

Our Ref: M220012 LT1 Pre-Gateway Review

16 August 2022

The Regional Office
Department of Planning and Environment
4 Parramatta Square, 12 Darcy Street
Locked Bag 5022
PARRAMATA NSW 2124

Dear Sir/Madam,

**APPLICATION FOR A REZONING REVIEW
PLANNING PROPOSAL APPLICATION FOR 34 FLOOD STREET, BONDI**

1. Introduction

This cover letter has been prepared by Planning Ingenuity acting on behalf of the landowner of No.34 Flood Street, Bondi. This letter accompanies an application for a Rezoning Review by the Department and the Sydney Eastern City Planning Panel. The application for Rezoning Review has been lodged via the NSW Planning Portal with application reference number RR2022/21.

This request for a Rezoning Review has been prepared in accordance with the *Local Environmental Plan Making Guideline* dated December 2021 (LEP Guideline). It contains all relevant documents as specified in the LEP Guideline. It identifies the Strategic and Site Specific Merits of the proposal which underpin the purpose of the Rezoning Review.

In particular this letter explains the strategic and site specific merits of the proposed zoning change are well aligned with the Planning Practice Notes PN10-001 and PN11- 002 both providing specific guidance on the application of the Special Uses Zone.

This cover letter also explains that Council's Resolution is inappropriate and unnecessary because the only land use zone in Waverley Local Environmental Plan 2012 that can achieve the intent of Part 2 to Council's Resolution is Zone R3 Medium Density Residential. Zone R3 is sought by the Planning Proposal application.



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2. Documents Submitted with the Rezoning Review

This application contains all the necessary information as required in the LEP Guideline as listed in the checklist table below:

Documents required by the LEP Guidelines	Comment specific to this application
<i>A copy of the proponent's application for a planning proposal, including all supporting material and information that was submitted to council</i>	These have already been uploaded to the Planning Portal
<i>All correspondence that the proponent has received from the council in relation to the planning proposal request</i>	See attached to this cover letter (Annexure A)
<i>All correspondence and written advice from other public authorities and government agencies, if available – not applicable.</i>	No referrals or advice from other public authorities was sought nor was it required
<i>The proponent's written justification of the strategic and site-specific merit to confirm why a review is warranted</i>	See Strategic Merit and Site-Specific Merit considerations below and included in the original application as well as subsequent correspondence between the applicant and Council staff included in Annexure A
<i>Disclosure of reportable political donations under section 10.4 of the EP&A Act, if relevant</i>	Not applicable.
<i>The rezoning review fee to the Department</i>	To be paid via the Planning Portal

It is relevant to note that the correspondence received from Council's Strategic Planning staff during the assessment of the application were supportive of the Planning Proposal application as was pre-lodgement advice provided by Council staff. See attached in Annexure A.



3. Strategic Merit

The *LEP Guidelines* require a Planning Proposal to demonstrate strategic merit including alignment with the NSW strategic planning framework. The matters for consideration in testing strategic merit are listed in Sections A and B in Table 3 to the LEP Guideline and asks - does the Planning Proposal:

- *Give effect to the relevant regional plan outside of the Greater Sydney Region, the relevant district plan within the Greater Sydney Region, and/or corridor/precinct plans applying to the site. This includes any draft regional, district or corridor/precinct plans released for public comment or a place strategy for a strategic precinct including any draft place strategy; or*
- *Demonstrate consistency with the relevant LSPS or strategy that has been endorsed by the Department or required as part of a regional or district plan; or*
- *Respond to a change in circumstances that has not been recognised by the existing planning framework*

The Planning Proposal application report prepared by Planning Ingenuity dated 28 February 2022 demonstrates in Section 5.3 the ways in which the Planning Proposal is positively aligned with the NSW, City East Region and Waverley Local Strategic Planning Framework and has strategic merit.

The Planning Proposal Application justifies the inconsistency with Planning Priority 4 to WLPSP.

Planning Priority 4 to WLPSP is as follows:

“Ensure the community is well serviced by crucial social and cultural infrastructure”

The WLPSP elaborates on Planning Priority 4 as follows (our emphasis added):

“When Waverley Council moved to the Standard Instrument LEP, Council chose to retain all land zoned ‘SP2 – Infrastructure’ for the purposes of retaining these crucial pieces of infrastructure in our area. This has meant that despite increasing pressures for residential development, Council has largely been able to protect these facilities for the community. Council will seek to retain and protect existing social infrastructure uses, and will not allow the deterioration of this land to other uses preferred by the current market such as residential, or tourist and visitor accommodation.”

The WLPSP does not define what is meant by *crucial pieces of infrastructure*.

The WLPSP was not informed by a strategic LGA-wide inventory of social and community infrastructure and therefore it lacks strategic validity or robust evidence to underpin and validate Planning Priority 4.

As explained in the Planning Proposal application report, Council applied Zone SP2 Infrastructure (Educational Establishment) to the site in error and prior to the adoption of the WLPSP.

The site has been used as a Synagogue since the 1950’s (not an Educational Establishment).

In accordance with Planning Practice Notes PN10-001 and PN11- 002, the current land use zone is incorrect and should not have been applied to the site with the adoption of WLEP 2012.

Furthermore PN10-001 does not list places of public worship as “crucial pieces of infrastructure”. LEP amendments should be consistent with Planning Practice notes because this is the strategic intention of the Standard Instrument – Principal Local Environmental Plan (SI-PLEP).

PN10-001 contains a sequence of questions to be asked when considering applying Zone SP2 in a Standard Instrument LEP. These questions are listed below along with comments specific to this case.



Six Principles for Zoning Infrastructure as listed in PN10-001		
Principle	How does the principle relate to this case?	Should Zone SP apply to this site?
1. Where the infrastructure type is permitted on all land in the Infrastructure SEPP: – future infrastructure may be placed in any zone – existing ‘special use’ zones should be rezoned the same as the adjacent zone – roads must be zoned.	Places of public worship are permitted with consent in Zone R3 in WLEP 2012. The existing ‘special use’ should be rezoned the same as adjacent land which is Zone R3.	No
2. Where the infrastructure type is only permitted in certain prescribed zones in the Infrastructure SEPP: – provide for future infrastructure in prescribed zones rather than special use zones – existing ‘special use’ zones should be rezoned the same as the adjacent land (if a prescribed zone) – rezone land SP2 Infrastructure, if there is no adjacent prescribed zone.	Places of public worship is not a type of infrastructure only permitted in prescribed zones in SEPP (Transport and Infrastructure) 2021. The existing ‘special use’ should be rezoned the same as adjacent land which is Zone R3.	No
3. If currently zoned ‘special use’, the following infrastructure land should remain zoned for a ‘special purpose’: – special purposes such as cemeteries, sewage treatment plants, waste disposal or landfill sites (rezone as SP2 Infrastructure) – strategic sites (rezone as SP2 Infrastructure) – large complexes (rezone as SP1 Special Activities). It is anticipated that only a minority of TAFEs and schools across NSW could be considered a ‘strategic site’, however, to assist in the initial assessment the following criteria should be used: • is it 20 hectares or more in size; and/or • does it provide a wide range of facilities (meeting rooms, halls, pool, sports fields, tennis courts and the like) that can also be used by the surrounding community; and/or • is it of regional significance (i.e. the only school servicing a large region).	The site is not a ‘special purpose’ as identified in PN10-001. The site is not a strategic site.	No
4. Where land is to be zoned SP1 Special Activities or SP2 Infrastructure: – include flexible zone boundary provisions where	Based on the above responses Zone SP1 or SP2 are not appropriate for this site.	N/A



<i>appropriate. – use generic land use map annotations.</i>	The Land Use map annotations in WLEP 2012 are not generic.	
<i>5. Where surplus public land is currently zoned 'special use': – where a valid site compatibility certificate exists, the land is to be rezoned consistent with the certificate, or – the land should be rezoned as a compatible land use, (e.g. to a prescribed zone).</i>	The site is not surplus public land.	N/A
<i>6. When preparing an LEP, avoid duplicating provisions in the Infrastructure SEPP (including those to manage impacts on infrastructure corridors).</i>	The provisions of SEPP (Transport and Infrastructure) 2021 do not apply to the site. The SEPP does not list places of public worship as significant infrastructure.	N/A

With consideration to the six (6) principles in PN10-001, Zone R3 should be applied to the site.

PN11-002 defines Zone SP2 Infrastructure as follows:

SP2 Infrastructure

Infrastructure land that is highly unlikely to be used for a different purpose in the future should be zoned SP2, for example 'cemeteries' and major 'sewage treatment plants.'

It may also be appropriate for major state infrastructure or strategic sites such as major 'hospitals,' large campus universities/TAFEs, major dams, power stations, landfill or waste disposal sites, 'correctional centres,' and 'airports.' Areas of Commonwealth land used for Defence purposes should be zoned SP2 (Defence). A small minority of 'schools' across NSW may also be considered a strategic site.

The use of clause 5.3 *Development near zone boundaries* is suggested when adopting SP1 or SP2 zones. This would enable development permitted on the adjoining land to be permitted if deemed compatible.

PN11-002 states that Zone SP2 should only be applied to:

- major state infrastructure
- a strategic site or
- a site that would be unlikely to be used for different purposes in the future.

PN11-002 does not adopt Standard Instrument Clause 5.3 Development near zone boundaries which further confounds the limitations on the site which result from incorrect zoning.

Both PN10-001 and PN11-002 provide clear guidance that:

- A Special Uses zone should not apply to the site; and
- The site should have a zoning consistent with adjacent land (being Zone R3)



As stated in the Planning Proposal report, there are more appropriate and contemporary means by which Council can achieve the retention and improvement of community facilities rather than “locking down” and restricting future development options for existing land in Zone SP1 and Zone SP2. Best practice in planning for community facilities is increasingly shifting to multi-purpose facilities such as the nearby Margaret Whitlam Centre and surrounding open spaces. The strategies that best suit Council’s circumstances can only be determined by undertaking an evidence-based strategic and best practice analysis.

The type of “*crucial social and cultural infrastructure*” sought by Planning Priority 4 of WLSPS is expected to be located and designed to optimise its availability and accessibility to the Waverley community. Suitable locations are on major, multimodal transport routes. Facilities should be useable day and night, 7 days a week without those use times being detrimental to neighbourhood amenity. Facilities need to be fitted out as universally accessible. These attributes cannot be readily achieved at the subject site under the current zoning and the amenity of the medium density residential neighbourhood is sensitive to the need for safe parking, vehicle access, shared pedestrian and cycling paths, safety lighting and hours of operation of non-residential uses.

Best practice in provision of “*crucial social and cultural infrastructure*” can be more feasibly supported when delivered in coordination with a mix of land uses. Increasing the flexibility of zoning and land use tables is key to achieving this. The zoning change proposed by the Planning Proposal application facilitates the retention, enhancement and redevelopment of the Synagogue as well as introducing a mix of uses which can be incorporated in a potential redevelopment of the site. The current zoning prevents feasible improvements.

For the reasons identified above the subject site must be considered an exception to Planning Priority 4 in WLSPS.

4. Site-specific merit

The *LEP Guidelines* note that in order to demonstrate site specific merit, the Planning Proposal must identify the potential environmental, social, and economic impacts of the proposal and outline proposed mitigation measures and justification. The matters for consideration in testing site specific merit in the LEP Guideline asks the Planning Proposal to give regard to and assess:

- *the natural environment on the site to which the proposal relates and other affected land (including known significant environmental areas, resources or hazards)*
- *existing uses, approved uses, and likely future uses of land in the vicinity of the land to which the proposal relates*
- *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 Planning Proposal will have no detrimental impacts to the natural environment.

The Planning Proposal has the potential for positive environmental impacts by facilitating a mix of future land use options that can improve:

- Environmental performance of new buildings
- Accessible facilities
- Improvements to the streetscape with new building works that respond to the heritage context and setting
- Street tree planting consistent with the Green Grid
- Landscaped areas within the site.

The Planning Proposal is consistent with land use zones and uses in the vicinity and is compatible with the capacity of existing infrastructure and utility services.



The Planning Proposal also has site specific merit because it seeks to correct a mistake made with the current LEP.

5. Council's Resolution

Council's Resolution specific to the Planning Proposal application is:

That Council:

1. Does not support the planning proposal set out in the report to amend the *Waverley Local Environmental Plan 2012* in respect of 34–36 Flood Street, Bondi, Lot 1 DP 1094020, as the proposal lacks strategic merit and involves a change in Council's long-established policy in relation to SP2 Infrastructure Zones.
2. Investigates the strategic merit of amending the current zoning of SP2 Infrastructure 'Educational Establishment' to a more appropriate zoning that represents the existing uses and considers potential future uses on the site in a future housekeeping planning proposal.

Part 1 of Council's Resolution states that the proposal to apply Zone R3 to the site lacks strategic merit. However, as explained above, we believe there is strong strategic merit to the proposal.

Part 2 of Council's Resolution acknowledges that the strategic merit will be investigated. As stated in (3) above this requires an evidence-based strategy to inform the Housekeeping amendment.

Notwithstanding these points, the only land use zone that would represent the existing uses as well as consider potential future uses AND be consistent with Planning Practice Notes would be Zone R3 Medium Density Residential.

To explain further, and Zone SP2 Infrastructure in WLEP 2012 would apply the following land use control table:

"Zone SP2 Infrastructure

1 Objectives of zone

- *To provide for infrastructure and related uses.*
- *To prevent development that is not compatible with or that may detract from the provision of infrastructure.*

2 Permitted without consent

Nil

3 Permitted with consent

Aquaculture; Roads; The purpose shown on the Land Zoning Map, including any development that is ordinarily incidental or ancillary to development for that purpose

4 Prohibited

Any development not specified in item 2 or 3"

The only land uses permitted with consent in this zone are:

- Aquaculture (inappropriate at this site)
- Roads (unnecessary at this site)
- Development ordinarily incidental or ancillary to a place of public worship. In the case of a place of public worship, this would be limited to uses such as a meeting rooms, a dwelling for the accommodation of a caretaker or an office.

However the current FSR is close to the maximum of 0.9:1. No additional use “ordinarily incidental or ancillary to” the synagogue would incentivise, or make feasible, the necessary redevelopment of the synagogue to contemporary standards under Zone SP2 Infrastructure (Place of Public Worship). Zone R3 gives a much broader range of permissible land uses which could allow a diversification of the existing use which would support substantial improvements to the site (such as a child care facility).

Applying the relevant strategic planning framework to the site and surrounds, including PN10-001 and PN11- 002, makes it clear that the only outcome that is consistent with Part 2 to Council’s Resolution is Zone R3. To be specific, Zone R3 is the only appropriate land use zone in WLEP 2012 that is:

- (i) consistent with the strategic planning framework;
- (ii) represents the existing use as a place of public worship which is a use permitted with consent; and
- (iii) considers a range of potential future uses.

Given that Zone R3 is the only outcome for future zoning, the Planning Proposal application should proceed to Gateway determination. There is no need to postpone this logical change for a Housekeeping amendment.

6. CONCLUSION

The applicant is seeking a Rezoning Review of the Planning Proposal application for 34 Flood Street Bondi.

It is clear from the above that the Planning Proposal has strategic and site specific merit.

Although the Council resolution does not support the Planning Proposal application, Part 2 of the Council resolution enables the application of a “more appropriate zone” which, as demonstrated above, could only be Zone R3 when strategic and site specific merit are considered for this site and its surrounding context.

We look forward to your favourable consideration of this application for a Rezoning Review given the application has strategic and site specific merit. Should you have any questions or require any clarification of the content of this letter please contact the undersigned.

Yours faithfully,
Planning Ingenuity Pty Ltd



Jeff Mead
MANAGING DIRECTOR



Sophie Perry
ASSOCIATE DIRECTOR

Attached – Annexure A – Correspondence during the assessment of the Planning Proposal Application

