

Rezoning Review Briefing Report – RR-2022-21

34-36 Flood Street, Bondi NSW (Rezoning from SP2 to R3)

Element	Description
Date of request	3 August 2022 (Accepted by the Department on 18 August 2022)
Department ref. no	RR-2022-21 (PP-2022-676)
LGA	Waverley
LEP to be amended	Waverley Local Environmental Plan (LEP) 2012
Address	34 – 36 Flood Street, Bondi NSW (Lot 1 DP 1094020)
Reason for review	<div><input checked="" type="checkbox"/> Council notified the proponent it will not support the proposed amendment</div> <div><input type="checkbox"/> Council failed to indicate support for the proposal within 90/115 days, or failed to submit the proposal after indicating its support</div>
Has council nominated PPA role	No – Council resolved not to support the planning proposal
Consultation	N/A

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Brief overview of the timeframe/progress of the planning proposal	<p>On <u>9 March 2022</u>, an application for a planning proposal was received by Council.</p> <p>On <u>25 May 2022</u>, the planning proposal request was reported to the Waverley Local Planning Panel (LPP). The Council staff report recommend that the proposal be submitted for a Gateway determination.</p> <p>LPP did not support the proposal proceeding to gateway because the proposal involves a change to the long-established Council policy in relation to SP2 Infrastructure zones. It also cited the action in the Waverley Local Strategic Planning Statement (LSPS) around retention of the SP2 Infrastructure zone to provide crucial social infrastructure.</p> <p>On <u>5 July 2022</u>, Council staff reported to Council's Strategic Planning and Development Committee (SPDC) meeting with a recommendation to refuse the planning proposal request, in line with the advice of the Waverley LPP. Council staff also recommended an investigation into the strategic merit of amending the current zoning of the site.</p> <p>The SPDC resolved not to support the planning proposal as it <i>"lacks strategic merit and involves a change in Council's long-established policy in relation to SP2 Infrastructure Zones"</i>. The SPDC also resolved that Council <i>"Investigates the strategic merit of amending the current zoning... to a more appropriate zoning that represents the existing uses and considers potential future uses on the site in a future housekeeping planning proposal."</i></p> <p>On <u>3 August 2022</u>, the proponent lodged a rezoning review request on the planning portal.</p> <p>On <u>18 August 2022</u>, the Department accepted the rezoning review, upon completion of a review of the submitted documentation and receipt of payment.</p>
Department contact:	Simon Ip, Manager Place and Infrastructure, 8289 6714

Planning Proposal

Table 1. Overview of planning proposal

Element	Description
Site Area	1,327 square metres (sqm)
Site Description	<p>The subject site is located at 34-36 Flood Street, Bondi and is legally described as Lot 1 in Deposited Plan (DP) 1094020. The site is irregular in shape and has a primary street frontage to Flood Street of approximately 18 metres (m). The secondary street frontage to Anglesea Street is approximately 7m.</p> <p>The existing development includes a synagogue with pedestrian access to Flood Street, with a not-for-profit community kitchen at the rear, accessed via a shared driveway located on the adjacent property to the north at 26-32 Flood Street, which accommodates a part four- and five-storey seniors housing development.</p> <p>The site has been developed in conjunction with the adjacent property to the south at 36A Flood Street, which is under the same ownership. 36A Flood Street is an educational establishment (Yeshiva College, with schooling for kindergarten to year 10) and is zoned R3 Medium Density Residential.</p> <p>According to Council's materials, the subject site was used from the late 1950's to 1980's as a school (Yeshiva College), which was later relocated to its current location at 36A Flood Street. The subject site has since been utilised as a synagogue attached to the school up to the present.</p> <p>A site map is provided at Figure 1.</p> <p>The surrounding developments are characterised by a mixture of residential flat buildings and detached and semi-detached dwellings. The residential buildings range in height from one to nine storeys.</p> <p>The site is located approximately 1 kilometre (km) from Bondi Junction Strategic Centre and Bondi Junction train station, and approximately 5km from Sydney central business district (CBD).</p>

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Element	Description
Zoning History – subject site and adjoining site at 36A Flood Street, Bondi	<p>The subject site is zoned SP2 Infrastructure (Educational Establishment). It has the same development standards as the adjacent and surrounding properties zoned R3 Medium Density Residential (See Table 2). No changes to the development standards are proposed.</p> <p>Council states that when the then draft Waverley LEP 2011 (later became LEP 2012) was prepared, the draft identified an R3 zoning for the subject site. A post-exhibition change altered the zoning from R3 to SP2 Infrastructure (Educational Establishment), despite the site being used as a synagogue.</p> <p>Council prepared a house-keeping planning proposal in 2013, which sought to amend the zoning of the adjoining site at 36A Flood Street from R3 Medium Density Residential to SP2 (Educational Establishment); however, Council did not support the rezoning due to objection by the landowner.</p>
Proposal Summary	<p><u>Proposal</u></p> <p>The proponent's planning proposal request (refer to planning proposal report in Attachment A2) seeks to amend the Waverley Local Environmental Plan (LEP) 2012 as it applies to the subject site to:</p> <ul style="list-style-type: none">• Change the land use zone from Zone SP2 Infrastructure (Educational Establishment) to Zone R3 Medium Density Residential. <p>The planning proposal does not seek any changes to development standards or other LEP provisions.</p> <p>The proponent also states that the current zoning of the land is an anomaly as the current use of the site is not an educational establishment, and the zoning is contrary to the guidelines and directions in Planning Practice Notes PN10-001 and PN11-002.</p> <p>The proponent also considers the current zoning does not facilitate the most desirable future use of the site within the setting of the surrounding medium density residential environment.</p> <p>The planning proposal includes indicative future development scenarios (Attachment A2) for the subject site in conjunction with the adjoining land at 36A Flood Street based on the R3 planning controls. The proponent has stated that any future development of the site will be subject to a separate development application (DA).</p> <p>The planning proposal report acknowledges that it is not the direct result of a strategic study or report, it is an applicant-initiated, site-specific proposal due to an oversight made in the application of land use zoning to the site.</p>

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Element	Description
Relevant State and Local Planning Policies, Instruments and Guiding Documents	<p><u>Strategic plans</u></p> <ul style="list-style-type: none"> Greater Sydney Region Plan: <i>A Metropolis of Three Cities</i> Future Transport Strategy 2056 Eastern City District Plan Waverley Local Strategic Planning Statement (LSPS) Waverley Local Housing Strategy <p><u>Practice notes</u></p> <ul style="list-style-type: none"> LEP Practice Note – Preparing LEPs using the Standard Instrument: standard zones (<i>PN11-002 - March 2011</i>) LEP Practice Note – Zoning for Infrastructure in LEPs (<i>PN10-001 - December 2010</i>)



Figure 1. Subject site (source: Nearmap) – The subject site is marked in red, and the adjoining Yeshiva College is marked in blue. The indicative development scenarios submitted by the proponent relate to both of these sites.

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The planning proposal seeks to amend the Waverley LEP 2012 per the changes below.

Table 2. Current and proposed controls

Control	Current	Proposed
Zone	SP2 Infrastructure (Educational Establishment)	R3 Medium Density Residential
Maximum height of buildings	12.5m	No Change
Maximum floor space ratio	0.9:1	No Change
Minimum lot size	N/A	No Change
Reclassify land from	N/A	N/A
<i>Indicative concept plan:</i>		
Number of dwellings	1 (caretaker cottage)	19 apartments or 8 multi-dwelling housing
Number of jobs	N/A	N/A

The planning proposal contains an explanation of provisions that adequately explains how the objectives of the proposal will be achieved.

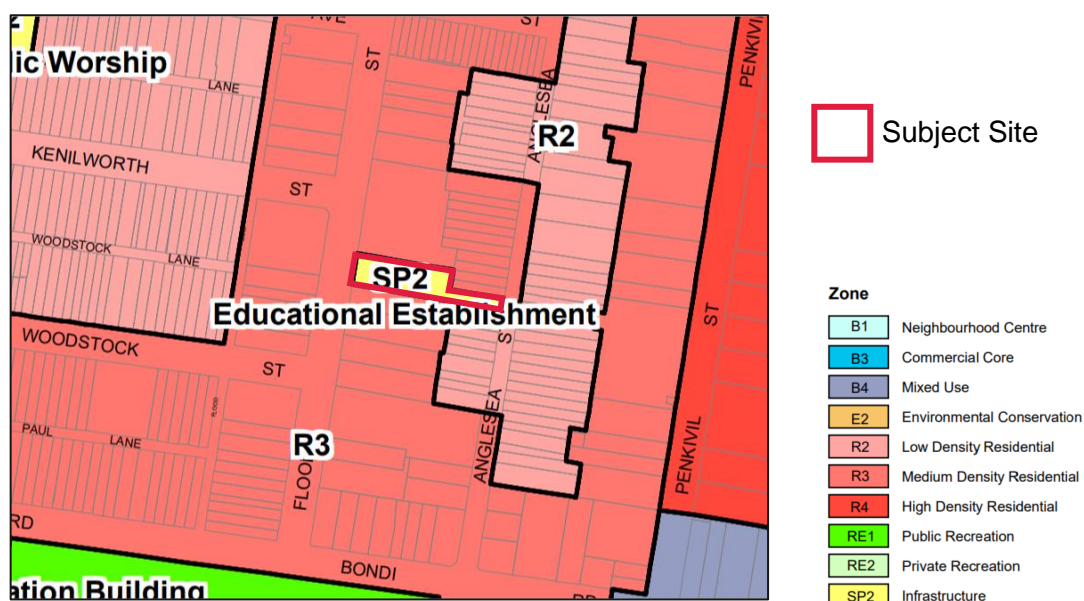


Figure 2. Current zoning (source: NSW Planning Portal)

Key Issues

Background

Waverley Local Planning Panel (LPP) at its meeting of 25 May 2022 recommended that the planning proposal not proceed; the key reasons provided were:

- The Panel does not support the planning proposal proceeding to a Gateway Determination for the purposes of exhibition.
- The 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 [now Greater Cities 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.’”*

Council’s Strategic Planning and Development Committee (SPDC) at its meeting of 5 July 2022 (**Attachment A1-f**) recommended the planning proposal not proceed; the key reasons provided were:

- Council does not support the planning proposal as it *“lacks strategic merit and involves a change in Council’s long-established policy in relation to SP2 Infrastructure Zones”*.
- Council should investigate *“the strategic merit of amending the current Infrastructure ‘Educational Establishment’ to a more appropriate zoning existing uses and considers potential future uses on the site in a future planning proposal”*.

Council officers’ comments in response to the rezoning review

The Department wrote to Council on 23 August 2022 advising the receipt of the rezoning review request and invited Council to provide comments.

Council provided comments on 08 September 2022 (**Attachment D**). Council states the proposal (and supporting information) which has been submitted for the rezoning review is the same as that considered by Council.

Department’s LEP Practice Notes

The proponent’s planning proposal refers to the following LEP practice notes.

The purpose of NSW planning practice notes is to provide commentary, guidance and advice for planning matters generally relating to principal local environmental plans and the standard instrument. Practice notes are for information purposes only and do not constitute legal advice.

LEP Practice Note – Zoning for Infrastructure in LEPs, December 2010 (PN10-001)

This practice note provides guidance to councils on zoning public infrastructure land in standard instrument LEPs. The following provisions in the note are of relevance:

Principle 2.1 Providing for future infrastructure in prescribed zones

*In most circumstances, 'special use' or 'special purpose' zones will not be required in LEPs to cater for current or proposed infrastructure. Most types of infrastructure development are permitted under the Infrastructure SEPP in a range of suitable 'prescribed zones'.**

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Principle 2.2 Rezoning existing 'special use' zones to adjacent prescribed zones

Most existing infrastructure land currently zoned 'special use' should be rezoned in the LEP according to what the adjacent zone is, if that zone is a 'prescribed zone' in the ISEPP which permits that type of infrastructure.

...

Principle 3 Certain special purpose zones should remain as special purpose zones

Principle 3.1 Where the land use is unlikely to change, and where the use is not otherwise covered in this practice note, land may be zoned SP2 Infrastructure.

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

...

Principle 3.2 Large precinct sites should remain in special purpose zones

Major state infrastructure on large sites may be zoned SP2 Infrastructure

**Note: The State Environmental Planning Policy (SEPP) (Transport and Infrastructure) 2021 does not specify controls for 'places of public worship'. The SEPP specifies a range of 'prescribed zones' for educational establishment – schools, including R3 Medium Density Residential zone.*

Under the zoning table for R3 Medium Density Residential zone of the Waverley LEP 2012, 'places of public worship' and 'educational establishment' are permitted with consent ('educational establishment' is not a use specified as 'permitted without consent' or 'prohibited').

LEP Practice Note – Preparing LEPs using the Standard Instrument: standard zones, March 2011 (PN11-002)

This practice note provides commentary on the standard zones in the Standard Instrument (Local Environmental Plans) Order 2006. It should be read in conjunction with any relevant State or regional planning provisions (including SEPPs and district or regional plans). The following provisions in the note concerning SP2 Infrastructure zones are of relevance:

- *Infrastructure land that is highly unlikely to be used for a different purpose in the future should be zoned SP2...*
- *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'.*

The above practice notes can be accessed on the Department's website at:

<https://www.planning.nsw.gov.au/Plans-for-your-area/Local-Planning-and-Zoning/Strategic-Planning-Toolkit>

Waverley Local Strategic Planning Statement (LSPS) 2020

The Waverley LSPS identifies planning priorities to give effect to the directions of the Region and District Plans. The LSPS aligns with Council's Community Strategic Plan (CSP).

Planning Priority 4 – Ensure the community is well serviced by crucial social and cultural infrastructure

The LSPS outlines planning principles and actions to provide social infrastructure to meet people's changing needs. The discussion in the LSPS states that Council is seeking 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*”.

Actions under this Priority that are relevant to this planning proposal include:

- Action 4 – Review and strengthen existing planning controls in the WLEP to continue to provide crucial social and cultural infrastructure for the area.
- Action 8 – Investigate and implement planning mechanisms to identify and protect crucial cultural and social infrastructure to the community.

Issue no. 1: Strategic merit

Council's view

Council considers that the proposal does not demonstrate strategic merit as:

- The Waverley LSPS 2020 included an action on the retention of the SP2 Infrastructure zone. The reason for this is that many sites currently zoned SP2 in the LGA provide crucial social infrastructure which is important to continue to support the community
- Council's SPDC has resolved to investigate an amendment to the current SP2 zoning of the site to a more appropriate zone that represents the existing and potential uses in a future house-keeping planning proposal. (Note: The Council officers' recommendation was to investigate the merit of an SP2 Infrastructure (Place of Public Worship) zone.)
- Any changes to the LSPS position for the retention of SP2 zones could create a precedent and result in the loss of current infrastructure. The proposed rezoning will result in a departure from Council's longstanding policy on SP2 zoned land.

Proponent's view

- The current zoning of the site is an anomaly. The proponent argues that the current SP2 zoning is not correct and the adjoining R3 zone should apply in accordance with the guidance in the Department's practice notes PN10-001 and PN11-002.
- The R3 zone allows a variety of uses and does not preclude a future development scheme that provides for a community facility or place of public worship.
- The proposal aligns with the relevant priorities and strategic merit matters in the Greater Sydney Region Plan, Eastern City District Plan and Waverley LSPS.
- The Waverley LSPS does not contain any definition for 'crucial pieces of infrastructure' and was not informed by an LGA-wide inventory of social and community infrastructure.
- Best practice in planning for community facilities is increasingly shifting to multi-purpose facilities. Suitable locations are on major, multi-modal transport routes. Facilities should be useable day and night, seven days a week without detrimental impacts on the amenity of the neighbourhood. These attributes cannot be readily achieved on the subject site.

- The proposal will facilitate 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.

Issue no. 2: Site specific merit

Council's view

- The proposed rezoning may result in the loss of the existing use as a place of public worship.
- Overshadowing from any future redevelopment of the site may have an impact on the surrounding properties.
- Redevelopment of the site for a medium density residential purpose is generally consistent with the character of the locality but may increase traffic congestion and increase parking demand in the surrounding area.
- Council considers that the existing use, including built form, could be expanded under the existing use provisions of the *Environmental Planning and Assessment Act 1979*.

Proponent's view

- The current zone 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 the surrounding medium density residential development.
- The current zoning prevents the feasible replacement of buildings that are reaching the end of their useful life and precludes any significant enhancement, alteration or reconstruction under existing use rights provisions.
- The proposal would have benefit for the adjoining site at 36A Flood Street. Without the proposed rezoning, the land at 36A would become an isolated site with no feasible potential for expansion or increase in intensity of use due to site configuration and access constraints and consideration of amenity of the neighbouring uses.
- The site is capable of being developed to maintain amenity to adjoining properties

Attachments

Attachment A1 – Rezoning Review Request Package

- a. Rezoning Review – Application Form
- b. Rezoning Review – cover letter
- c. Rezoning Review – Political Donations Disclosure Statement
- d. Rezoning Review – Decision Notice on planning proposal – 28 July 2022
- e. Rezoning Review – SPDC Report
- f. Rezoning Review – SPDC Minutes
- g. Rezoning Review – proponent's letter to Planning Panel – 11 August 2022
- h. Rezoning Review – Various correspondence between Council and Proponent
 - i. Correspondence – recommendation of WLPP Assessment Report – 17 May 2022
 - ii. Correspondence – Council's advice of postponement of SPDC – 17 June 2022

- iii. Correspondence – Council to proponent regarding release of WLPP report – 7 June 2022
- iv. Correspondence – from proponent to Council's Mayor – 1 July 2022
- v. Correspondence – Miscellaneous correspondence from February to May 2022
- vi. Correspondence – Miscellaneous correspondence from February to May 2022, involving GIPA matter
- vii. Correspondence – Miscellaneous correspondence from February to June 2022
- viii. Correspondence – Miscellaneous correspondence from May to July 2022
- ix. Correspondence – GIPA request for release of WLPP report – 15 June to 4 July 2022

Attachment A2 – Planning Proposal package

- a. Planning Proposal – Pre-Lodgement Planning Proposal Application Form
- b. Planning Proposal – Planning Proposal report (Planning Ingenuity, dated 28 February 2022)
- c. Planning Proposal – Appendix A: Pre-lodgement advice (email trail 11 February 2022)
- d. Planning Proposal – Appendix B: Future development scenarios

Attachment B – Site/Locality map

Attachment C – Existing LEP maps

Attachment D – Councils comments (8 September 2022)

- a. Letter from Council to the Department, dated 8 September 2022
- b. Planning proposal prepared by proponent, dated 28 February 2022
 - i. Planning Proposal report (Planning Ingenuity, dated 28 February 2022)
 - ii. Planning proposal – Attachment A: Pre-lodgement advice
 - iii. Planning proposal – Attachment B: Future development scenarios
- c. Letter from proponent to Council Mayor, dated 5 September 2022

Note: a link to the above documents are available at:

<https://www.planningportal.nsw.gov.au/rezoning-reviews/under-assessment/34-36-flood-street-bondi-junction>



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