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Plan finalisation report – PP-2021-4641

Waverley Local Environmental Plan 2012 (Amendment No. 23)
99-117 Birrell Street, Waverley

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Acknowledgment of Country

The Department of Planning and Environment acknowledges the Traditional Owners and Custodians of the land on which we live and work and pays respect to Elders past, present and future.

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1 Introduction

1.1 Overview

1.1.1 Name of draft LEP

Waverley Local Environmental Plan 2012 (Amendment No. 23) - 99-117 Birrell Street, Waverley

1.1.2 Site description

Table 1 Site description

Site Description	The planning proposal applies to land at 99-117 Birrell Street, Waverley (the site)
Type	Site specific
Council / LGA	Waverley Council
LGA	Waverley

The subject site (**Figure 1**) adjoins the northern edge of the War Memorial Hospital Campus (the Campus site) in Waverley, approximately 800 metres (m) south-east from Bondi Junction transport interchange. It encompasses 11 residential lots with a combined land area of approximately 0.334 hectares (ha) (3,341 sqm as confirmed by the proponent).

The subject lots are under the single ownership of the proponent, except for the property at 99 Birrell Street, Waverley (Lot 1 DP 312247 and Lot 1 DP 1115332), outlined in blue on **Figure 2** below.

The site fronts Birrell Street to the north and is surrounded on all other sides by the War Memorial Hospital Campus (see **Figures 1** and **3**). The subject site and the Campus site together form the “Edina Estate” and occupy the entire urban block bounded by Birrell Street, Carrington Road, Church Street and Bronte Road.

Existing development on the Birrell Street site comprises a row of detached and semi-detached dwellings extending over a street frontage of 80m. The site falls approximately 5.5m from east to west, with an average gradient of 7%.



Figure 1 - Aerial view of the subject site (coloured in orange) (Source: planning proposal)



Figure 2 - The subject site outlined in red (the property outlined in blue has yet to be acquired by the proponent) (Source: Sixmaps, 2021)



Figure 3 - Site Context Map (Nearmap, 2021)

1.1.3 Purpose of plan

The draft local environmental plan (LEP) seeks to implement the planning proposal to facilitate redevelopment of 99-117 Birrell Street, Waverley to complement the adjacent War Memorial Hospital Campus site redevelopment, and to provide for additional seniors housing and affordable housing.

This planning proposal complements a separate proposal for the Campus site that was finalised in October 2021, and through this Amendment No. 22 introduced a site specific LEP clause, Clause 6.13 *Development of the War Memorial Hospital Campus at Edina Estate, Waverley* into Waverley LEP 2012 (see **Figures 2** and **3** above). The subject planning proposal intends to utilise and amend this local provision to enable the holistic redevelopment of the Edina Estate.

According to the master plan submitted in support of the planning proposal, the redevelopment of the entire Edina Estate is expected to provide 240 independent living units (representing an increase of 213 units on site). Due to the building footprints partly extending across property boundaries (between the subject and Campus sites), the master plan does not provide a breakdown of units that will be provided within the subject site.

Table 2 below outlines the current and proposed controls under the LEP.

Table 2 - Current and proposed controls

Control	Current	Proposed
Zone	R3 Medium Density Residential	No change
Height of buildings	9.5m	Part 15m and 21m (incentivised), to be identified on the Alternative Height of Buildings Map
Floor space ratio (FSR)	0.6:1	1.2:1 (incentivised), to be identified on the Alternative Floor Space Ratio Map
Key Sites Map	Not applicable to the site	Include the site on the Key Sites Map to enable Clause 6.9 <i>Design Excellence</i> and a site-specific incentive provision to be applied. (See further details following this table)
Site-specific provision under Part 6 Additional local provisions	Not applicable to the site	Amend Clause 6.13 <i>Development of the War Memorial Hospital Campus at Edina Estate, Waverley</i> and create site-specific provisions that apply to the site, including requirements for a Development Control Plan (DCP), minimum deep soil provision, building performance standards and affordable housing provision. (See further details following this table)

The proposed amendments to the Waverley LEP 2012 are described below:

1. Include the site on the Key Sites Map so that the following clauses apply to the future development on the site:
 - Clause 6.9 *Design excellence*, and
 - Clause 6.13 *Development of the War Memorial Hospital Campus at Edina Estate, Waverley*;
2. Amend Clause 6.13 *Development of the War Memorial Hospital Campus at Edina Estate, Waverley*, to apply the clause to the subject site to:
 - Provide objectives under Clause 6.13(1) relating to integration of the subject and adjoining Campus sites and provision of affordable housing;
 - Require a site-specific Development Control Plan (DCP) to be prepared for the whole Edina Estate under Clause 6.13(3);
 - Include an incentive provision to increase height of buildings from 9.5m to part 15m and 21m and to increase the FSR from 0.6:1 to 1.2:1 for the site, where the following site-specific requirements in Clause 6.13(5) are met:
 - at least 30% of the land will be a deep soil zone;
 - any building used only for non-residential purposes will be capable of achieving a 4.5-star NABERS rating for water or equivalent;

- any part of a building that is used for non-residential purposes will be capable of achieving a 5.5-star NABERS rating for energy or equivalent;
 - for BASIX affected development – any building used for dwellings will be capable of – (i) exceeding the applicable BASIX target for water by at least 5 points or equivalent, (ii) exceeding the applicable BASIX target for energy by at least 10 points or equivalent, and (iii) achieving a NatHERS rating of 7 stars or equivalent;
3. Create new site-specific provisions for the subject land to provide additional requirements for development that utilises the incentive heights and FSR:
- At least 10% of the development for residential accommodation on the site (99-117 Birrell Street, Waverley only) are to be set aside as affordable housing; and
 - Development on the site is to complement the adjoining War Memorial Hospital site.

1.1.4 State electorate and local member

The site falls within the Coogee state electorate. Dr Marjorie O'Neill MP is the State Member. The site falls within the Wentworth federal electorate. Ms Allegra Spender MP is the Federal Member.

To the team's knowledge, neither MP has made any written representations regarding the proposal.

There are no donations or gifts to disclose, and a political donation disclosure is not required.

There have been no meetings or communications with registered lobbyists with respect to this proposal.

2 Gateway determination and alterations

The Gateway determination issued on 17/09/2021 determined that the proposal should proceed subject to conditions.

As per Condition 1 of the Gateway determination, Council revised the planning proposal prior to exhibition to address specific matters, except that the references to monetary contributions or payment for affordable housing had not been removed (Condition 1c). Refer to further discussion in **Section 4.12** of this report.

In accordance with the Gateway determination (Condition 6), the proposal is required to be finalised on 17/06/2022.

No alterations have been made to the Gateway determination.

Council has publicly exhibited the planning proposal as required by the Gateway determination and has considered the community submissions.

Pursuant to Section 3.34(8) of the *Environmental Planning and Assessment Act 1979*, the draft LEP can be made as the community consultation requirements have been satisfied.

3 Public exhibition and post-exhibition changes

In accordance with the Gateway determination, the proposal was publicly exhibited by Council from 10/11/2021 to 19/01/2022.

A total of 74 community submissions were received, comprising of 69 objections (93%), 3 submissions supporting the proposal (4%) and 2 undetermined/unclear (3%). Of the total number of community submissions, Council advised that 48 are considered 'unique submissions', which were distinctively different in their content to any other submissions.

3.1 Submissions during exhibition

3.1.1 Submissions supporting the proposal

There were 3 submissions in support of the proposal.

3.1.2 Submissions objecting to and/or raising issues about the proposal

There were 69 submissions received from individuals and organisations, including the Friends of War Memorial community group and the Queens Park Precinct Executive Committee, objecting to and/or raising issues about the proposal. The following provides a summary of Council's post exhibition report tabled to council and the Department's own assessment of key issues raised.

Table 3 Summary of Key Issues

Issue raised	No. of submissions (% of the 69 objections)	Council response and Department assessment of adequacy of response
Building heights	60 (87%)	<p>Council Response:</p> <p><i>... the proposed building heights of 15m and 21m are considered to be appropriate. Specifically, the height arrangement seeks to:</i></p> <ul style="list-style-type: none"> • <i>Ensure the additional height is only available when affordable housing, high-performance buildings and significant deep soil zones (open space) are provided for the site.</i> • <i>Provide appropriate height to the immediate curtilage of the individual heritage items to the east of the site.</i> • <i>Permit additional height in the centre of the site where it can be appropriately mediated by the design of the buildings on site and present a more appropriate 15m street frontage to the adjacent built form, which is a mix of 1-2 storey dwellings and 3-4 storey flats, with a maximum height limit of 12.5m.</i> • <i>Ensure that the height of the heritage listed Norfolk Pine trees is not challenged by any new development on the site.</i> • <i>Ensure that the height of the Vickery Tower is appropriately respected by any new development on the site.</i> • <i>Ensure that the 15m and 21m are maximum alternate heights, which include any bonuses that may apply from SEPPs.</i> <p>Department Assessment:</p> <p>The Department concurs with Council's assessment that the proposed alternative building heights (part 15m and 21m) are appropriate for the site. The Department does not agree with Council with regard to excluding the height bonuses from the State Environmental Planning Policy (SEPP) Housing 2021 for the reasons outlined in Section 4.1.5 of this report.</p>

Issue raised	No. of submissions (% of the 69 objections)	Council response and Department assessment of adequacy of response
Potential impact on built heritage (surrounding or loss of existing cottages)	51 (74%)	<p>Council Response:</p> <p><i>None of the properties on the subject sites are currently listed as Heritage Items in the WLEP or located in a Heritage Conservation Area (HCA). Given the presence of Heritage Items located on the Campus Site and the presence of the Botany Heritage Conservation Area to the north of Birrell Street, appropriate design considerations will need to occur relating to any development which would take place on the sites. These details are not considered as part of the principal development standards which would amend the WLEP but rather, are matters to be addressed in the site-specific DCP, which is discussed in more detail later in this report.</i></p> <p>Department Assessment:</p> <p>The Department concurs with Council's response.</p> <p>The proposed development standards have been informed by a master plan that seeks to protect the curtilage of the adjoining and nearby heritage items and conservation areas. The proposal will indirectly contribute to adaptive reuse of the heritage items within the adjoining Campus site through facilitating redevelopment of the Edina Estate.</p> <p>The proposal does not change the existing listing of heritage items and conservation areas in the vicinity of the site.</p> <p>The proposal and related draft DCP would help protect and enhance the heritage and landscape qualities of the Edina Estate by locating new development away from areas of significant heritage and biodiversity value.</p>
FSR and bulk	47 (68%)	<p>Council Response:</p> <p><i>The maximum available FSR proposed is consistent with that of the Campus Site at a FSR 1.2:1. As is the case with the proposed building heights, the increase in available floor space on the site will only be available if any development satisfies the criteria as outlined in this report. Allowing for additional floor space, will assist in the ability to deliver Seniors Housing on the site.</i></p> <p><i>Due to the increase in floorspace which will result, Officers have seen the provision of affordable housing as a key public benefit associated with this uplift, critical to its progression.</i></p> <p>Department Assessment:</p> <p>The Department concurs with Council's response above and assessment in the planning proposal regarding the proposed development standards and potential impacts of the built forms.</p>

Issue raised	No. of submissions (% of the 69 objections)	Council response and Department assessment of adequacy of response
Potential impact on character and surrounding properties	42 (61%)	<p>Council Response:</p> <p><i>The key issues raised in relation to the controls proposed in the proposal relate to objections to the proposed Alternative Building Heights and Alternative Floor Space Ratio. The issues raised reference the impact the proposed building heights and floor space ratio could have on the surrounding neighbourhood characteristics, particularly the relationship between any new built form, properties adjacent and heritage items on site.</i></p> <p>Department Assessment:</p> <p>The Department is satisfied with Council's assessment of the proposal. The proposed built form is appropriate in its context with respect to the existing character of the area. The potential overshadowing of surrounding properties is expected to be minimal.</p>
Potential increase in height and FSR resulting from the application of Housing SEPP bonuses	33 (48%)	<p>Council Response:</p> <p><i>Concern regarding the potential application of any bonuses available under the Housing SEPP was also raised as a key issue.</i></p> <p>Council's resolutions at its meeting on 12 April 2022 included a request to exclude the site from the Housing SEPP bonus provisions relating to FSR and building heights.</p> <p>Department Assessment:</p> <p>Excluding the site from the Housing SEPP bonus provisions would contradict the objectives of the planning proposal to provide seniors housing and undermine the intent of the Housing SEPP to incentivise seniors housing development. Refer to further discussion in Section 4.1.6 of this report.</p>
Ability to implement affordable housing provision	32 (46%)	<p>Council Response:</p> <p><i>Several submissions also raised concern surrounding whether or not Council would be able to implement the proposed affordable housing provision in the WLEP. It appears there was some confusion in the community about this proposed provision, as the DPE asked Council in the Gateway Determination to remove reference to Council's AHCS, but not to remove the provision altogether.</i></p> <p>Department Assessment:</p> <p>The exhibited planning proposal contains references to monetary contributions or payment for affordable housing, which had not been removed to meet the requirement of the Gateway determination.</p>

Issue raised	No. of submissions (% of the 69 objections)	Council response and Department assessment of adequacy of response
		<p>As assessed at Gateway and further discussed in Section 4.1.2 of this report, Waverley Council currently does not have an affordable housing contribution scheme adopted in the LEP, and therefore cannot impose a contribution towards affordable housing on development.</p> <p>However, the Department supports an affordable housing provision in the draft LEP that is structured as a site-specific incentive clause, without refencing any monetary contribution or payment, or land dedication. This will still enable the provision of affordable housing.</p>
Concern over future living arrangements of current residents	10 (14%)	<p>Council Response:</p> <p>Council's post exhibition report did not provide a specific response to this issue. Council's resolution at its meeting on 12 April 2022 included a request that the Department, as the local plan making authority (LPMA), consider a number of matters in the finalisation, including <i>"existing residents are rehoused within the Eastern Suburbs region to ensure there is no dislocation from their local community"</i>.</p> <p>Department Assessment:</p> <p>The Department acknowledges the concerns raised in the community submissions. However, the future living arrangements of the current residents is not a matter for the finalisation of this planning proposal. Refer to further discussion in Section 4 of this report.</p>
Traffic impacts	5 (7%)	<p>Council Response:</p> <p>Council's post exhibition report did not provide a specific response to the traffic issues raised. Council's report noted that the draft site specific DCP would be reviewed to minimise the potential impacts of parking and traffic generation associated with the proposal on the surrounding street network.</p> <p>Department Assessment:</p> <p>Traffic impacts were considered in the planning proposal and by the Department at the Gateway stage. The proposal was accompanied by a Traffic and Transport Impact Assessment which addresses the Edina Estate as a whole. The report concludes that the expected traffic generation would be moderated by the intended use as seniors housing.</p> <p>The Department notes that the draft site-specific DCP would provide further guidance on matters such as parking and vehicular access. Further traffic and parking assessment can be undertaken at the development application (DA) stage. This approach is considered appropriate.</p>

3.1.3 Other issues raised

Site-specific DCP related matters

A high proportion of submissions (79) raised concerns relating to detailed design and other matters as noted in Council's post exhibition report, which could be addressed in the site-specific DCP.

There are concerns about impact on habitat corridor and urban ecology, and potential removal of mature trees on the Campus site. No critical habitat or threatened species are identified on the subject site. As identified in the Waverley DCP 2012, an existing habitat corridor on the adjoining Campus site intersects the south-eastern corner of the subject site. The proposal seeks to introduce deep soil zone requirement to the subject site. Additionally, biodiversity outcomes will be addressed through the proposed site specific DCP to protect the corridor. These would ensure the healthy growth of mature trees throughout the Edina Estate.

Proponent submission

The proponent, Uniting, made a submission on 19 January 2022. The submission supports the proposed alternative building heights and FSR standards and the intent to provide a certain amount of affordable housing. However, the proponent objected to the proposal to mandate affordable housing provision. Instead of prescribing a minimum percentage in the LEP, the proponent argued for alternative mechanisms to deliver affordable housing, such as through a voluntary planning agreement (VPA), and that such an approach would align with the provisions of the Housing SEPP (which came into effect during the exhibition of the planning proposal, on 26 November 2021).

Following exhibition and subsequent discussion with Council officers, the proponent wrote to Council on 17 March 2022, withdrawing its submission and supporting the proposed LEP amendment to prescribe a minimum of 10% of the dwellings to be allocated for affordable housing.

3.2 Advice from agencies

In accordance with the Gateway determination, Council was required to consult with Transport for NSW (TfNSW), NSW Health, Sydney Water, Heritage NSW and Ausgrid. All except Ausgrid provided a submission, none objected to the proposal and the feedback is summarised in **Table 4** below.

Table 4 Advice from public authorities

Agency	Advice raised	Council response
Transport for NSW (TfNSW)	<p>TfNSW raised no objection to the proposal and stated <i>'the traffic generated by seniors and affordable housing is considered minimal with the site well serviced by bus services on Birrell and Bronte Streets [sic: Bronte Road] and within easy walking distance to Bondi Junction and Charing Cross retail centres reducing the need for private vehicle use.'</i></p> <p>TfNSW supports the development of a Green Travel Plan as a condition of consent for any future development.</p>	<p>Council did not provide a specific response to TfNSW's comments, noting that no objections nor significant issues were raised. Council also noted that most matters raised were relevant at the development application stage or were consistent with the advice received for the Campus site planning proposal.</p>

Agency	Advice raised	Council response
NSW Health	The South Eastern Sydney Local Health District raised no objections and advised that the proposal <i>“appears reasonable with respect to potential health and social benefits”</i> .	Noted no objections nor significant issues raised
Sydney Water	Sydney Water provided comments to assist in planning the future servicing needs of the proposed development. It advised that detailed servicing requirements will be provided when the future proposal is referred to Sydney Water as part of a Section 73 application.	Council did not provide a specific response to the comments, noting no objections nor significant issues were raised.
Heritage NSW	Heritage NSW advised that the proposal is unlikely to impact on any items on the State Heritage Register (SHR) but has the potential to impact on some local heritage items. Heritage NSW also noted Council's nomination of the 'War Memorial Hospital' for inclusion on the SHR, and that the SHR Committee determined that it may meet the threshold for State heritage significance but was not a priority for SHR listing at this time. Additional considerations in relation to historic archaeology and heritage assessments were also recommended by Heritage NSW.	Council did not provide a specific response to Heritage NSW's comments. Council's post exhibition report notes that none of the properties on the subject site are currently listed as heritage Items or located within a Heritage Conservation Area (HCA), and that appropriate design consideration will take place at the DA stage to respond to nearby heritage items and HCA.

The Department considers Council has adequately addressed matters raised in the submissions from public authorities.

3.3 Post-exhibition changes

3.3.1 Council resolved changes

At its Ordinary Meeting on 12/04/2022, Council resolved to not support the planning proposal.

Council also resolved to request the Department consider the following amendments should it support the proposal at finalisation:

- *Floor space ratio (FSR) not to exceed 1:1.*
- *Height of building (HOB) not to exceed 12 m.*
- *The site is excluded from the Affordable Housing SEPP* bonus provisions relating to FSR and HOB.*
- *A mechanism is provided to achieve a minimum of 10% affordable housing on the site in line with Council's endorsed Affordable Housing Contribution Scheme.*

- *Existing residents are rehoused within the Eastern Suburbs region to ensure there is no dislocation from their local community.*
- *Inclusion of social impact mitigation provisions as part of the process.*

*Note: The Department assumes Council is referring to the Housing SEPP bonuses.

These amendments requested by Council are not consistent with Council officers' recommendation. Council officers recommended support of the proposal, with an additional change to require that the alternative building heights of 15m and 21m under the proposed LEP are only available when any Housing SEPP height bonuses are not relied upon.

The Department has reviewed these requests and does not consider that any amendments to the proposal are justified. Further details of the Department's consideration are in section 4 of this report.

3.3.2 The Department's recommended post-exhibition changes

As part of the drafting process, the Department has included the following post-exhibition changes:

- Insert additional objectives and amend existing provisions to ensure that the Edina Estate is redeveloped in a holistic and integrated manner, and that the development on the subject site complements the adjoining Campus site redevelopment for it to access the incentivised heights and FSR; and
- Remove reference to the '404sqm' floor space quantum from the proposed affordable housing provision (and retain the minimum percentage, 10%).

The recommended amendments above do not alter the intent of the planning proposal as exhibited, but will ensure clarity and address the Gateway determination condition as discussed further in **Section 4** of this report.

Regarding the affordable housing provision, the post-exhibition change seeks to establish that at least 10% of the gross floor area of a building used for residential accommodation will be used for the purposes of affordable housing. This reflects the intent of the planning proposal to link affordable housing provision through a seniors housing development.

Having regard to the above, the post-exhibition changes do not require re-exhibition.

4 Department's assessment

The proposal has been subject to detailed review and assessment through the Department's Gateway determination and subsequent planning proposal processes. It has also been subject to an adequate level of public consultation and engagement.

The following reassesses the proposal against relevant Section 9.1 Directions, SEPPs, Regional and District Plans and Council's Local Strategic Planning Statement (LSPS). It also reassesses any potential key impacts associated with the proposal (as modified).

The exhibited planning proposal provided to the Department for consideration at the finalisation stage:

- Remains consistent with the regional and district plans relating to the site.
- Remains consistent with Council's LSPS.
- Remains consistent with all relevant Section 9.1 Directions, except for Direction 1.4 Site Specific Provisions. The inconsistency with Direction 1.4 is considered to be of a minor significance and was addressed at the Gateway stage.
- Remains consistent with all relevant SEPPs, except for the Housing SEPP as further discussed in **Section 4.1.2** below.

The following tables identify whether the proposal is consistent with the assessment undertaken at the Gateway determination stage. Where the proposal is inconsistent with this assessment, requires further analysis or requires reconsideration of any unresolved matters these are addressed in Section 4.1

Table 5 Summary of strategic assessment

	Consistent with Gateway determination report assessment	
Regional Plan	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1
District Plan	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1
Local Strategic Planning Statement	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1
Local Housing Strategy	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1
Local Planning Panel (LPP) recommendation	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1
Section 9.1 Ministerial Directions	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1
State Environmental Planning Policies (SEPPs)	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No, refer to section 4.1 – the Housing SEPP

Table 6 Summary of site-specific assessment

Site-specific assessment	Consistent with Gateway determination report Assessment	
Social and economic impacts	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1
Environmental impacts	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1
Infrastructure	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1

4.1 Detailed assessment

The following section provides the Department's assessment of key matters and any recommended revisions to the planning proposal.

4.1.1 Section 9.1 Ministerial Directions

Consistency with Section 9.1 Ministerial Direction – 4.4 Remediation of Contaminated Land has been resolved since the Gateway assessment by amendments to the planning proposal and provision of additional information prior to public exhibition. The findings and conclusion of the Phase 1 Environmental Site Assessment regarding site contamination were included in the planning proposal and address consistency with the above Direction 4.4.

4.1.2 State Environmental Planning Policies (SEPPs)

Consistency with the following SEPPs was required to be addressed prior to public exhibition:

SEPP (Building Sustainability Index: BASIX) 2004 and SEPP (Sustainable Buildings) 2022

Prior to public exhibition and in line with the Gateway conditions, the proposed high performance building standard has been revised as an incentive provision for accessing the alternative height and FSR standards in lieu of a requirement, to avoid potential inconsistency with Clause 8 of the BASIX SEPP.

In August 2022, the NSW Government released the new SEPP (Sustainable Buildings) 2022 (Sustainable Buildings SEPP), which will come into effect on 1 October 2023. The Sustainable Buildings SEPP will repeal the BASIX SEPP upon commencement. The new instrument incorporates provisions in the BASIX SEPP and introduces measures for non-residential buildings, including embodied emission measurement and reporting for all non-residential developments, and energy and water standards for large commercial development. A comparison of the relevant requirements in the draft LEP, the BASIX SEPP and the Sustainable Buildings SEPP is provided in **Table 7**.

The proposed building performance standards in the draft LEP will not affect the operation of the BASIX SEPP and the Sustainable Buildings SEPP, or vice versa. This is because they do not seek to override the mandatory minimum standards of these SEPPs but intend to facilitate development to exceed those minimum requirements through the alternative height and FSR incentivised controls. Specifically:

- For non-residential buildings, the proposed water and energy NABERS ratings in the draft LEP are higher or equivalent to the standards required for large commercial development introduced by the Sustainable Buildings SEPP (note that ‘commercial premises’ are prohibited for the site under its current R3 zoning); and
- For BASIX affected residential buildings, the draft LEP seeks to facilitate development to exceed the minimum BASIX water standard by at least 5 points and energy standard by at least 10 points. The proposed NatHERS rating will result in development achieving higher thermal performance than one that currently complies with BASIX; or will be equivalent to what would be required under the Sustainable Buildings SEPP when it commences in October 2023. This means that there would still be benefit for the NatHERS requirement to remain in the draft LEP to apply to any development application, which may be lodged prior to the commencement of the Sustainable Buildings SEPP.

Table 7 - Comparison between draft LEP, BASIX SEPP and Sustainable Buildings SEPP

Development types	CI 6.13 of Waverley LEP 2012 (proposed provision for the site)	BASIX SEPP	Sustainable Buildings SEPP
Non-residential buildings	<ul style="list-style-type: none"> 4.5-star NABERS rating for water or equivalent 5.5-star NABERS rating for energy or equivalent 	Not affected by BASIX	<ul style="list-style-type: none"> Minimum 3-star NABERS water rating for large commercial development (offices, hotels, motels or serviced apartments) Energy standards for large commercial development: <ul style="list-style-type: none"> minimum 5.5-Star NABERS rating for offices; and minimum 4-Star NABERS rating for hotels, motels or serviced apartments Embodied emission measurement and reporting for all developments Certain developments to be 'all electric' or capable of converting to operate without fossil fuels by 2035.
BASIX affected residential buildings	<ul style="list-style-type: none"> Exceeding the applicable BASIX target for water by at least 5 points or equivalent Exceeding the applicable BASIX target for energy by at least 10 points or equivalent NatHERS rating of 7 stars or equivalent 	<ul style="list-style-type: none"> The water and energy standards vary with building types and location Thermal performance - Currently, homes that comply with BASIX have been achieving NatHERS rating of 5.5 to 6 stars on average 	<ul style="list-style-type: none"> Incorporates current BASIX water standards (i.e., no change) Energy - average 7-11% increase in greenhouse gas reduction* Thermal performance – NatHER's rating of at least 7 stars* New BASIX materials index <p>*Note - The higher BASIX thermal performance and energy standards apply to all new residential buildings across NSW except for:</p> <ul style="list-style-type: none"> homes in the North Coast climate zones small apartment buildings up to 5 storeys in NSW

SEPP (Housing) 2021 – Chapter 2 Affordable housing (former SEPP 70)

Waverley Council currently does not have a Department-endorsed affordable housing contribution scheme in place. As noted in the Gateway determination report, a developer contribution towards affordable housing may only be imposed in accordance with an affordable housing scheme identified in the LEP pursuant to Section 7.32 of the *Environmental Planning and Assessment Act 1979* and Chapter 2 of the Housing SEPP.

As such, the Gateway determination contains a condition requiring modification to the planning proposal to remove all references to a monetary affordable housing contribution or payment, as well as references to contributions under SEPP 70.

Prior to public exhibition, the planning proposal was revised to remove references to contributions under the former SEPP 70. However, references to monetary contributions or payment for affordable housing were still included in the exhibited proposal.

For the reasons outlined above, the proposed affordable housing provision (minimum 10% of gross floor area of a building used for residential accommodation purposes) in the draft LEP is structured as a site-specific incentive clause that is triggered by development utilising the uplift, and without referencing any monetary affordable housing contribution or payment.

4.1.3 Waverley Local Housing Strategy

The Waverley Local Housing Strategy (LHS) was endorsed by the Department on 16 July 2021, subject to several requirements. The alignment of the planning proposal with the endorsed local housing strategy is required to be addressed as a Gateway determination condition.

Consistent with the condition, the planning proposal has been revised to address the Waverley LHS, which identifies the need for more affordable housing and recognises that planning for seniors housing is an important consideration as the demand for aged care continues to grow.

The planning proposal states that the increase in capacity on the site to provide for additional housing and services for seniors supports ageing in place, and that the provision of affordable housing on the site is in line with the aims of the Waverley LSPS and LHS.

4.1.4 FSR and building heights

At its meeting on 12 April 2022, Council resolved to not support the planning proposal and request the Department consider the following amendments to the proposed development standards should the Department support finalisation of the proposal:

- FSR not to exceed 1:1; and
- height of buildings not to exceed 12m.

Council's request seeks to address the concerns raised in the community submissions relating to building bulk and scale, and potential impacts on heritage, local character, and surrounding properties. However, no justification or design testings were provided by Council in support of the nominated reduced standards.

Consistent with the (finalised) planning proposal for the adjoining Campus site, the alternative FSR and building heights proposed for the subject site are 1.2:1 and part 15m and 21m respectively. The proposed development standards would result in a built form that integrates with future development of the adjoining Campus site and facilitate a holistic development outcome across the Edina Estate. The potential amenity impacts, such as bulk, scale and overshadowing, have been addressed in the planning proposal and accompanying urban design report, both of which have been assessed at Gateway and considered to be reasonable.

The proposed alternative building heights and FSR not only assist in delivering seniors housing that complements the redevelopment of the entire Edina Estate, but also facilitate additional affordable housing, in line with the aims of the Waverley Council's LSPS and LHS. The additional FSR and heights permissible for the site are bonuses available only if the development satisfies the provisions regarding deep soil, building performance, affordable housing, and integration with the adjoining Campus site redevelopment.

It is also worth noting that affordable housing provision is not required for the Campus site redevelopment (as there was no endorsed LHS at the time the proposal was submitted to the Department for Gateway), this is an additional public benefit to be delivered by the subject planning proposal.

4.1.5 Request to exclude bonuses under the Housing SEPP

Council's resolution also included a request to exclude the site from the Affordable Housing SEPP* bonus provisions relating to FSR and building height. Limited justification for the request was provided in the Council minutes.

*To the Department's understanding, the Council resolution refers to the provisions under section 87 *Additional floor space ratios* of the Housing SEPP. Section 87 applies to development for the purposes of seniors housing on land where "(a) *development for the purposes of a residential flat building or shop top housing is permitted on the land under another environmental planning instrument...*" As such, this provision applies to the subject site, which is zoned R3 Medium Density Residential, as well as the R3 portion of the Campus site if seniors housing development is proposed.

Council officers did not recommend a complete exclusion of the Housing SEPP bonus provisions, but instead recommended that the development should not benefit from both the height bonuses of the Housing SEPP and the draft LEP at the same time. Council officer's report noted that the total FSR achievable for the site through the additional Housing SEPP bonus is lower than what would have been available under the former SEPP Housing for Seniors and People with a Disability (SEPP Seniors Housing).

A comparison of the maximum building heights and FSRs achievable under the bonus provisions of the former SEPP (Seniors Housing) and the current Housing SEPP is outlined in **Table 8** below.

Table 8 - Existing and proposed LEP controls and senior's living development bonuses (for vertical village) on R3 land

	Current LEP control	Proposed control (incentivised) under the draft LEP	Bonus under the former Seniors Housing SEPP	Bonus under the Housing SEPP
Height	9.5m	Part 15m and 21m	No height bonus	+ 3.8m = Part 18.8m and 24.8m*
FSR	0.6:1	1.2:1	0.5:1 = 1.7:1**	15% bonus for independent living units (i.e., 15% x 1.2) = 0.18:1 = 1.38:1** 20% bonus for a residential care facility (i.e., 20% x 1.2) = 0.24:1 = 1.44:1** 25% for ILU and RCF (i.e., 25% x 1.2) = 0.3:1 = 1.5:1**

* Maximum building heights comprising the proposed LEP incentive heights and SEPP bonus

** Maximum FSR comprising the proposed LEP incentive FSR and SEPP bonus

Based on the calculations above, under the bonus floor space provisions of the Housing SEPP, a maximum FSR of 1.5:1 for the subject Birrell Street site is potentially achievable where seniors housing is proposed. However, when considering the Edina Estate as a whole, and the land areas

of the estate that are zoned R3, the Department has calculated a total FSR (averaged across the whole estate), inclusive of the SEPP floor space bonus, to be approximately 1.26:1.

The concept master plan prepared by the proponent presents a built form outcome for the entire Edina Estate. The proponent has provided high-level floor space breakdowns for the master plan, which indicates an FSR of approximately 1.39:1 for the subject and Campus sites combined.

The proponent has also confirmed that the building envelopes in the exhibited masterplan have factored in the bonus provisions of the former Seniors Housing SEPP, and therefore can more than accommodate the reduced floor space bonuses under the Housing SEPP. As the building envelopes in the master plan (which informed the proposed development standards) would more than accommodate the total FSR inclusive of any Housing SEPP bonuses, it is not necessary for the future development to utilise the 3.8m height bonus under section 87(2)(c) of the SEPP to fully contain the permissible floor space.

The Housing SEPP aims to provide a state-wide approach to seniors housing. The SEPP contains design principles that a proposed development must address, which would mitigate impacts associated with building bulk and scale. These principles relate to neighbourhood amenity and streetscape, visual and acoustic privacy, solar access and design for climate (Division 6, Part 5 of the Housing SEPP).

With a reduction in the bonus FSR and introduction of a building height bonus, the provisions of the current Housing SEPP provide flexibility in the detailed design to achieve good outcomes. For instance, there would be more flexibility in distributing floor space to reduce building depth and/or increase in separation distances, etc.

In addition, the design standards in the SEPP and *Seniors Living Policy: Urban design guideline for infill development* will apply. The Apartment Design Guide (ADG) will continue to apply to Independent Living Units to ensure good amenity. The DA process will examine and address the potential impacts of the bonus floor space and/or height further.

For the reasons outlined above, the Department does not consider Council's request is justified. Switching off the incentive provisions in the Housing SEPP would contradict and undermine its policy intent and the purpose of the planning proposal to incentivise seniors housing development to meet the needs of the community.

4.1.6 Affordable housing

The planning proposal requires that 10% of the development on the site or 404sqm of floor space (whichever is greater) be set aside as affordable housing as a pre-condition to access the additional building heights and FSR for the site. The 404sqm quantum was calculated by approximating 10% of the maximum permissible floor space under the incentivised FSR control.

To achieve the intent of the proposal, the draft LEP includes the following requirement for future development to access the alternative building heights and FSR:

at least 10% of the gross floor area of a building used for the purposes of residential accommodation will be used for the purposes of affordable housing.

To ensure clarity, the provision seeks to specify the minimum amount of affordable housing to be provided on site, expressed through a percentage of floor space used for residential accommodation purposes (as defined in the Standard Instrument LEP) permissible in the R3 zone, which includes seniors housing.

The provision will not specify the minimum floor space for affordable housing of 404sqm as stated in the planning proposal. This is because the land use table for the R3 zone under the Waverley LEP allows for a range of non-residential uses, such as childcare centres and community facilities, and the feasibility of providing affordable housing (through a fixed floor space requirement) in a

development for non-residential purposes, or incorporating a significant non-residential component, has not been tested.

In addition, the provision does not refer to any monetary contribution or payment, or dedication of land to be used for affordable housing for reasons discussed in section 4.1.2 of this report.

The above approach is consistent with that taken by other planning proposals, where the proponent has offered to provide affordable housing to support uplift (other than through an affordable housing scheme prepared in accordance with the former SEPP 70).

During section 3.36 consultation on the terms of the draft LEP, Council requested certain changes to the affordable housing provision. This is discussed in **Section 5** 'Post-assessment consultation' below.

4.1.7 Holistic redevelopment

A key intent of the planning proposal is to ensure the entire Edina Estate is redeveloped in a holistic and integrated manner. Condition 1(a) of the Gateway determination required the proposal *to explain that the bonus/incentive provisions are only available if the properties are developed as part of the broader War Memorial Hospital site.*

The Waverley Local Planning Panel (LPP) has recommended the amalgamation of all Birrell Street lots with the Campus site in order to facilitate holistic redevelopment of the Edina Estate. However, such an approach may undermine the intent of the proposal by hindering renewal of the estate, in the scenario where the proponent is unsuccessful in acquiring the remaining properties.

The draft LEP requires future development on the subject site to complement the development on the adjoining Campus site. Application of this LEP provision in conjunction with the site-specific DCP will ensure coordinated redevelopment across the entire estate.

4.1.8 Rehousing current residents and social impacts

Council's resolution also included a request that the Department consider:

- *Existing residents are rehoused within the Eastern Suburbs region to ensure there is no dislocation from their local community.*
- *Inclusion of social impact mitigation provisions as part of the process.*

The Department acknowledges Council's concerns about dislocation of the existing community as a result of any redevelopment of the site. However, the rehousing of existing residents is not a matter for the finalisation of this planning proposal. The proposal is considered to provide social benefits by facilitating renewal of the Edina Estate to provide for new seniors housing, affordable housing and publicly accessible open space.

The proposal is consistent with the objectives of the Waverley LHS, and would support the community to age in place and contribute to housing diversity.

4.1.9 Proposed heritage conservation area

Council's post exhibition report indicated that the Edina Estate has been identified by Council as a potential heritage conservation area (HCA).

On 30 May 2022, Council lodged a planning proposal with the Department to implement its Heritage Policy. The proposal included the creation of the War Memorial Hospital HCA, encompassing the entire urban block bounded by Birrell Street, Bronte Road, Church Street and Carrington Road.

Following a preliminary assessment, the above planning proposal has been discontinued. At the time of writing, Council is preparing a revised planning proposal with additional information and will be submitted to the Department for Gateway determination.

5 Post-assessment consultation

The Department consulted with the following stakeholders after the assessment.

Table 9 - Consultation following the Department's assessment

Stakeholder	Consultation	The Department is satisfied with the draft LEP
Mapping	3 maps have been prepared and checked by the Department's ePlanning team and meet the technical requirements.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No, see below for details
Council	<p>Council was consulted on the terms of the draft instrument under clause 3.36(1) of the <i>Environmental Planning and Assessment Act 1979</i>.</p> <p>Council advised on 17/08/2022 that it supported the draft. However, on 26/8/2022, Council requested a change to the draft LEP to require dedication of affordable housing stock to Council. On 30/8/2022, Council amended their request that the draft LEP should include wordings to ensure the affordable housing will be used for such in perpetuity. The Department has considered Council's requests and formed the view that such changes are not necessary.</p>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No, see below for details
Parliamentary Counsel Opinion	On 14/09/2022, Parliamentary Counsel provided the final Opinion that the draft LEP could legally be made.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No, see below for details

On 17 August 2022, Council provided feedback on the draft LEP and raised no objection to its terms. On 26 August 2022, Council requested the inclusion of a requirement for dedication of affordable housing to Council. On 30 August 2022, Council amended their request and sought the inclusion of wordings to ensure the affordable housing will remain for such use '*in perpetuity*'.

'Affordable housing' is a defined term under section 1.4(1) of the *Environmental Planning and Assessment Act* and reads as follows:

affordable housing means housing for very low income households, low income households or moderate income households, being such households as are prescribed by the regulations or as are provided for in an environmental planning instrument.

The definition for 'affordable housing' in the Waverley LEP has the same meaning as in the Act.

Clause 13 of the Housing SEPP provides a detailed definition for 'affordable housing' with prescription for very low, low or moderate income households, and makes reference to section 1.4(1) of the Act.

The exhibited planning proposal did not mention dedication of affordable housing to Council nor having a fixed / specific term for the affordable housing provided in the future development.

It is considered that the draft LEP is sufficiently clear that the affordable housing will be used for its intended purpose, a reference to its use 'in perpetuity' is deemed unnecessary. The draft LEP

would give effect to the planning proposal as exhibited. The management and maintenance of any affordable housing provided in future development could be addressed in detail at the development application stage.

6 Recommendation

It is recommended that the Minister's delegate as the local plan-making authority determine to make the draft LEP under section 3.36(2)(a) of the Act because:

- The proposed alternative building height and FSR standards represent a logical extension to the controls developed for the adjoining War Memorial Hospital Campus site, which are currently in force.
- The proposal will complement the redevelopment of the adjoining War Memorial Hospital Campus site and enable the holistic redevelopment of the entire Edina Estate, which will provide for additional seniors housing to address the changing needs of the community.
- The proposal will contribute to housing diversity and affordable housing and will generate employment opportunities in a location close to public transport and commercial and retail services.
- The proposal will facilitate sustainable building designs and additional deep soil planting.
- The proposal demonstrates strategic and site-specific merits and is consistent with the provisions of the Eastern City District Plan, Waverley Local Strategic Planning Statement and relevant SEPPs. The proposal is consistent with all applicable section 9.1 Ministerial Directions, except for Direction 1.4 *Site Specific Provisions*, however the inconsistency is of a minor significance.
- The issues raised during community and agency consultation have been satisfactorily addressed, and there are no outstanding agency objections to the proposal.
- All matters identified in the Gateway determination have been satisfactorily resolved.



18 October 2022

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18 October 2022

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