

REPORT PD/5.1/22.07



Subject: Planning Proposal - 34-36 Flood Street, Bondi

TRIM No: PP-1/2022

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RECOMMENDATION:

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, as the proposal lacks strategic merit and involves a change in the 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 SP2 Infrastructure 'Place of Public Worship' in a future housekeeping planning proposal.

1. Executive Summary

This report informs Council of the receipt of a planning proposal from Karimbla Properties (the Proponent) for 34-36 Flood Street, Bondi (the subject site). The Proponent-led planning proposal (the Proposal) and associated documentation were submitted to Council on 9 March 2022.

The Proposal seeks to amend the *Waverley Local Environmental Plan 2012* (WLEP2012) in relation to the subject site by changing the land use zone from SP2 Special Infrastructure 'Educational Establishment' to R3 Medium Density Residential. The Proposal does not seek to change the height or floor space ratio (FSR) of the site.

The site to the south of the subject site, 36A Flood Street, is an educational establishment (Yeshiva College), and is zoned R3 Medium Density Residential instead of SP2 Infrastructure (Educational Establishment). Both sites are under the same ownership.

The Proposal was reported to the Waverley Local Planning Panel (WLPP) on 25 May 2022 and was not supported by the Panel.

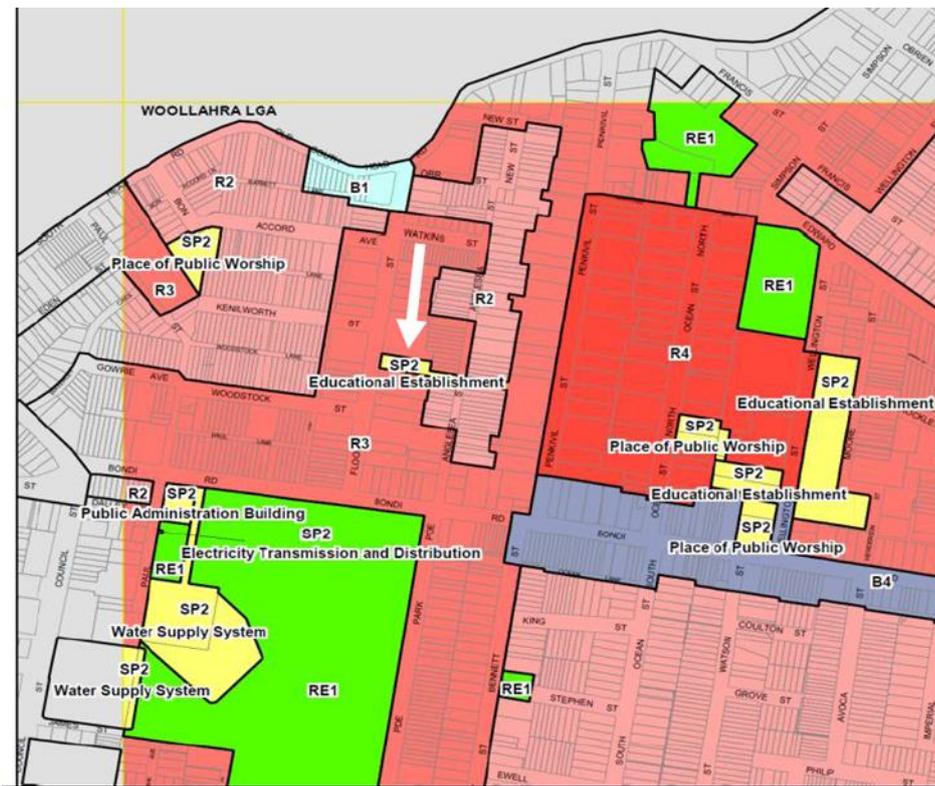


Figure 1. Subject site and associated zoning.

2. Background

The subject site is located at 34-36 Flood Street, Bondi (Lot 1 DP 1094020). The total area of the site is 1,327 m². The primary frontage of the site is Flood Street, and the secondary frontage is Anglesea Street.

The site contains a Synagogue (Place of Public Worship), and a commercial-type community rear kitchen at the rear of the Synagogue with a shared driveway and path. The site is surrounded by medium density residential buildings, with two-storey of detached dwellings at the rear. On the north of the site, there is a multi-storey Seniors Housing development that shares vehicle access with 34-36 Flood Street. Located on the southern side of the site is 36A Flood Street, housing Yeshiva College, a school serving years K-10.

The site is currently zoned SP2 Infrastructure (Educational Establishment), and the surrounding area is R3 zone Medium Density Residential and R2 Zone Low-Density Residential.

The Proponent has prepared a planning proposal to amend WLEP2012 to change the land use zone from SP2 Special Infrastructure 'Educational Establishment' to R3 Medium Density Residential. To support this proposal, the Proponent has provided the following documentation as in Attachments 1-3:

- Planning proposal.
- Future development advice.
- Pre-lodgement advice.

History of the site

The subject site was utilised from the late 1950s to the 1980s as a school, Yeshiva College. As the school expanded it moved into the adjacent site at 36A Flood Street. Following the relocation of the school, the site was then utilised as a synagogue attached to the school.

In 2010, Council adopted the *Waverley Local Environmental Plan 2011*, which would go on to become the WLEP2012, and requested to enable the draft plan to be publicly exhibited. The public exhibition of the draft WLEP2012 identified the site as R3 Medium Residential in accordance with the Practice Note provided by the NSW Government, which required that all educational establishments and places of worship sites be zoned as the adjacent zone.

When the WLEP2012 was reported to Council post-exhibition and subsequently adopted by Council, it was done so with the condition that all schools within the Waverley local government area (LGA) instead be zoned Infrastructure SP2 Educational Establishment. As a result, the original Infrastructure Zoning was carried over from the WLEP1996 into the WLEP2012 for the subject site so the land remained zoned SP2 'Education Establishment', despite the site being utilised as a synagogue.

The position adopted by Council was contrary to a Practice Note prepared by the NSW Government in relation to Infrastructure zoning, however this position was upheld by the NSW Government in the drafting of the legal instrument. Further discussion relating to this matter is provided later in the report. The incongruity of the adjoining land located at 36A Flood Street being rezoned zoned R3 Medium Density Residential, rather than as Special Infrastructure 'Educational Establishment' was not identified during the drafting of the WLEP2012, despite the site at that time housing the Yeshiva College.

This anomaly was, however, identified in 2013 when a housekeeping planning proposal was reported to Council which included a proposal to amend the zoning of 36A Flood Street, from R3 Medium Density Residential to SP2 Infrastructure 'Educational Establishment' to better reflect the actual use of the land. During the exhibition process, the owner of the site made an objection to this rezoning and subsequent to this, Council did not support the rezoning, and the site at 36A Flood Street remained R3 Medium Density Residential.

This has resulted in an anomaly where the subject site (34-36 Flood Street) is zoned SP2 – Educational Establishment but contains a Place of Public Worship and associated community facilities, and the adjacent site (36A Flood Street) is zoned R3 Medium Density Residential but contains an Educational Establishment.

3. Relevant Council Resolutions

See Attachment 4.

4. Discussion

The planning proposal

The table below outlines the LEP controls applicable to the site and what is proposed by the Proposal.

Table 2. LEP controls and planning proposal.

WLEP 2012 Provision	Current planning controls	Planning proposal
Zone	SP2 Infrastructure	R3 Medium Density Residential
Permitted Use	Aquaculture; Roads; The purpose shown on the Land Zoning Map (Educational Establishment), including any development that is ordinarily incidental or ancillary to development for that purpose	Attached dwellings; Bed and breakfast accommodation; Boarding houses; Building identification signs; Business identification signs; Centre-based child care facilities; Community facilities; Group homes; Home industries; Kiosks; Markets; Multi dwelling housing; Neighbourhood shops; Oyster aquaculture; Places of public worship; Respite day care centres; Roads; Seniors

		housing; Tank-based aquaculture; Any other development not specified in item 2 or 4
FSR	0.9:1	0.9:1
Height	12.5m	12.5m
Heritage	No	No

The Proposal seeks to amend the WLEP2012 for the subject site from the current zoning of SP2 Infrastructure (Educational Establishment), which provides for uses for educational purposes only. The Proposal seeks to amend the zoning to R3 Medium Density Residential Zone. The Proposal does not seek to change the height or FSR of the site.

The proposed zone change is not out of character with the surrounding area of Flood Street, which is predominantly R3 medium density residential as identified in Figure 1. Whilst not identified as the expressed purpose of the Proposal, the resulting zone would enable residential development on the site to the same height and FSR as the surrounding properties.

To demonstrate what a potential redevelopment of the site may allow, at the request of Council officers, the Proponent provided a document that outlined the potential future development (Attachment 2). This document provides a demonstration of two compliant development possibilities to demonstrate overshadowing and character, should the site be redeveloped in the future.

Under the current land use controls of the WLEP2012, the existing use on the site (Place of Public Worship) is not a permissible use – though as it is an existing use, it may remain. Furthermore, it is likely that the ‘existing use’ provisions under the *Environmental Planning and Assessment Act* and Regulation would apply in respect to any future proposal involving:

- (a) the carrying out of alterations or extensions to or the rebuilding of a building or work being used for an existing use, and*
- (b) the change of an existing use to another use, and*
- (c) the enlargement or expansion or intensification of an existing use.*

This means that there is an ability to further develop the land subject to meeting the relevant requirements under the Act.

A summary of the reasons for the rezoning of the site from SP2 Educational Establishment to R3 Medium Density Residential provided by the Proponent:

- 1. The current zone does not facilitate feasible alterations or significant new work to the existing Synagogue building nor do they facilitate other forms of compatible development which would enhance the feasibility of improving the Synagogue. The current zoning does not facilitate the most desirable future use of the site within the context of the streetscape and neighbourhood character and within the setting of surrounding medium density residential development. The provisions for existing use right that may apply to the site only permit minor alterations for the purposes of an educational establishment. The building would require more than minor alterations in order to be used as an educational establishment that would meet contemporary standards.*
- 2. It is a better option to provide a range of alternatives for the redevelopment of the site and the financial benefits of new development options to be factored into the provision of new facilities either at the site or elsewhere.*

Assessment process

As part of the criteria in the NSW Department of Planning and Environment *Local Environmental Plan Making Guidelines*, Council is required to report the Proposal to Council for a decision on whether the Proposal should proceed to Gateway Determination within 90 days, otherwise, the Proponent can seek to lodge a Rezoning Review which would result in the matter being referred to the Sydney Eastern City Planning Panel. Due to the schedule of WLPP, Council and Committee Meetings, the Proposal is being reported to Council outside of the 90-day requirement.

Waverley Local Planning Panel (WLPP)

Council is required to report planning proposals of this nature to the Waverley Local Planning Panel (WLPP) for advice. The planning proposal was reported to the WLPP on 25 May 2022 for advice with the view of proceeding the Proposal to a Gateway Determination for the purposes of exhibition, in order to receive public feedback on the Proposal.

The Proponent was present at the WLPP to address questions from panel members about the proposal, including concerns in relation to the change of the SP2 Infrastructure zone in contradiction with Council policy.

At the meeting, the WLPP unanimously resolved that:

- The recommendations in the officer's report relating to this planning proposal are noted. However, the Panel does not support the planning proposal proceeding to a Gateway Determination for the purposes of exhibition.
- This planning proposal involves an anticipated change in long-established policy by the Council in relation to SP2 Zones. The Council has specifically sought variation to the Practice Note 11-002 of 2011 to allow private and public-school sites and places of public worship to be zoned SP2 as opposed to reflecting the adjoining zone. It is noted that the 2020 Local Strategic Planning Statement was adopted by Council and assured by the Greater Sydney Commission that the 'retention of the SP2 Infrastructure Zone was identified as an action when undertaking any review of the Local Environmental Plan. The reason for this was that many of the sites currently zoned SP2 in Waverley provide crucial social infrastructure.'
- The adjoining site of Yeshiva College is zoned R3. It would appear that there is a mapping discrepancy in the LEP, however, the Panel is not aware of the history of how the zoning lines were determined at the relevant time.

Following the WLPP Meeting, officers considered the concerns raised and advice provided by the Panel and have subsequently recommended that the Proposal does not have sufficient merit to proceed to Gateway Determination for the reasons discussed in this report.

Strategic merit of the Proposal

The Proponent is of the view that the proposed LEP amendment has strategic merit which is aligned with the relevant matters for consideration set out in Council's Local Strategic Planning Statement (WLSPS). The strategic merit test, which is part of the assessment criteria to determine the Proposal, is addressed in the attached planning proposal (Attachment 1, Table 3, p. 38).

In the preparation of the WLSPS, the retention of the SP2 Infrastructure zone was identified as an action when undertaking any review of the WLEP2012. The reason for this is that many of the sites currently zoned SP2 around the Waverley LGA provide crucial social infrastructure.

The retention of this social infrastructure is important to continue to support a resilient community through the provision of spaces in which people can gather, and form relationships within the community. In addition, these places often provide safe spaces where people can partake in public life and low-cost community activities, which is important for maintaining mental wellbeing in high-density areas. The following Planning Priorities and Actions from the WLSPS are relevant to the proposal:

- Planning Priority 4 (PP4) – Ensure the community is well serviced by crucial social and cultural infrastructure.
- PP4, Action 4 – Review and strengthen existing planning controls in the WLEP to continue to provide crucial social and cultural infrastructure for the area.
- PP4, Action 8 – Investigate and implement planning mechanisms to identify and protect crucial cultural and social infrastructure for the community.

On the matter of the SP2 zoning, the WLSPS states:

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.

It is considered that the Proposal is not in keeping with the Planning Priority or Actions of the WLSPS and does not demonstrate strategic merit for the following reasons:

1. In the preparation of the WLSPS, the retention of the SP2 Infrastructure zone was identified as an action when undertaking any review of the WLEP 2012. The reason for this is that many of the sites currently zoned SP2 around the Waverley LGA provide crucial social infrastructure. The retention of this social infrastructure is important to continue to support a resilient community through the provision of spaces in which people can gather, and form relationships within the community.
2. The amendment to WLEP2012 to change the zoning from SP2 Infrastructure to R3 Medium Density Residential will involve a departure from the policy that was adopted by the Council in 2012 and supported by the NSW Government at the time. Any changes to the policy may have a significant impact on similar SP2 Infrastructure sites in Waverley Council by creating a precedent.

The Proponent raises an issue regarding the inability to undertake alterations or additions to the current building on site due to the site being for the purpose of 'Educational Establishment' rather than 'Place of Public Worship'. As has been previously indicated, this is not correct as the existing use including the built form could be expanded under the existing use provisions in the Act. Notwithstanding this, the existing zoning anomaly will be investigated by officers in a future housekeeping amendment.

Site-specific merit

The site is surrounded by medium density residential land uses and the change in zoning will not change the character of the area, however it may result in the loss of the existing use as a Place of Public Worship. The assessment criteria outlined in the DPE Guideline to determine if a planning proposal has site-specific planning merit is addressed in Table 4 on page 40 of the planning proposal Report prepared by the Proponent provided in Attachment 1.

Traffic, parking and road safety

The proposed change in the zone may facilitate a future redevelopment or the intensification of the current development, which may result in an increase in traffic. It is noted that there is no increase in density (height and floor space ratio) proposed under this Proposal, however different uses will place different pressures on the road network and parking availability. Traffic and parking impacts would be assessed in conjunction with any future development application.

Overshadowing

Overshadowing from any future redevelopment of the site may have an impact on the surrounding properties, which the Proponent has demonstrated in two Scenarios of design which are available in section 3.3 in the planning proposal. Overshadowing impacts would be assessed in conjunction with any future development application.

Character

The land uses surrounding the site are predominantly characterised by residential flat buildings and the properties immediately north and south of the site are zoned R3 Medium Density Residential. The residential purpose is generally consistent with the character of the locality.

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 budgeted.

Consultation

This Proposal is not recommended to proceed to public exhibition. If the Proposal was to proceed to public exhibition it would be done so in accordance with any Gateway Conditions.

6. Conclusion

An amendment to WLEP2012 to change the zoning from SP2 Infrastructure to R3 Medium Density Residential will be inconsistent with the policy that was adopted by the Council and supported by the Department of Planning due to the character and density of the LGA and any changes to this Social Infrastructure will have an impact on the area.

In the preparation of the WLSPS, the retention of the SP2 Infrastructure zone was identified as an action when undertaking any review of the WLEP2012. The basis for this is that many of the sites currently zoned SP2 around the Waverley LGA provide crucial social infrastructure.

The retention of this social infrastructure is an important strategic planning outcome to continue to support a resilient community through the provision of spaces in which people can gather, and form relationships within the community.

7. Attachments

1. Planning proposal
2. Future development scenarios
3. Pre-lodgement advice
4. Minute Extract - Finance, Ethics and Strategic Planning Committee - 6 March 2012 - Item F-06.12 - Waverley Planning Review 2011 .