustainability

- The proponent states that the densification and diversification of land uses at the site will improve land use efficiency.
- The proponent states that infill redevelopment will “promote the creation of a better-quality environment built on the principles of sustainability”.
- The site “which is situated on the convergence of the Green Grid link along Old South Head Road, will directly respond to the delivery of this vision of connecting communities to natural landscape”. It would “deliver Green Grid connections and increase urban tree canopy, in accordance with Actions 65 and 66.” (Action 65

states: “*Expand urban tree canopy in the public realm.*”, whereas Action 66 relates to delivery of the Greater Sydney Green Grid.)

Consistency with a relevant local strategy that has been endorsed by the Department.

Waverley Local Strategic Planning Statement (LSPS)

The proposal does not include comments relating to the specific planning priorities of the Waverley LSPS.

It notes that the site is located on the ‘Rose Bay Implementation Plan’ map within the LSPS in an area marked “placemaking initiatives along key corridors”.

Regarding the proposed concept development design, the proposal states the following:

“Infrastructure and Collaboration: *Located on a shared path on Old South Head Road, this site has walking access to bus services as well as other nearby amenities. It is less than 30 minutes travel to Bondi Junction and the Harbour CBD. A new public space, laneway and high quality street frontage treatments support urban life.*

Liveability: *The proposal retains a character building in a new human-scape development complete with green elements, public art and diverse housing.*

Productivity: *Live/work spaces enable new opportunities for people to work close to home, whilst a flexible community space, a childcare centre and retail and dining spaces will strengthen the local economy by providing a nine fold increase in jobs on site.*

Sustainability: *A 6-Star Design and As-Built certification is targeted. This sustainable design focus will also help this place contribute to the proposed Green Grid link alongside the golf course.”*

Waverley Local Housing Strategy 2020-2036

The Waverley Local Housing Strategy 2020-2036 is currently being reviewed by the Department for endorsement and is relevant to the planning proposal.

The Waverley Local Housing Strategy identifies the following five priorities and associated actions, to guide the future of housing in Waverley:

- H1: Manage housing growth sustainably and in the right locations.
- H2: Encourage a range of housing options to support and retain a diverse community.
- H3: Increase amount of affordable rental and social housing.
- H4: Improve liveability, sustainability and accessibility through high quality residential design.
- H5: Ensure new development is consistent with desired and future character.

The Planning Proposal does not address the Waverley Local Housing Strategy 2020-2036, but the response to Council’s request for further information mentions “the allocation of affordable housing in accordance with the Waverley Housing Strategy 2020 at a rate of 10%”. It was mentioned that a draft voluntary planning agreement including the above benefit will be prepared.

Responding to a change in circumstances, such as investment in new infrastructure or changing demographic trends that have not been recognised by existing planning controls.

The planning proposal does not discuss a change in circumstances. The urban design report contains a brief discussion about change in circumstances in the context of the opportunities to revitalise the area.

2.2 Site-specific merit test

The natural environment (including known significant environmental values, resources or hazards).

The proposal states “the Site is not identified within an area of biodiversity and accordingly the proposal would not exhibit any adverse impact on the natural environment or other resources. Additional planting in the form of roof gardens and green walls may be considered within the proposal to ensure that enhanced sustainable mechanisms can be facilitated on the Site”.

A stage 1 environmental site assessment has been undertaken. The assessment concludes that the site can be made suitable for residential development subject to appropriate remediation measures being undertaken.

The existing uses, approved uses and likely future uses of land in the vicinity of the proposal.

The proposal describes the site as an underutilised space with unrealised potential for revitalisation. It states: “The proposal has been built upon the concept of place making particularly given the site context, where... public domain spaces are proposed.”

As discussed in section 1.3 of this report, a heritage listed building is currently located on the site and is operating as a bakery and café. The proposal states that this building will be retained and adaptively re-used. The supporting heritage report states that the other buildings on the site do not have heritage significance.

The services and infrastructure that are or will be available to meet the demands arising from the proposal and any proposed financial arrangements for infrastructure provision.

The site is located close to an existing bus stop (routes 386 and 387) which provides connection to Bondi Junction. The concept development includes the creation of a new public plaza (15% of site area according to the Place Design Justification Report; it is 20% according the planning proposal) and retail services. The site is located adjacent to the

Royal Sydney Golf Club, and the nearest public open space is Barracluff Park, located approximately 600m south of the site.

The Department notes that a transport and traffic report has not been prepared.

No financial arrangements for infrastructure provision are mentioned in the planning proposal.

Council's comments included the following: *"There are no arrangements for additional infrastructure provision in place from Council or any other government agency for the immediate area. The proposal does offer public space in lieu of a monetary contribution in the form of 15% of the lot area being given for public use. The proposal offers up to 10% of the units to be used for the purposes of affordable housing."*

3. COUNCIL VIEWS

On 30 March 2021, the Department wrote to Waverley Council advising of the Rezoning Review request and seeking Council's comments. Council provided a response on 27 April 2021, which is included in full as **Attachment D**.

The response confirmed that *"the proposal which has been submitted for the rezoning review is the same proposal that was considered by Council."*

Council's response letter also stated that:

"The original request to prepare a planning proposal was not progressed by Council as the proposal lacks site-specific merit, and the proposed 25m height and 2.5:1 floor space ratio (FSR) development 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 existing 12.5m height and 0.9:1 FSR development standards in the Waverley Local Environment[al] 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.

Council determined to not support the planning proposal with the knowledge that the Waverley Local Planning Panel unanimously recommended that the planning proposal not proceed to Gateway Determination, for the lack of site-specific merit and the same issues listed in (a) through (c) above."

The response from Council also included a Planning Proposal Assessment Report which raised further issues in more detail, including that the development concept constituted shop-top housing and that this is a prohibited use in the R3 zone. In order to deliver the proposed concept development, the land would need to be rezoned or additional permitted uses included.

As a mixed-use outcome as envisaged in the concept scheme could not be achieved, Council is of the view that *"Without the retail/residential mix use component the public*

space will only service the residents of the building as there will be no reason to visit the space as it will not be the vibrant destination that the concept scheme envisages. Similarly without the mixed-use component the 70 permanent jobs created and economic prosperity of a public square with retail offerings is unlikely to be realised and as such the ongoing economic effects will be minimal."

ATTACHMENTS

Attachment A – Locality Map

Attachment B – Site Map

Attachment C – Current LEP Maps

Attachment D – Council Correspondence

Attachment E – Rezoning Review Application Documents

- E1 – Rezoning Review submission form
- E2 – Rezoning Review application form
- E3 – Cover letter – Rezoning Review request
- E4 – Planning Proposal
- E5 – Place Design Justification Report
- E6 – Heritage Impact Assessment
- E7 – Stakeholder engagement strategy
- E8 – Strategic merit test
- E9 – Sydney East Business Chamber meeting notes
- E10 – Agenda of Strategic Planning and Development Committee 2 March 2021
- E11 – Minutes of Strategic Planning and Development Committee 2 March 2021
- E12 – Survey Plan
- E13 – Environmental Site Assessment
- E14 – Architectural Drawings
- E15 – Rose Bay Precinct Committee meeting notes
- E16 – Letter to Council – response to Waverley Local Planning Panel Meeting 17 February 2021
- E17 – Council's Decision Notice letter

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