



Our ref: PP-01/2022

8 September 2022

Mr. John Doubleday  
Planning Officer Metro East and South  
4 Parramatta Square  
12 Darcy Street  
PARRAMATTA NSW 2150

Dear Mr Doubleday,

**Re: Request for a rezoning review – RR-2022-21– 34 Flood Street, Bondi Junction**

Thank you for your letter dated 23 August 2022 notifying Waverley Council that a request for a Rezoning Review was submitted by Karimbla Properties Pty. Ltd, comprising of a planning proposal seeking to amend the Waverley Local Environmental Plan 2012 as it applies to 34 Flood Street, Bondi Junction to change the land use zone from SP2 Educational Establishment to R3 Medium Density Residential.

Waverley Council officers have reviewed the information that was submitted with the Rezoning Review request available from [planningportal.nsw.gov.au/rezoning-review](http://planningportal.nsw.gov.au/rezoning-review) and can confirm that the proposal which has been submitted for the rezoning review is the same proposal that was considered by Council.

The original request to prepare a planning proposal was not progressed by Council as the proposal lacks Strategic merit which involves a significant departure from Council's long-established policy in relation to SP2 Infrastructure Zones for social infrastructure.

In addition, Council made the determination 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 reasons listed above.

It is noted that the adjacent site at 36A Flood Street, under the same ownership, is currently zoned R3 Medium Density Residential and houses the Yeshiva College. In 2013 a Planning Proposal was reported to Council which included the proposal to amend the zoning of 36A Flood Street, from R3 Medium Density Residential to SP2 Infrastructure Educational Establishment. During the exhibition process, the owner of the site made an objection to this rezoning regarding the importance of the residential zoning for the specific funding arrangements of the site, and as a result, Council did not support the rezoning, and the site at 36A Flood Street remained R3 Medium Density Residential. The site at 36A Flood Street was recently identified in an article published by Sydney Morning Herald that Yeshiva College will close at the end of September. From recent correspondence from Harry Triguboff at Meriton (see attached letter) it is likely that they would like to develop the Yeshiva College site and the site subject to this Planning Proposal to residential apartments. It is noted that the two adjacent sites, if zoned R3 Medium Density Residential, would create a significant development

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site. This would result in the loss of valuable social infrastructure that the Council has a longstanding policy position – in the LEP and LSPS – to retain.

Provided as an attachment to this letter is an assessment report regarding the Planning Proposal of the subject site 34-36 Flood Street, Bondi. It is also noted that the Rezoning Review documents provided are the same as the original documentation provided with the Planning Proposal.

If you have any questions or require further information on this matter, please Shima Niavarani, Strategic Planner between the hours of 9.00am and 5.00pm, Monday to Friday, (excluding public holidays) on 9083 8054.

**Best regards,  
Tim Sneesby  
A/Executive Manager  
Urban Planning, Policy and Strategy**

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## ATTACHMENT A – PLANNING PROPOSAL – ASSESSMENT REPORT

34-36 Flood Street, Bondi Junction

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## Executive Summary

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.

*Table 1: LEP controls and Planning Proposal*

WLEP 2012 Provision	Current Planning Controls	Planning Proposal
<b>Zone</b>	SP2 Infrastructure – Educational Establishment	R3 Medium Density Residential
<b>Additional Permitted Use</b>	Nil	Nil
<b>FSR</b>	0.9:1	0.9:1
<b>Height</b>	12.5m	12.5m
<b>Heritage</b>	No	No

The Proposal was reported to the Waverley Local Planning Panel (WLPP) on 25 May 2022 and was not supported by the Panel. The Proposal was reported to the Council on 5 July 2022 and was not supported to proceed to Gateway Determination as the rezoning lacks Strategic merit and involves a change in Council's long-established policy in relation to SP2 Infrastructure Zones.

## 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 m<sup>2</sup>. The primary frontage of the site is Flood Street, and the secondary frontage is Anglesea Street. The site contains a Synagogue, and there is a kitchen at the rear of the Synagogue with a shared driveway and path. The site is surrounded by medium-density residential buildings, with the eastern portion of the site containing two storeys of detached dwellings. 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 Medium Density Residential and R2 Zone Low-Density Residential. The subject site is also known as Harry O. Triguboff Centre, a Hasidic Jewish Synagogue, learning centre and library of the Chabad-Lubavitch nusach.

## 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, and the subject site was then utilised as a synagogue ancillary to the school. In 2010 Council adopted the draft Waverley Local Environmental Plan 2011, which would go on to become the WLEP2012, and requested to enable the draft plan to be publicly exhibited. As the original Infrastructure Zoning was carried over from the WLEP1996 into the WLEP2012, the zoning applied in WLEP2012 was SP2 'Education Establishment', despite the site being utilised as an ancillary synagogue. At the time there was no opportunity for

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public feedback on the SP2 Infrastructure 'Education Establishment' zoning, as 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 at the time, which required that all educational establishments and places of worship sites be zoned as the adjacent zone. When the WLEP2012 was adopted by Council, it was done so with the condition that all schools within the Waverley Local Government Area be zoned Infrastructure SP2 Educational Establishment. This position was done so against a Practice Note prepared by the NSW Government in relation to Infrastructure zoning but was eventually 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 site at 36A Flood Street was zoned residential at the time that the school moved into the site and was not amended after the school moved to reflect the new use of the site. This anomaly 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 the proposal to amend the zoning of 36A Flood Street, from R3 Medium Density Residential to SP2 Infrastructure Educational Establishment to reflect the current use of the site. During the exhibition process, the owner of the site made an objection to this rezoning regarding the importance of the residential zoning for the specific funding arrangements of the site, and as a result, Council did not support the rezoning, and the site at 36A Flood Street remained R3 Medium Density Residential.

As a result, the subject site (34-36 Flood Street) is zoned SP2 – Educational Establishment, however, contains a place of public worship which is ancillary to the Yeshiva College, and associated community facilities, and the adjacent site (36A Flood Street) is zoned R3 Medium Density Residential but contains the educational establishment Yeshiva College. This is one of the main points the Proponent sees as the reasoning as to why the site should be rezoned via a Planning Proposal, with the main reason for the rezoning to R3 Medium Density Residential to be to enable greater flexibility for the use of the site as a synagogue and educational establishment. However, when questioned about why the zone SP2 – Place of Worship was not appropriate for the synagogue, the justification provided by the Proponent simply refers to the Practice Note, which was not followed in the making of the Waverley LEP2012.

On August 19, the Sydney Morning Herald published an article<sup>1</sup> that identified that Yeshiva College will be closed by the end of September due to a number of significant issues regarding the operations of the school. As the current use of the subject site is ancillary to the Yeshiva College, it is unclear whether the synagogue would continue to function separately to the school, or to close. Accordingly, should the Rezoning Review proceed, it is likely that the adjacent site and the subject site would be redeveloped as a residential site, given the medium density zoning and size of the combined sites. The loss of the school and synagogue would be significant for the local community and is a core reason that the Council has a longstanding position on retaining the SP2 Infrastructure zone for the purposes of protecting sites for social infrastructure against redevelopment, particularly in an economic development market that provides significant profits for residential development.

## Relevant Council Resolutions

Meeting and date	Item No.	Resolution
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<sup>1</sup> <https://www.smh.com.au/national/nsw/bondi-school-accused-of-misusing-funding-will-stay-open-until-end-of-september-20220817-p5baq5.html>

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<p>Committee Meeting 6 March 2012</p>	<p>F-1203.6</p>	<p><b>Waverley Planning Review 2011 (A07/1581-04)</b></p> <p>Report dated 20 February 2012 from the Director, Planning &amp; Environmental Services regarding the public exhibition of the Waverley Planning Review including the Draft Waverley Local Environmental Plan (LEP) 2011 and Draft Waverley Development Control Plan (DCP) 2011. The report also recommends adoption of this plan, subject to certain amendments.</p> <p><b>MOTION / RECOMMENDATION (Wakefield / Sloan)</b></p> <p>That:</p> <ol style="list-style-type: none"> <li>1. Council adopt the Draft Waverley Local Environmental Plan 2011 as exhibited, subject to the following minor amendments: <ul style="list-style-type: none"> <li>(a) Zone all Educational Establishments and Places of Public Worship SP2 Infrastructure.</li> </ul> </li> <li>2. Council proceed with the making of the Draft Waverley Local Environmental Plan 2011 to effect the reclassification of the properties listed in Schedule 4 from Community to Operational land.</li> <li>3. The Draft Waverley Local Environmental Plan 2011 be forwarded to the Minister for Planning in accordance with Section 68 of the Environmental Planning and Assessment Act 1979 with a request that the plan be made.</li> <li>4. The Department of Planning and Infrastructure be advised that a Public Hearing in accordance with the provisions of Section 68 of the Act is not required as the matters raised in the submission are not of such significance as to warrant a Public Hearing.</li> <li>5. Stakeholders be invited to enter into discussions to prepare site-specific controls for the Bronte RSL Club Sub-branch site and War Memorial Hospital site.</li> <li>6. The owners of the War Memorial Hospital site be invited to discuss the height and Floor Space Ratio controls for the site, and the matter be reported back to Council in the future.</li> <li>7. The Heritage Inventory Sheet for Scarba House be reviewed to ensure that the curtilage around the heritage item and landscaped grounds is appropriate, and that any future development will not undermine the heritage significance of the site.</li> <li>8. Council officers meet with officers of the Department of Planning &amp; Infrastructure to investigate the opportunity to rezone roads in the future to either SP2 Infrastructure or that lower order zones take</li> </ol>
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		<p>priority and that the outcomes of the meeting be reported to Council or incorporated into the first amendment of the gazetted Waverley LEP 2011.</p> <p>9. Council officers commence, as soon as practical, the preparation of a set of Amendments to be submitted after gazettal of the changes to the Waverley LEP indicated herein.</p> <p>10. The recently commissioned independent Urban Design Review of Bondi Junction be input into the Amendments indicated in Clause 9.</p> <p>11. A heritage assessment be prepared for the Bronte Plateau (north) area.</p> <p>12. All people who made submissions be advised of Council's decision.</p> <p>13. Council staff involved in the preparation of the Waverley Planning Review 2011 be thanked for their efforts.</p>
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## 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
<b>Zone</b>	SP2 Infrastructure	R3 Medium Density Residential
<b>Additional Permitted Use</b>	Nil	Nil
<b>FSR</b>	0.9:1	0.9:1
<b>Height</b>	12.5m	12.5m
<b>Heritage</b>	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 and ancillary uses only. The Proposal seeks to amend the zoning only, to a proposed R3 Medium Density Residential Zone. The Proposal does not seek to change the height or FSR of the site.

The proposed zone change is consistent with the surrounding area of Flood Street, which is predominantly R3 Medium Density Residential, as identified in Figure 1. Whilst not the expressed purpose of the Proposal, the resulting zone may 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 the attached Future Development Advice. This document provides a demonstration of two compliant development possibilities to demonstrate overshadowing and character, should the site be redeveloped in the future.

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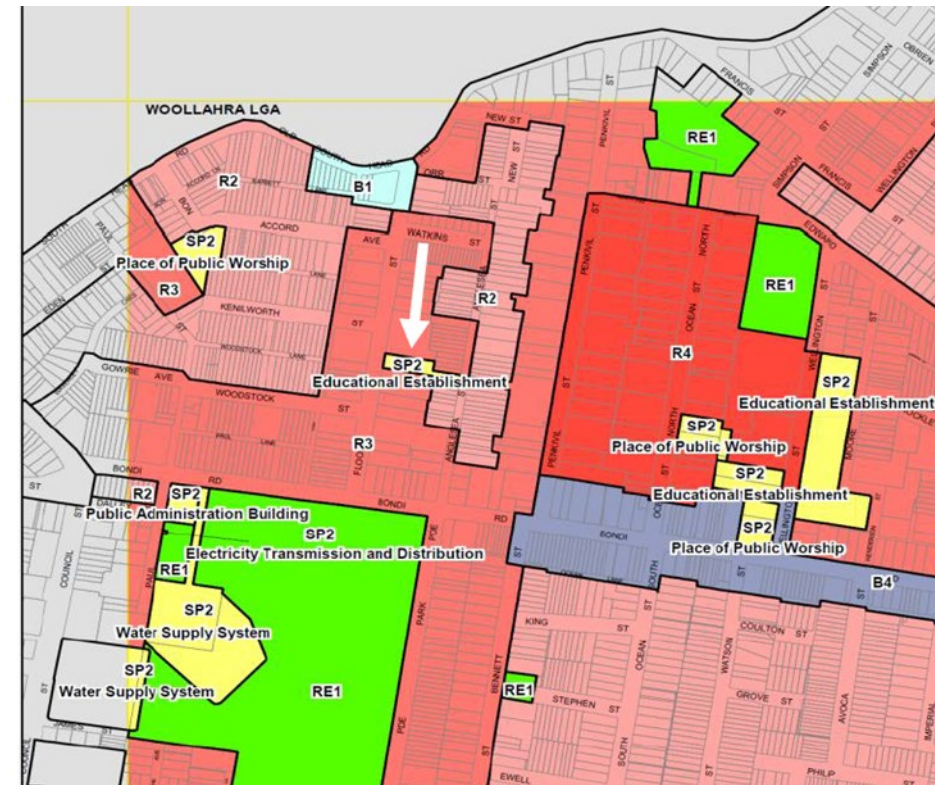
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The site to the south of the subject site, 36A Flood Street, is an educational establishment, Yeshiva College, and is zoned R3 instead of SP2. Both sites are under the same ownership and share uses via the Yeshiva College and ancillary synagogue.

With the current land use controls of the WLEP2012, the only permissibility on the subject site is an educational establishment and ancillary uses. The provision for the existing use only permits minor alterations for the purposes of an educational establishment. The Proponent has identified that any works to the building at the subject site required are not permissible under the current land-use zoning.

*Table 3: Subject site and associated zoning.*



## Assessment Process

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 to receive public feedback on the Proposal. The Proponent was available to address questions from WLPP members about the proposal, including concerns the panel had in relation to the change of the SP2 Infrastructure zone in contradiction with Council policy. At the meeting, the WLPP unanimously advised 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

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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.

Regular updates relating to the position of the Officers, the position of the WLPP and the recommendation being put to Council within this report have been provided to the Proponent, throughout the pre-Gateway assessment process.

## Strategic merit of the Proposal

The Proposal prepared by the Proponent identifies that the proposed LEP amendment has strategic merit which is aligned with the relevant matters for consideration set out in *Waverley 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 Table 3 page 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 *Waverley Local Environmental Plan*. 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.*

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Accordingly, the Proposal is not in keeping with the Planning Priority or Actions of the WLSPS. As a result of the inconsistency with the WLSPS Officers sought further justification from the Proponent regarding the matter. The following justification was provided:

*With regard to your query, you would be aware the respective Planning Practice Notes give guidance to the use of SP2 land so it equally addresses your suggestion for consideration of the SP2 (Place of Worship) zone. The Practice Note states that the SP2 Zone 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. As outlined clearly in our PP and emails below, none of these provisions applies to this site. Specifically, PN11-002 states:*

*"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 centers,' 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."*

*(NOTE - PN10-001 deals with what schools should be to consider context and states it should be applied to schools that have 20+ha, include facilities for community uses and is of regional significance).*

*There is no reference that suggests that it should in any way be considered for the subject site/uses.*

*On the contrary, PN10-001 specifically addresses the provisions to consider for existing SP zoned land when adopting a new LEP:*

*"For infrastructure or services prescribed in all zones and those currently zoned 'special use', (e.g. roads, railway lines, substations, pipelines etc), the appropriate adjacent land zone should generally be used. Applying the adjacent zone type to public infrastructure land follows a basic planning principle of aligning land uses. It is established practice to refer to the zoning of adjoining land when seeking to establish an appropriate zoning for land. In many cases, the infrastructure land would have been zoned the same as the adjoining land if it had not been used instead for an infrastructure purpose. This approach avoids the need for spot rezonings when the infrastructure use expands, ceases, is realigned or is downsized in the future. It is preferable that the land use zone be the same as the adjacent zoning so that future uses are compatible with existing surrounding uses."*

*Accordingly, the use of the SP2 land, whether for education or religious uses is not appropriate for this site. The R3 zone however surrounds the site, facilitates the uses continuing/expanding under its zoning provisions and will ensure that appropriate development is secured in the future should the current use expand, cease or downsize in the future.*

*We would also maintain that just because Council has an incorrect precedent within its LEP, this should not be perpetuated against established planning guidance, particularly to the detriment of private landowners where the PN specifically focuses the use of SP zones on public infrastructure and facilities well beyond the uses and scale of facilities on the subject site. We are consistently advised as applicants that an outcome that has been given on a particular*

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*development, that may be considered advantageous but does not necessarily comply as per planning controls, cannot be used as justification for another site to automatically secure the same benefit. Accordingly, a precedent of incorrect zoning within your LEP should not be used as a reason to apply the same incorrect zoning elsewhere.*

As discussed by the Proponent, two Practice Notes (PN10-001 and PN11-002) have been prepared by the NSW Government regarding the use of the SP2 Infrastructure zone. The practice notes recommended that places of worship and schools would be rezoned as the neighbouring land use (in most cases in Waverley, this was R2 Low-Density Residential or R3 Medium Density Residential). As discussed earlier in the report, when preparing the Waverley LEP 2012, Council deliberately chose to retain the SP2 Infrastructure zone due to the limited social infrastructure in a very high density area. Whilst against the Practice Note, the NSW Government supported the Council's request to retain the SP2 Infrastructure zoning. This position has been reaffirmed in the WLSPS in other Planning Proposals where Council has sought to protect the SP2 Zoning from being rezoned to residential, such as the War Memorial Hospital Planning Proposal.

In summary of the above considerations, it has been concluded that the Proposal 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 would involve a departure from the policy that was adopted by the Council in 2012 and supported by the NSW Government. Any changes to the policy may have a significant impact on similar SP2 Infrastructure sites in Waverley Council by creating a precedent, and will likely result in the loss of the current infrastructure on site.

The issue with the loss of key social infrastructure such as schools in Waverley, which is a densely populated area with high land values, is that securing new locations for similar social infrastructure which are well connected and well located is a significant challenge given the demand for high-value housing. However, for Waverley Council to be able to achieve the Objective 6 in the Greater Sydney Region Plan (GSRP) to create 20-minute neighbourhoods and provide land for crucial social infrastructure, which schools are identified as in the GSRP, it is vital that these precious and few sites are retained. In addition, sites that may be developable as social infrastructure from another use will likely face significant resistance from existing residents as a new use brings unknown environmental impacts such as noise and increased traffic disruption. By comparison, the retention of an existing school site has established relationships with the community and a set of existing operational rules and expectations. Accordingly, the loss of such a crucial piece of social infrastructure, such as currently located across 34-36 Flood Street and 36A Flood Street, would be an immeasurable loss for the broader community in terms of lost social infrastructure.

## Site-specific merit

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The site is surrounded by Medium-Density residential land uses and the change in zoning would not change the character of the area, and land use opportunities are consistent with the current zoning. The zoning change will not increase the demand for additional essential services.

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.

It is noted that whilst the Future Development Advice provided with the Proposal provides potential indicative redevelopment outcomes, this Proposal only addresses land use zoning and does not allow for approval for development of any kind.

#### 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, however different uses will place different pressures on the road network and parking availability and the Proposal does seek to enable a variety of uses currently not available on the site. If the proposal were to proceed against Officer's recommendation or via a successful Rezoning Review, Council would further review any likely traffic impacts, however, the specifics of any future development on the local road network or the residential amenity in the locality would be assessed at the Development Application stage.

#### Overshadowing

Overshadowing from any future redevelopment of the site might 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.

#### Character

The land uses surrounding the site are predominantly characterized 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, but future development might have an impact on population density which may increase traffic congestion and increase parking demand in the surrounding area.

## Conclusion

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 and supported by the Department of Planning & Environment due to the character and residential density of the LGA. Any loss of social infrastructure will have an impact on the area. In addition, in the preparation of the WLSPP, 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.

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