

Synagogue DA decision, 105 Wellington St

FREQUENTLY ASKED QUESTIONS

On 2 August 2017 the Land and Environment Court refused a Development Application (DA) for a synagogue and apartments at 105 Wellington Street, Bondi. Unfortunately, a lot of media stories suggested that Council had banned the synagogue, and supported terrorism, both of which are untrue. This coverage has caused genuine distress in the community and to Councillors and Council staff. Waverley Council wishes to reassure the community that it strongly supports the Jewish community and the vital contribution of the Jewish community to Waverley life.

This document provides answers to the many possible questions being asked by members of the community in relation to the DA for a synagogue and apartments at 105 Wellington Street. It also includes the joint statement recently agreed upon by Waverley Council and Friends of Refugees of Eastern Europe (the applicant for the DA).

What is the current status of the synagogue proposal?

Waverley Council and the Friends of Refugees of Eastern Europe, FREE (the applicant for 105 Wellington Street) met on 9 August to discuss the way forward. This was a constructive meeting which resulted in a joint statement. FREE have indicated they will lodge another development application with Council.

The parties have agreed that there is every possibility that outstanding matters can be resolved satisfactorily, in which case development approval for the synagogue and apartments could be given.

At the site at 105 Wellington Street, a synagogue is a permitted use under Waverley's planning controls.

Will the synagogue be built by December?

There have been suggestions on social media that the synagogue will be built by December but this is untrue. Development approval is required before any construction can occur. It is possible, should the new development application be submitted and outstanding matters resolved, that development approval could be in place by December.

What happened to religious freedom?

The 2 August Land and Environment Court decision did not address any issue in relation to religious freedom. Planning matters are dealt with under the Environmental Planning and Assessment Act which does not mention religion in any way. The Land and Environment Court decision did address whether the DA had met the requirements under law. The applicant themselves submitted a report identifying significant security threats – any applicant which had done this would have been assessed in the same way. Previously, development applications submitted to Council from synagogues and from Jewish schools have not identified that specific security threats existed.

Waverley has a significant Jewish community of over 10,000 people and we are fortunate to have multiple synagogues, Jewish schools, and Jewish organisations and services operating in Waverley. For many years, Waverley Council has worked closely with the Jewish community and this will continue.

Why did the DA go to the Land and Environment Court for a decision?

At the end of 40 days after a development application is submitted, an applicant can lodge an appeal in the Land & Environment Court and have the court determine the application. This is generally referred to as a 'deemed refusal'. The court then 'stands in the council's shoes' and determines the application. To refer the application to the Land and Environment Court in this way is a decision of the applicant. Alternatively, the applicant could choose to keep an application with the council for any period beyond the 40 days – and the vast majority of applicants do just this.

It is generally not possible to assess and determine complex applications within 40 days.

In this instance, FREE chose to take the decision making power out of the hands of Council and instead sought a ruling from the Land and Environment Court.

Did Council refuse the application?

The Council did not refuse the development application. Council was in the process of assessing the application when the applicant chose to lodge an appeal in the Land and Environment Court after the expiry of 40 days.

'Deemed refusal' is a term used in the Environmental Planning and Assessment Act that refers to an application that the Council has not determined within 40 days.

Over time, Council has received many development applications from synagogues and Jewish schools for alterations and improvements, and in some cases for security upgrades. In all these cases Council has dealt with the applications effectively and development approval has been given without controversy.

Why is Council blaming the Land and Environment Court for making the decision, when the decision was a reflection of your recommendations?

This was a decision of the court based on the evidence put during the hearing. Council does not make recommendations but it is required to identify all 'contentions'. A contention is any fact, matter or circumstance that the council contends should, if not addressed, lead the court to refuse the application.

In this case, the applicant raised a matter in their own application that neither the Council nor the court could ignore. The applicant submitted a report from a recognised expert security consultant that listed nine separate threats and suggested that these were likely threats. These threats included various types of specific bombs and attacks. . This report was publicly available as part of the development application and as a result nearby residents also raised security as an issue.

No other DA that Council has received for any application (synagogue or otherwise) has contained this type of expert information that suggested such a likelihood.

The report addressed how design elements of the building could provide reasonable levels of protection for the occupants of the synagogue – but relevantly did not address what the potential impacts would be on public safety.

The Council and the court could simply not ignore the applicant’s own expert evidence. To set this evidence aside, there would need to be contrary expert evidence (e.g. another expert saying the likelihood of these attacks was low or remote). The applicant, by their own evidence put this issue squarely before the Commissioner and in essence asked him to ignore the potential public safety issues that it raised.

Had the applicant not submitted this report and not raised this issue themselves, it is unlikely that Council would have raised it and certainly the court could not have refused the application for the reasons it did.

Does Council’s recommendation to the Court mean Waverley Council thinks all the synagogues in Waverley and Australia are a terror threat? Do residents need to be nervous if they live near a synagogue?

This is the first time that any evidence has been put to Waverley Council as part of a development application that a synagogue was a likely target of significant threats as listed in the applicant’s own Preliminary Threat & Risk Analysis report. It should be noted that the Court judgement found that:

“While Exhibit H the Preliminary Threat and Risk Analysis] makes general comments on the risk of terrorist attacks internationally, nationally and to Jewish people, there is no specific risk assessment **for the site** ... It would seem that a more sophisticated risk assessment process could be required for matters such as a potential terrorist threat.”

For all previous development applications for other synagogues and Jewish schools, a simple security report has been referenced by the applicant without identifying specific threats. The assessment process for other applications has involved consideration of the applicant’s information and relevant matters under the legislation. There have been no circumstances previously of a similar nature to this application (that is, where an applicant themselves raise specific threats).

If the DA is resubmitted, will the synagogue be approved?

The outcome of any assessment of a DA cannot be predicted as all processes must be fairly undertaken and matters considered. A synagogue is a permissible use in the zone so some form of synagogue would likely be capable of approval, however, if exactly the same application with the same report was submitted, it is likely it would again be refused.

Can't Council appeal the Land and Environment Court's decision?

Council has no reason to appeal the Land and Environment Court’s decision. The applicant can appeal the decision of the Land and Environment Court through the Court of Appeals.

Why was Council opposed to the proposed blast wall if it mitigated risks?

There have been numerous applications by existing organisations (synagogues and Jewish schools) for what they term 'blast walls'. It has been consistently made clear that there are no planning grounds to support this term and that we consider any such application as a front fence and apply relevant controls under the LEP and DCP.

In all cases, the applicant has made amendments that have allowed an approval to be granted.

Why has Council been opposed to this DA from the start?

This is not the case. All applications and applicants are treated equally and assessed based on the planning legislation.

What would the process be if the DA was resubmitted? Would it go back to the Land and Environment Court?

That is the applicant's decision. Council would consider a fresh application if one was submitted. . If the application is not determined within 40 days or if the applicant is dissatisfied with the determination of Council, it can lodge an appeal through the Land and Environment Court, as they did in this case.

Why have Councillors voted this way?

Elected Councillors did not vote or decide on this development application. Council introduced an Independent Assessment Panel (the Waverley Development Assessment Panel) to make Development Application decisions about four years ago and it has been extremely successful with applicants and objectors being pretty happy with the new system. Nor have Councillors influenced professional staff instructions to Council's legal counsel dealing with the Land and Environment Court case.

Should a new development application be submitted, and Council is allowed sufficient time to complete its assessment, then the final determination will be made by the independent Waverley Development Assessment Panel.

Has Council met recently with the applicant?

Yes. Waverley Council and the Friends of Refugees of Eastern Europe held a 'without prejudice' meeting on 9 August 2017 to discuss the proposed synagogue and apartments at 105 Wellington Street, for which the development application was refused by the Land and Environment Court on 2 August.

Those present from Waverley Council were the Mayor, Acting General Manager and senior planning staff. Those present from the Friends of Refugees of Eastern Europe included Rabbi Yehoram Ulman, Rabbi Eli Feldman, and Rabbi Eli Schlanger along with their town planning advisor and architect.

The meeting opened with a prayer led by Rabbi Feldman and opening comments from Mayor Sally Betts and Rabbi Ulman. The Rabbi acknowledged Waverley Council's commitment to and support of the Jewish community. Waverley Council reaffirmed that a synagogue is a permitted use at the site under

Waverley planning controls and that security issues around other synagogues and Jewish schools had been dealt with quickly and without controversy in the past.

After some constructive discussion, both parties agreed that the decision of the court was not meant to be related to religion or terror and that the matters raised in the judgement were capable of being overcome.

The meeting discussed the process for submission and assessment of a fresh Development Application. Waverley Council and the Friends of Refugees of Eastern Europe agreed that it was likely that, should a new Development Application be submitted, outstanding matters could be resolved satisfactorily in which case development approval could be given.

Will the Friends of Refugees of Eastern Europe resubmit their DA?

In the meeting on 9 August, FREE advised Council staff that they would be submitting a new development application including a revised security assessment.

Waverley staff outlined the process for assessment of a new development application, which would be determined by the independent Waverley Development Assessment Panel and not by the Councillors.



JOINT STATEMENT
FRIENDS OF REFUGEES OF EASTERN EUROPE & WAVERLEY COUNCIL



WAVERLEY
COUNCIL

10 August 2017

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Both parties expressed the view that Waverley is a safe place to live and visit and that any new DA for the Wellington Street site should reassess security provisions. Waverley staff discussed the various development applications for alterations to other synagogues and Jewish schools that Waverley Council has dealt with in the past; many of these included a security component, and all these applications had been approved by Waverley Council once any matters had been resolved. FREE advised that they would be submitting a revised security assessment as part of their development application.

Waverley staff outlined the process for assessment of a new development application, which would be determined by the independent Waverley Development Assessment Panel and not by the Councillors.

Both parties expressed their commitment to work together constructively to resolve outstanding issues and to allay any fears that have arisen out of the press coverage. A further meeting of the FREE architect and town planning adviser will take place with Council senior planning staff next week.

Rabbi Ulman welcomed the Council's offer to meet again to discuss a new application for a similar development and was heartened to hear from Council that a synagogue is an acceptable use for a building on the land.

Rabbi Ulman said "The meeting today was positive and we look forward to working with Waverley Council to address issues raised in the Land and Environment Court judgement. All going well, we may have development approval in place as soon as December."

Waverley Council Acting General Manager Cathy Henderson said "We are very pleased that Waverley and FREE have committed to working together constructively. Both parties will follow the legal process for submission and assessment of the new development application and I feel confident that outstanding matters, including security, can be resolved. "

Both parties expressed their commitment to free speech and freedom of religion, and suggested the planned protest on 13 August may be unproductive at this time.

Ends