

COUNCIL ASSESSMENT REPORT

Panel Reference	PPSSEC-83
DA Number	DA-482/2017/A
LGA	Waverley
Proposed Development	Modification to construct two additional residential levels, provide five additional apartments, internal alterations and changes to bicycle parking spaces, roof design and façade
Street Address	57-75 Grafton Street, BONDI JUNCTION
Applicant/Owner	Clygen Pty Ltd
Date of DA lodgement	18 August 2020
Total number of Submissions	• Twelve
Number of Unique Objections	• Twelve
Recommendation	Refusal
Regional Development Criteria (Schedule 7 of the SEPP (State and Regional Development) 2011)	Development that has a capital investment value of more than \$30 million.
List of all relevant s4.15(1)(a) matters	<ul style="list-style-type: none"> • State Environmental Planning Policy 55 - Remediation of Land • State Environmental Planning Policy 65 - Design Quality of Residential Flat Development • State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 • State Environmental Planning Policy (Infrastructure) 2007 • State Environmental Planning Policy (State and Regional Development) 2011 • State Regional Environmental Plan (Sydney Harbour Catchment) 2005 • Waverley Local Environmental Plan 2012 • Waverley Development Control Plan 2012 • Offer to enter into a Planning Agreement under section 7.4
List all documents submitted with this report for the Panel's consideration	<ul style="list-style-type: none"> • Architectural Plans • Statement of Environmental Effects • Copy of submissions • Letter of Concurrence – Sydney Trains
Summary of key submissions	<ul style="list-style-type: none"> • Height and density • Amenity impacts – Overshadowing, solar access, views, privacy • Traffic and parking impacts • Not substantially the same development • Construction, value, infrastructure
Report prepared by	Kylie Lucas, Senior Assessment Planner, Waverley Council
Report date	14 April 2021

Summary of s4.15 matters

Yes

Have all recommendations in relation to relevant s4.15 matters been summarised in the Executive Summary of the assessment report?

Legislative clauses requiring consent authority satisfaction

Yes

Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarized, in the Executive Summary of the assessment report?

e.g. Clause 7 of SEPP 55 - Remediation of Land, Clause 4.6(4) of the relevant LEP

Clause 4.6 Exceptions to development standards

If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report?

Not applicable

Special Infrastructure Contributions

Does the DA require Special Infrastructure Contributions conditions (S7.24)?

No

Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions

Conditions

Have draft conditions been provided to the applicant for comment?

Yes

Note: in order to reduce delays in determinations, the Panel prefer that draft conditions, notwithstanding Council's recommendation, be provided to the applicant to enable any comments to be considered as part of the assessment report

1. EXECUTIVE SUMMARY

DA-482/2017 for the demolition of an existing commercial building and construction of a 19-storey mixed use building comprising ground level retail and residential apartments above was approved by the Sydney Eastern City Planning Panel (SECPP) on 2 May 2019.

The subject modification application seeks consent for two additional residential levels increasing the building from 19 storeys to 21 storeys. The additional levels will provide five additional apartments increasing the development from 78 to 83 apartments. The modifications also include an additional storey to the Hegarty Lane podium at the rear, the northwards extension (Grafton Street elevation) of part of the lower ground, upper ground and Level 6 and above and minor modifications to the façade, balconies, elevations, bicycle parking and internal layouts of some apartments.

The site is zoned B4 Mixed Use and shop top housing is a permitted use in the zone. The site has the highest development standards in the Local Government Area, with a height limit of 60m and floor space ratio (FSR) of 6:1.

The modification seeks to increase:

- a. the FSR to 6.76:1 - exceeding the development standard by 978m² or 13%, and
- b. the building height to 71.3m - exceeding the development standard by 11.3m or 19%. (Note: the current approved building already exceeds the maximum height)

The applicant has proposed a planning agreement to provide a monetary contribution for public works identified in Appendix 6 of the Waverley Planning Agreements Policy 2014 (Amendment No. 3). Whilst the Policy relates to proposals where the development exceeds the FSR development standard by 'up to 15%' the proposal must still be satisfactory on planning grounds. The application proposes an additional 978m² of gross floor area, equating to 13% over the maximum FSR permitted for the site.

Council will not enter a planning agreement unless it is satisfied that the proposed development is acceptable on planning grounds having regard to the general heads of consideration set out in Section 4.15 of the Act. Development that is unacceptable on planning grounds will not be given consent because of benefits offered by a developer. It is noted that any exceptions to relevant development standards will be assessed in accordance with the provisions set out in cl.4.6 of WLEP 2012.

(Waverley Planning Agreement Policy 2014 (Amendment No. 3))

Notwithstanding the applicant's offer to enter into a planning agreement with Council, the proposal (if lodged as a development application instead of a s4.55 application) would not satisfy the required provisions for the variation of a development standard against clause 4.6 of WLEP 2012. Whilst this may not be legally required, it remains an appropriate test to determine if the proposed development should be approved.

If approved, the proposal would result in the highest building along this western section of Grafton Street which, under WLEP, should be providing a transition in height from the established built forms of the commercial core of Bondi Junction, to the lower built form heights to the west. The proposal is considered an overdevelopment, not in the public interest and accordingly, the application is recommended for refusal.

2. PREAMBLE

2.1 Site and Surrounding Locality

The site is identified as Lot 2 in DP 1073913, known as 59-75 Grafton Street, Bondi Junction and faces Grafton Street with secondary access to Hegarty Lane at the rear. The site has a frontage of 32.5m and a depth of 41m, with an overall area of 1281m². The site has a slope from the rear lane to Grafton Street, a difference of approximately 3m.

Currently on site is a nine-storey commercial building and the Bondi Junction Rail corridor is located beneath the site. Vehicular access is provided from Grafton Street and Hegarty Lane to three levels of car parking located predominantly above ground level.

The site is burdened by a right of way and easement for electricity and transit. A substation is located on Grafton Street at the front of the site within the front property boundary and a street tree on the footpath. Across the road to the north of the site is Syd Einfeld Drive (expressway) at an elevated height above Grafton Street. To the west of the site is an eight-storey commercial building (55 Grafton Street, where development consent [DA-155/2018] has recently been granted for a 20-storey mixed use building). While, to the east (79-81 Grafton Street) is a mixed use development including two residential towers atop a podium, respectively 18 and 20-storeys in height with a Wilson public parking garage located above ground in the lower podium levels the building.

The Bondi Junction area has an evolving character as smaller buildings are being replaced with mixed use developments with ground and first floor commercial uses and residential apartments above in response to the zoning uplift in the 2010 and 2012 Local Environmental Plans.

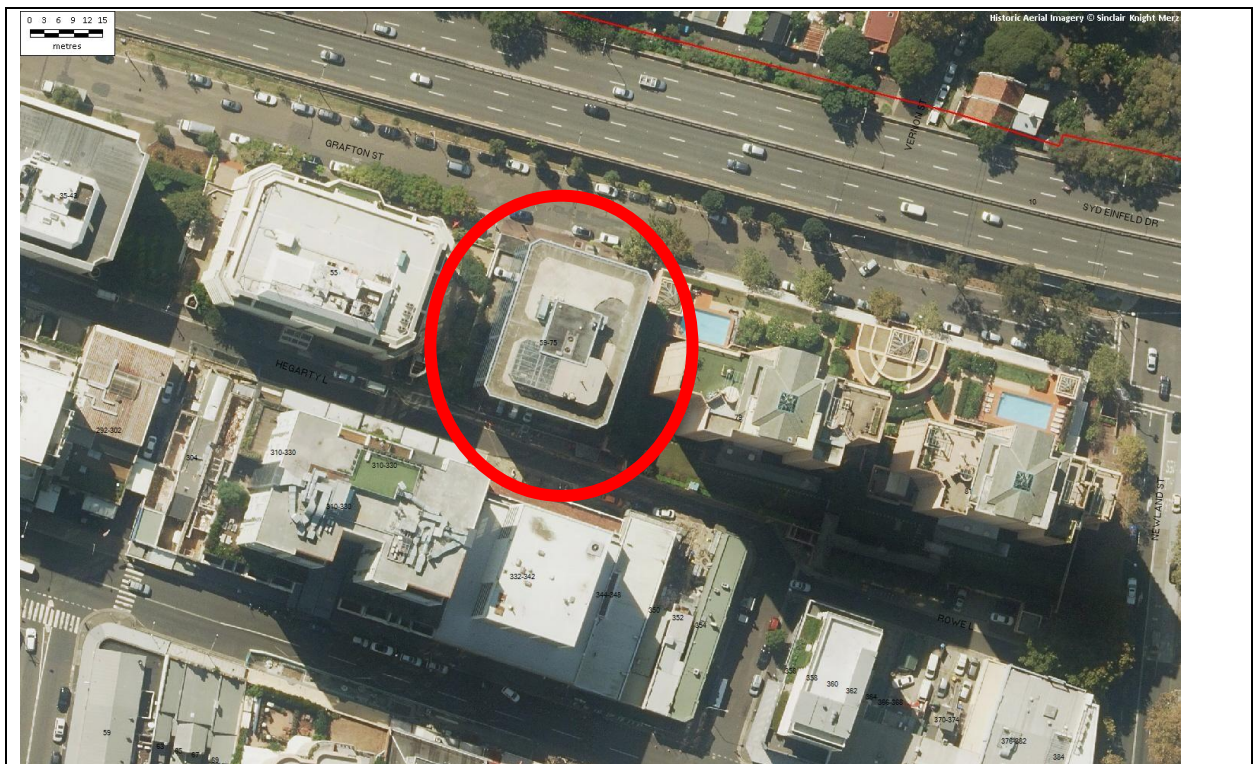


Figure 1: Aerial view of the site, circled in red (Source: Exponare mapping).

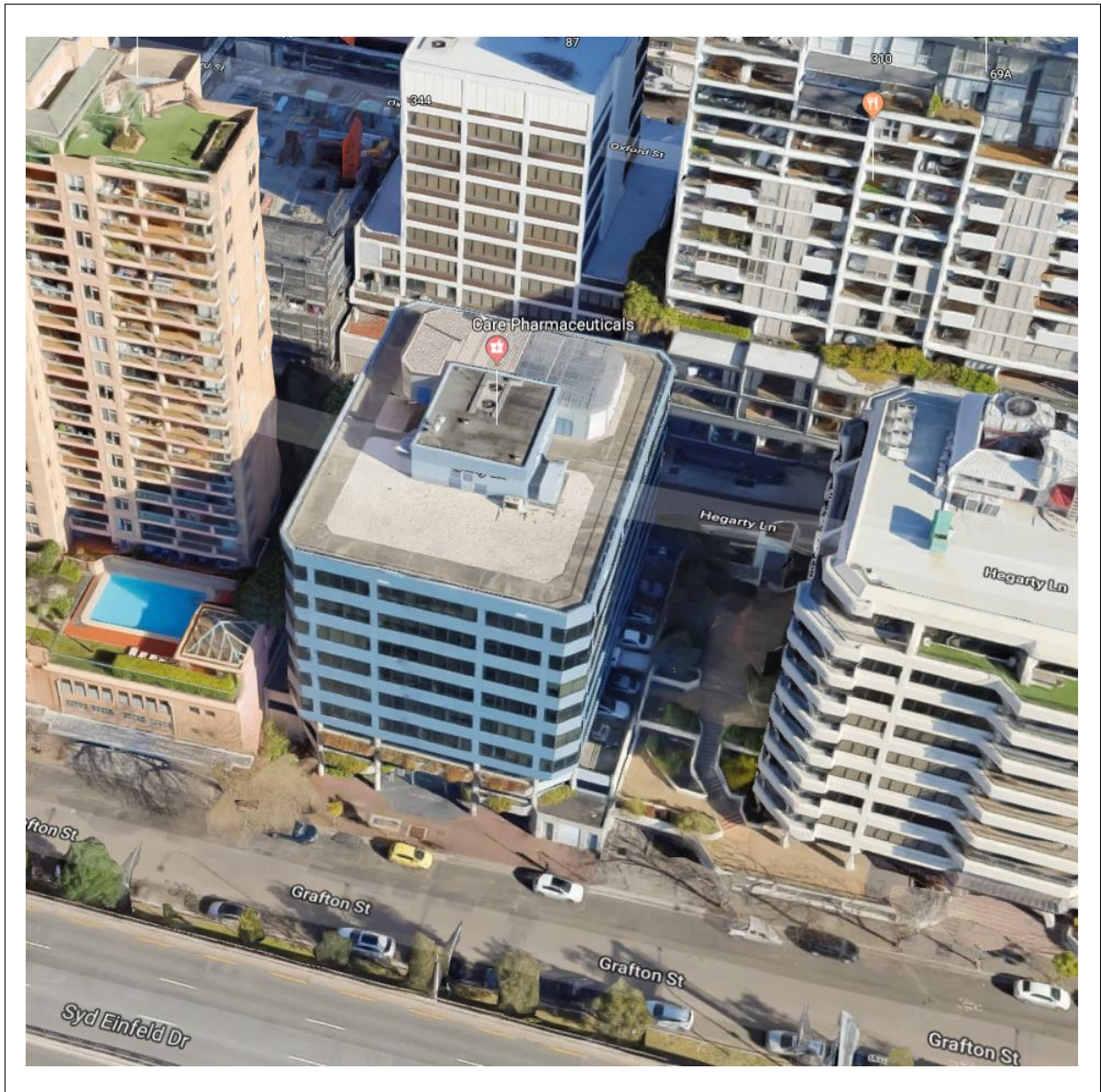


Figure 2: 3D image of the site, sourced from Google Maps.

2.2 Relevant History and Details of Approved Development

DA-482/2017: Demolition of existing commercial building and construction of 19 storey mixed use building comprising ground level retail and residential apartments above was approved by the Sydney Eastern City Planning Panel (SECPP) on 2 May 2019.

PD-24/2020: Pre-DA advice in relation to modifications to approved DA-482/2017 proposing an additional three residential storeys adding 15% gross floor area was provided on 28 July 2020. The formal advisory letter included the following advice:

Any additional floor space over the development standards will be heavily scrutinised. The additional impacts upon both the adjoining properties and the streetscape will need to be thoroughly addressed in any development application seeking to exceed the development standards.

DA-482/2017/A – application to modify existing consent

The application, DA-482/2017/A, was subsequently lodged and the most significant change from the Pre-DA advice was a reduction from 3 additional levels to two additional levels. This application was deferred on 9 November 2020 to address/provide the following (summarised):

- View impacts from properties at 71-73 and 83-85 Spring Street, Bondi Junction.
- A thorough overshadowing analysis.
- A 3D Digital model.
- Redesign of the façade, resolution of materials/finishes and increased details regarding landscaping in accordance with the comments raised by the Waverley Design Excellence Advisory Panel (DEAP).
- Minor errors on the plans and documentation (including gross floor area calculations), landscaping and cladding.

Amended plans were provided on 30 November 2020 and were further amended in response to the overshadowing impacts. The final amended plans were provided to Council on 25 February 2021.

2.3 Proposal

The application has been lodged as a section 4.55 (2) application and provides for the following modifications to the approved development:

- Two additional residential levels increasing the building from 19 storeys to 21 storeys. This modification will increase the height of the building from approved RL 132.09 to RL 138.29 equating to 6.19m.
- An additional storey to the Hegarty Lane podium at the rear.
- Northwards extension (Grafton Street elevation) of part of the lower ground, upper ground and Level 6 and above.
- Five additional apartments increasing the development from 78 apartments to 83 apartments.
- Minor changes to the upper ground floor non-residential floor plan including the consolidation of two retail spaces to form one large commercial unit and associated increase in non-residential gross floor area (475.8m² approved, 506.1m² proposed).
- Provision of additional balconies on the southern (Hegarty Lane) elevation for Levels 6, 8, 10, 12, 14, 16 and 18. Reduction in balconies on the southern elevation (Hegarty Lane) for Levels 7, 9, 11, 13, 15 and 19.
- Minor façade changes.
- Minor change to the roof terrace design.
- Eleven additional bicycle parking spaces (89 approved by condition, 100 proposed).
- Alteration to the internal layout of some apartments.



Figure 3: Photomontage comparison of the proposal from Grafton Street



Figure 4: Photomontage comparison of the proposal from Hegarty Lane (Source: Applicant's SEE)

3. ASSESSMENT

The following matters are to be considered in the assessment of this modification application under sections 4.15 and 4.55 of the *Environmental Planning and Assessment Act 1979* (the Act).

3.1 Section 4.55 Considerations

In relation to applications to modify a development consent, the Environmental Planning & Assessment Act requires, amongst other matters, that any such application must meet the requirement of being "...substantially the same development..." as the original consent.

s4.55(2) Other modifications A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if—

(a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted

In *Moto Projects (No 2) Pty Ltd v North Sydney Council* [1999] NSWLEC 280, Bignold J described the process for consideration of a proposed modification of development as follows:

“55. The requisite factual finding obviously requires a comparison between the development, as currently approved, and the development as proposed to be modified. The result of the comparison must be a finding that the modified development is “essentially or materially” the same as the approved development.

56. The comparative task does not merely involve a comparison of the physical features or components of the development as approved and modified where that comparative exercise is undertaken in some type of sterile vacuum. Rather, the comparison involves an appreciation, qualitative, as well as quantitative, of the developments being compared in their proper contexts (including the circumstances in which the development consent was granted).”

Whilst the proposal continues to provide the same uses on the site, the addition of two levels will result in a substantial variation from the maximum allowable height and FSR development standards (quantitative appreciation) and would be significantly incongruent with the existing and desired future character of the area (qualitative appreciation - see figure 3 photomontage under 2.3 Proposal). Therefore the development as proposed to be modified is not considered ‘substantially the same development’ as that for which consent was originally granted, therefore the proposal does not satisfy this test.

If the SECPP accepts this position, then the application cannot be approved.

If the SECPP does not accept this assessment, the following assessment is provided:

3.2 Planning Instruments and Development Control Plans

The following is an assessment against relevant legislation, environmental planning instruments, including State environmental planning policies (SEPPs), and development control plans.

3.2.1 SEPP (Building Sustainability Index – BASIX) 2004

A BASIX Certificate and Basix Report have been submitted with the application.

The BASIX Certificate lists measures to satisfy BASIX requirements which have been incorporated into the proposal. A standard condition is recommended ensuring the measures detailed in the BASIX Certificate are implemented.

3.2.2 SEPP 55 Remediation of Land

There is no known history of contamination applicable to the site. The subject site has historically been used for residential purposes. Accordingly, site land contamination is considered unlikely and no further investigation is necessary.

3.2.3 SEPP (Infrastructure) 2007

The development site is located within the Bondi Junction rail corridor and as such, the application was referred to the rail authority, Sydney Trains pursuant to Clause 59(1) of the Environmental Planning and Assessment Regulation 2000 requesting that concurrence be granted by as required by Clause 86 of the Infrastructure SEPP.

A letter of concurrence from Sydney Trains, which included conditions of consent was subsequently provided to Council. These conditions are provided as an attachment and included in the draft conditions (in the event of approval).

3.2.4 Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

The Bondi Junction Centre is captured by the Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 (the SREP) as it is part of land identified within the edged heavy black borders on the Sydney Harbour Catchment Map referred to in clause 3(1) of the SREP. The SREP is a deemed SEPP, and therefore, the matters for consideration under Division 2 of Part 3 of the SREP apply to the assessment of the application.

Given the site is separated by a substantial distance from the immediate foreshores and waterways of Sydney Harbour, the proposed development has no effect on the following matters set out in clauses 21 to 24 and 26 and 27 of the SREP:

- biodiversity, ecology and environment protection
- public access to, and use of, foreshores and waterways
- maintenance of a working harbour
- interrelationship of waterway and foreshore uses
- maintenance, protection and enhancement of views
- boat storage facilities.

The proposed development may be partially visible from the immediate foreshores and waterways of Sydney Harbour and therefore clause 25 of the SREP is to be taken into consideration in the assessment of the application.

3.2.5 SEPP 65 Design Quality of Residential Flat Development

The modification application was referred to the Waverley Design Excellence Advisory Panel on 21 October 2020. The Panel's comment of the proposed development with regard to the nine design quality principles under SEPP 65 and a planning response to each comment are set out in **Table 1** below:

Table 1: Assessment against the Nine Design Quality Principles under SEPP 65

Principle
Principle 1: Context and Neighbourhood
<p><i>The subject site is located in an evolving high-density precinct on the south side of Grafton Street adjacent to the raised and very busy Syd Einfield Drive. The site also has a frontage to Hegarty Lane (one level above) and incorporates a cross site link. The applicants demonstrate a sound understanding of context.</i></p> <p><i>There is an approved built form for the site by the same architects comprising a four-storey podium and fifteen-storey tower. While the application is largely the same as the approved proposal for the site, it comprises an additional two levels to the tower, an additional level to the approved four-storey podium and an additional 13% GFA. The panel is advised by the Council that this is allowed as part of a Voluntary Planning Agreement, which is limits additional development to an extra 15% density and 2 additional levels.</i></p> <p><i>The Panel supports the approved proposal generally and recognises that it will make a positive contribution to streetscape amenity. This proposal too is generally supported – especially as its</i></p>

Principle

impacts on adjoining properties appear to be limited - although there are some elements that could improve its visual and physical amenity (see comments below in 'Built Form' and 'Amenity').

Planning comment: The proposal exceeds the height and FSR development standards applicable to the site and results in unreasonable amenity impacts upon surrounding properties (discussed further throughout this report). The additional two levels are out of scale with adjoining development and does not reflect the desired future character of Grafton Street. For these reasons it is considered that the proposal does not satisfy Principle 1.

Principle 2: Built Form and Scale

With the additional level proposed, the podium will now present as five levels to Hegarty Lane; this make little impact on the scale and character of the lane and would appear to create a better transition with the stepped podium proposed at number 47 – 55. With the additional two levels proposed, the tower will now be 21 stories in height; although this breaches the height plane by 11.3m. the Panel acknowledge that impacts are limited, and that Council does generally support additional height by up to two levels. The Panel support the built form proposed generally, including additional height and density, expressed car stackers and general layouts. However:

- The materiality and expression of the north facing podium is questioned, especially as it faces the very busy and noisy Syd Einfield Drive. It is recommended that this façade is redesigned to incorporate more solidity, such as solid spandrels, incorporating planters perhaps and even solid sections of walls to bedrooms.*
- Due to fire risk, the Panel does not support the use of sandwich panels, such as use "alucobond". It is recommended that a solid material is used instead (such as stryrum, zinc or other materials) that eliminate the risk of unsafe outcomes.*
- The vertical blade screens currently proposed to separate south facing through units and maisonettes (levels 6, 8, 10, 12, 14, 16, 18 and 20) appear a little flimsy. It is recommended that a more robust solution, incorporating upper levels too is proposed.*

Planning comment: Amended plans were provided satisfying the above criteria. Notwithstanding, the bulk and scale of the proposed development is well beyond that envisaged by the development standards, resulting in unreasonable amenity impacts upon surrounding properties. For these reasons it is considered that the proposal does not satisfy Principle 2.

Principle 3: Density

Although the proposed density of 6.79:1 exceeds the 6:1 standard for the site, the Panel supports the proposal due to the following:

- There are limited impacts on adjoining properties*
- The proposal will contribute positively to streetscape amenity*
- The layouts generally are very good with excellent open space provision*

Planning comment: The proposal will have negative impacts upon adjoining properties in terms of overshadowing and view impacts. These issues are discussed elsewhere in this report.

Principle 4: Sustainability

The sustainability of the proposal is supported as it includes:

- High mid-winter solar access compliance (78%)*
- High cross ventilation compliance (76%)*
- High levels of bicycle storage*

Principle
<p><i>The Panel encourages the inclusion of solar panels on the north façade water collection and re-use and other sustainability measures.</i></p> <p>Planning comment: The amended plans incorporate solar panels on the roof.</p>
Principle 5: Landscape
<p><i>As noted above, the Panel supports the landscape proposed including the cross-site link, the layout and soft landscaping of the communal terraces and the private open spaces. It is recommended however that:</i></p> <ul style="list-style-type: none"> <i>additional street trees are proposed for Grafton Street</i> <i>a larger tree is proposed for Hegarty Lane fronting open space</i> <i>larger shade giving trees provided for each communal terrace</i> <i>introducing additional landscape planters to green the podium</i> <p>Planning comment: There are existing conditions regarding street trees on Grafton Street and Hegarty Lane and these are considered appropriate. Amended landscape plans have been provided which address the remaining issues raised above.</p>
Principle 6: Amenity
<p><i>The proposal is generally supported although the following have been raised:</i></p> <ul style="list-style-type: none"> <i>traffic noise impacts on podium apartments</i> <i>additional street trees</i> <i>additional shade giving trees to communal terraces</i> <i>additional planting to private open spaces</i> <p>Planning comment: These issues have been discussed previously in this table.</p>
Principle 7: Safety
<p><i>The Panel supports the activation and animation of Hegarty Lane.</i></p>
Principle 8: Housing Diversity and Social Interaction
<p><i>Acceptable</i></p>
Principle 9: Aesthetics
<p><i>See notes above regarding:</i></p> <ul style="list-style-type: none"> <i>Use of solid material instead of sandwich panel</i> <i>The solidity and greening of the podium</i> <i>The privacy screens separating from the adjacent balcony's/private open spaces</i> <p>Planning comment: These issues have been discussed previously in this table.</p>

The Apartment Design Guide (ADG) of SEPP 65 applies to the development and is discussed in Table 2. The main building has been previously considered against the ADG and subsequently approved. **As such the following table provides an assessment against only the two additional levels proposed.**

Table 2: Apartment Design Guide (ADG) Assessment – Part 3 and Part 4

Design Criteria	Compliance	Comment
Part 3 Siting the development		
3A Site analysis	No	The proposed modification has not considered the site, local and wider context for the reasons discussed further within this report. Essentially the height and bulk of the building will be inconsistent with the surrounding pattern of development and the desired future character of Grafton Street. This is evidenced by the substantial breaches of both the height and FSR development standards
3B Orientation	No	This part of the ADG relates to overshadowing impacts of the development which are discussed in detail in Section 3.2.6 of this report.
3C Public domain interface	Yes	There is little change to the public domain interface as part of this modification. The proposal includes increasing the height of the podium level on Hegarty Lane however, this will not result in unacceptable impacts on the public domain.
3D Communal and public open space	Yes	The previously approved communal open space at the roof level is being retained and enlarged slightly.
3F Visual privacy	Yes	The additional two levels have windows and balconies orientated toward Grafton Street and Hegarty Lane. Given that this would be the highest building in the area, there would be no windows or balconies of other buildings opposite. In this regard, privacy impacts are not unreasonable.
3J Bicycle and car parking	Yes	<p>The proposed modification does not provide additional parking spaces for the new apartments.</p> <p>The proposed development falls within the design criteria of Objective 3J-1 as it is located on land within 800m of a railway station in the Sydney Metropolitan Area. This clause allows the resident and visitor car parking requirements to be assessed against the Guide to Traffic Generating Development 2002 or Council's DCP, whichever is less. Given that the DCP has a minimum of nil parking for the site, DCP 2012 is the relevant control under which the proposal is to be assessed. Refer to Section 3.2.7,</p>

Design Criteria	Compliance	Comment
		<p>Table 4 for detailed discussion in relation to parking rates.</p> <p>The modified proposal provides an additional 11 bicycle spaces increasing the 89 approved (by condition) to 100 spaces. Visitor spaces are located on both road frontages, easily accessible to the public.</p>
Part 4 – Designing the building		
4A Solar and daylight access <ul style="list-style-type: none"> Living rooms and private open spaces of at least 70% of units receive minimum of 2 hours direct sunlight between 9am-3pm mid-winter A maximum of 15% receive no direct sunlight between 9am-3pm mid-winter. 	<p>Yes</p> <p>Yes</p>	<ul style="list-style-type: none"> 4 of the 5 additional apartments have a northerly aspect and will receive more than 2 hours solar access. The modified building will have 77% of apartments receiving at least the minimum 2 hours of solar access required. 10 of the apartments in the overall development will be south facing and receive no direct sunlight equating to 12% of the development. <p>The proposal is consistent with the remaining objectives of this part of the ADG ensuring that daylight access is satisfactory and incorporating shading in the warmer months.</p>
4B Natural ventilation <ul style="list-style-type: none"> All habitable rooms are naturally ventilated Number of units with natural cross ventilation is maximised: <ul style="list-style-type: none"> At least 60% of units naturally ventilated in the first 9 storeys of the development. 	Yes	<ul style="list-style-type: none"> All the additional apartments will be naturally cross-ventilated. Overall, the development will achieve compliance with this control with 76% of apartments naturally cross-ventilated. All habitable rooms within the new apartments will be provided with at least one window for natural ventilation. The new apartments will predominantly have dual aspects. One apartment on the southern elevation will be a double storey apartment.
4C Ceiling heights <ul style="list-style-type: none"> Habitable rooms – 2.7m Non-habitable rooms – 2.4m 	Yes	<p>The ceiling heights within all new apartments can comply with the minimum requirement, providing a minimum of 3.1m floor to floor heights.</p>

Design Criteria	Compliance	Comment
<ul style="list-style-type: none"> 2 storey units – 2.7m main level (living) & 2.4m upper floor where its area does not exceed 50% of the unit area 		
<p>4D Apartment size and layout</p> <p>The following minimum internal areas apply:</p> <ul style="list-style-type: none"> <i>Studio = 35 m²</i> <i>1 Bed = 50 m²</i> <i>2 Bed = 70 m²</i> <i>3 Bed = 90 m²</i> <i>Add 5m² for each additional bathroom (above 1)</i> <p>Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room.</p> <p>Maximum depth of open plan living layouts is 8m.</p>	Yes	<p>All new apartments will have internal areas in excess of the minimum ADG requirements. In this regard, the proposed unit sizes and layout are acceptable.</p> <p>The glazed area to each habitable room is of an acceptable size in relation to the dimensions of the room.</p> <p>The bedrooms have a satisfactory size to meet the intent of the design criteria. All kitchens are separate to the circulation spaces.</p> <p>All living areas in each apartment are open plan and do not exceed the 8m criteria.</p> <p>The proposal is consistent with the objectives of this part of the ADG.</p>
<p>4E Private open space and balconies</p> <p>All apartments provide primary balcony as follows:</p> <ul style="list-style-type: none"> 1-bed – 8m² & 2m depth 3+bed - 12m² & 2.4m depth 	Yes	<p>All new apartments are provided with a balcony accessed from the main living areas which meet the minimum requirements of the ADG in terms of area and depth.</p> <p>The design of the balconies is integrated into the architectural form, providing articulation to the building, as well as providing casual surveillance of the street. The finishes of the balconies are consistent with the palette of materials in the building overall. Screens or solid side walls are provided to enhance privacy.</p>
<p>4F Common circulation and spaces</p> <ul style="list-style-type: none"> Max of 8 units accessed off a 	Yes	<p>There are three apartments accessed from Level 18 and two from Level 19.</p>

Design Criteria	Compliance	Comment
circulation core on a single level		
4G Storage In addition to kitchens, bathrooms and bedrooms, the following is provided: <ul style="list-style-type: none"> • 1-bed – 6m³ • 3+bed – 10m³ 	Yes (subject to condition)	The additional apartments provide similar storage to that approved in the apartments below. A condition has been imposed on the original consent to ensure compliance in this respect in the event of approval.
4H Acoustic privacy	Yes	The modified proposal has adequately considered and addressed the design guidance requirements in 4H of the ADG.
4J Noise and pollution	Yes	The additional levels are located at Levels 18 and 19 of the building and unlikely to experience noise pollution from Syd Enfield due to the height separation distance.
Configuration		
4K Apartment mix	Yes	The modified proposal will result in the following mix of apartments within the building overall: <ul style="list-style-type: none"> • 7 x studio • 27 x 1-bedroom • 32 x 2-bedroom • 17 x 3-bedroom This apartment mix will support a wide variety of household types and sizes and is considered appropriate given the sites proximity to public transport options and the high density urban environment.
4M Facades	Yes	The amended proposal has made changes to the façade in accordance with the comments of the DEAP as detailed in Table 1. The modified building incorporates a simple architectural design with each façade contributing to the visual interest of the building and character of the local area.
4N Roof design	Yes	The roof provides common open space and services areas and has a cohesive relationship with the overall building design, streetscape and Bondi Junction centre.
4O Landscape design	Yes	Amendments have been made to the landscaping on site in response to comments by

Design Criteria	Compliance	Comment
		the DEAP as detailed in Table 1. The proposed landscaping is diverse with street trees on Grafton Street, a tree within the forecourt area to the lane, as well as around the podium level of the building and the roof. The proposed landscaping responds to the conditions of the site and is appropriate in a high density area.
4P Planting on structures	Yes	The landscape plans address the objectives and design criteria in 4P of the ADG. A condition of the original consent was imposed to ensure that the planting on structures has sufficient depth and structure.
Performance		
4U Energy	Yes	All new apartments incorporate passive environmental design, meeting the cross ventilation requirements in the ADG. Natural ventilation is incorporated in all apartments reducing the need for mechanical ventilation and climate control.

3.2.6 Waverley Local Environmental Plan 2012 (Waverley LEP 2012)

The relevant matters to be considered under the Waverley LEP 2012 for the proposal are outlined below:

Table 3: Waverley LEP 2012 Compliance Table

Provision	Compliance	Comment
Part 1 Preliminary		
1.2 Aims of plan	Yes	The modified proposal continues to be consistent with the objectives of the LEP.
Part 2 Permitted or prohibited development		
Land Use Table B4 Mixed Use Zone	Yes	The proposal is defined as shop top housing which is permitted with consent in the zone. The modified proposal is consistent with the objectives of the zone.
Part 4 Principal development standards		
4.3 Height of buildings <ul style="list-style-type: none"> 60m 	No	The approved development has a maximum height of 67.09m which already exceeds the development standard by 7.09m or

Provision	Compliance	Comment
		13%.(mainly due to roof plant and open space structures) The modification seeks to increase the approved height to 71.3m exceeding the development standard by 11.3m or 19%.
4.4 Floor space ratio and • 6:1 (7686m ²) Site Area: 1281m ²	No	The approved development has an FSR of 6:1 (7683m ²) complying with the maximum FSR development standard. The modification seeks to increase the approved FSR to 6.76:1 (8664m ²) exceeding the development standard by 978m ² or 13%.
4.6 Exceptions to development standards	See discussion	The application is <u>not</u> accompanied by a written request pursuant to clause 4.6 of Waverley LEP 2012 to vary the development standards as one is not required for S4.55 applications. Notwithstanding, a detailed discussion of the variation to the development standards is presented below this table.
Part 5 Miscellaneous provisions		
5.10 Heritage conservation	Yes	On the opposite side of Hegarty Lane is the development at 310-330 Oxford Street which is listed as Heritage item under the Waverley LEP (recognised for the 2 storey shop fronts presenting to Oxford Street). The heritage significance of that building however is the heritage shops which are located on the Oxford Street frontage of the site. The modified proposal is visually removed from those heritage terraces, therefore it is considered that the proposal will not impact on the heritage significance of that adjoining building.
Part 6 Additional local provisions		
6.5 Active street frontages in the Bondi Junction Centre	Yes	The minor modifications at the Grafton Street entry will not impact upon the active street frontages previously approved.
6.9 Design Excellence	No	The proposed modifications do not exhibit design excellence. Refer to detailed discussion presented below this table.

The following is a detailed discussion of the issues identified in the compliance table in relation to the Waverley LEP 2012.

4.6 Exceptions to development standards

The application has not been submitted as a new development application for two levels to an (approved but not yet constructed) development. Such an approach is available to the applicant and if this approach was taken, then the applicant would have been required to submit a written request seeking to justify the contravention of the height and FSR development standards pursuant to clause 4.6 of WLEP.

The consent authority would have to then be satisfied (amongst other matters) that:

- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- (b) that there are sufficient environmental planning grounds to justify contravening the development standard.*

Also, that:

- (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out....*

Whilst this written request is not required for section 4.55 applications and has not been submitted, the matters that must be considered under clause 4.6 are considered relevant to assist in forming a merit assessment of the proposal. This is also the consistent approach taken by the Land & Environment Court in considering appeals involving section 4.55 applications.

However, a proper assessment of these matters obviously cannot be undertaken absent any such written request by the applicant. Notwithstanding this, it would be difficult to see how the proposal for two additional levels that would substantially exceed the maximum height and FSR development standards could adequately address the requirements under clause 4.6 – if they applied.

Floor Space Ratio and height.

The modification seeks to increase the approved FSR from a compliant 6:1 to an FSR of 6.76:1 (8664m²) exceeding the development standard by 978m² or 13%.

The site benefits from one of the highest FSR and the highest height development standards in the WLEP. The Bondi Junction Centre is identified for high density development located close to the Bondi Junction bus/rail interchange to achieve the housing targets set by the State Government.

The objectives of the FSR development standard within the LEP are:

- (a) to ensure sufficient floor space can be accommodated within the Bondi Junction Centre to meet foreseeable future needs,*
- (b) to provide an appropriate correlation between maximum building heights and density controls,*

- (c) to ensure that buildings are compatible with the bulk and scale of the desired future character of the locality,*
- (d) to establish limitations on the overall scale of development to preserve the environmental amenity of neighbouring properties and the locality.*

Objectives (a)-(d) seek to ensure that there will be an adequate (or an appropriate) amount of floor space in Bondi Junction business and commercial areas, however they also seek to ensure suitable urban design outcomes are achieved that result in development of an appropriate size and scale. This is achieved by setting maximum limitations to height and FSR development standards in the LEP.

The LEP provides for a maximum FSR of 6:1 for this site and others along this section of Grafton Street. The properties on the opposite side of site in Hegarty Lane (to the immediate south of the site), are have a lower maximum height of 38m and FSR of 5:1.

The objectives of the height development standard within the LEP are:

- (a) to establish limits on the overall height of development to preserve the environmental amenity of neighbouring properties and public spaces and, if appropriate, the sharing of views,*
- (b) to increase development capacity within the Bondi Junction Centre to accommodate future retail and commercial floor space growth,*
- (c) to accommodate taller buildings on land in Zone B3 Commercial Core of the Bondi Junction Centre and provide an appropriate transition in building heights surrounding that land,*
- (d) to ensure that buildings are compatible with the height, bulk and scale of the desired future character of the locality and positively complement and contribute to the physical definition of the street network and public space.*

Objective (a) seeks to 'limit' overall height to 'preserve the environmental amenity' of other properties and open spaces. The proposed development does not achieve this. There will be both view and shadow impacts that would not occur except for the development so the development does not 'preserve' the amenity '*..of neighbouring properties and public spaces*'

Objectives (b) and (c) are also not achieved or are not applicable. Objective (d) is not achieved. It is reasonable to conclude that the desired future character for an area can be generally determined by the development standards of the LEP. Relevantly, for a development application, these maximums can only be varied by satisfaction of the detailed performance criteria under cl4.6 of WLEP. The applicant has not done this in this case.

The subject site sits within a row of sites with height and FSR development standards of 60m and 6:1 respectively. The adjoining sites to the east at 79 and 81 Grafton Street form part of this row and have been redeveloped with 19-storey buildings to the top of the tower form with a two-storey centrally located pitched roof structure above the tower podium. The approved development is already higher than these two adjoining towers. The proposal will increase the height differences even further being approximately 14m between the tower parapets and 10.91m higher overall. **Figure 3** in Section 2.3 of this report indicates the exacerbated height difference between the existing buildings and that approved and proposed for this site.

It should also be noted that approval of this modification would set a precedent for the two existing commercial buildings to the west (one of which already has development consent for a new building complying with height and FSR) which would result in what would constructively become a change to the adopted LEP development standards in this area.

Overshadowing

The ADG provides design guidance to minimise overshadowing of adjoining properties at mid-winter with the following being of relevance to this modification:

- Living areas, private open space and communal open space should receive at least 2 hours.
- Where an adjoining property does not currently receive the required hours of solar access, the proposed building does ensure solar access to neighbouring properties is not reduced by more than 20%.

The proposed modification has been amended to reduce the bulk of the building in the north-eastern corner to minimise overshadowing of the adjoining property to the south-east of the site, 350 Oxford Street. The amended proposal will result in three properties in 350 Oxford Street being impacted as follows:

- One unit which received 2 hours to the balcony under the approved development will be reduced by 13%.
- One unit which received less than 2 hours would have solar access to living room windows further reduced by 14% (equating to 15 minutes reducing to 1 hour and 30 minutes).
- One unit receiving less than 2 hours to the living room will have 50% increased solar access (equating to 15 extra minutes increasing to 45 minutes).

The Land Environment Court has published a Planning Principle on access to sunlight in the case of the *Benevolent Society v Waverley Council* [2010] in NSWLEC 1082. The principle recognises that at higher densities sunlight is *'harder to protect and the claim to retain is not as strong'*. The principle also recognises that *'in areas undergoing change, the impact on what is likely to be built on adjoining sites should be considered as well as the existing development'*.

The sites to the south of the subject site have been redeveloped with the exception of 282 Oxford Street which is an 8-storey commercial building. This property is located directly south of the subject site and will be significantly impacted by the proposal, upon redevelopment. It is highly unlikely that the redevelopment of this site will be able to meet the minimum solar access requirements and additional levels will exacerbate this further.

View Impacts

The proposed additional levels will not impact upon views from properties directly to the rear of the site, as these are lower in height than the additional levels. Notwithstanding, Council's 3D digital modelling reveals that views containing icons will likely be impacted from 71-73 Spring Street, a high-density development to the south-east of the site. **Figures 5-8** provide an indication of the views that will likely be impacted from the upper levels of this building.



Figure 5: Elevation of 71-73 Spring Street with view points shown (refer to following images for potential views achieved from these points)



Figure 6: View 1 (RL 60.65) comparison between the approved (left) and proposed (right)

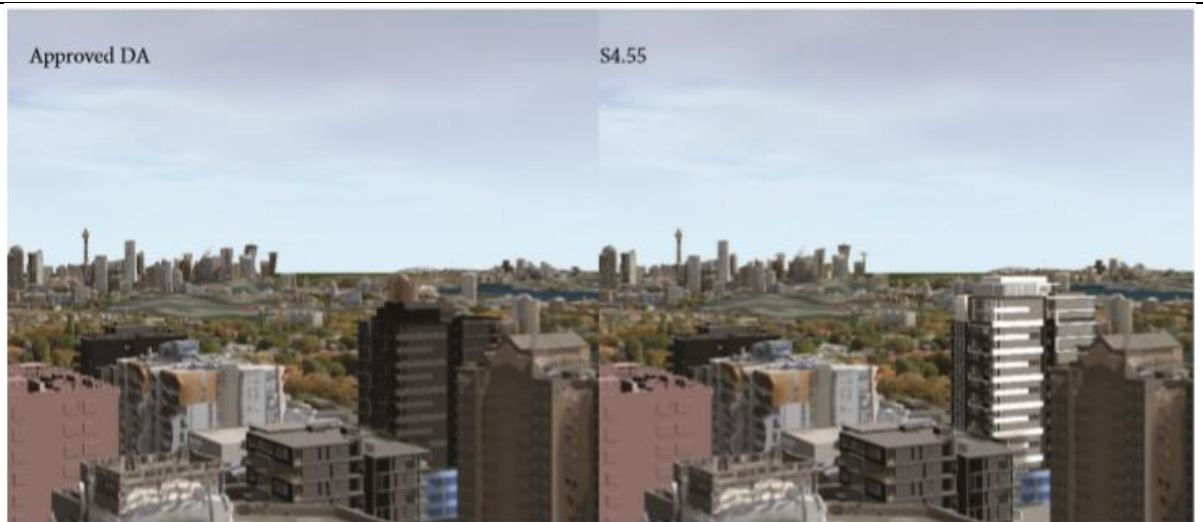


Figure 7: View 2 (RL 63.7) comparison between the approved (left) and proposed (right)

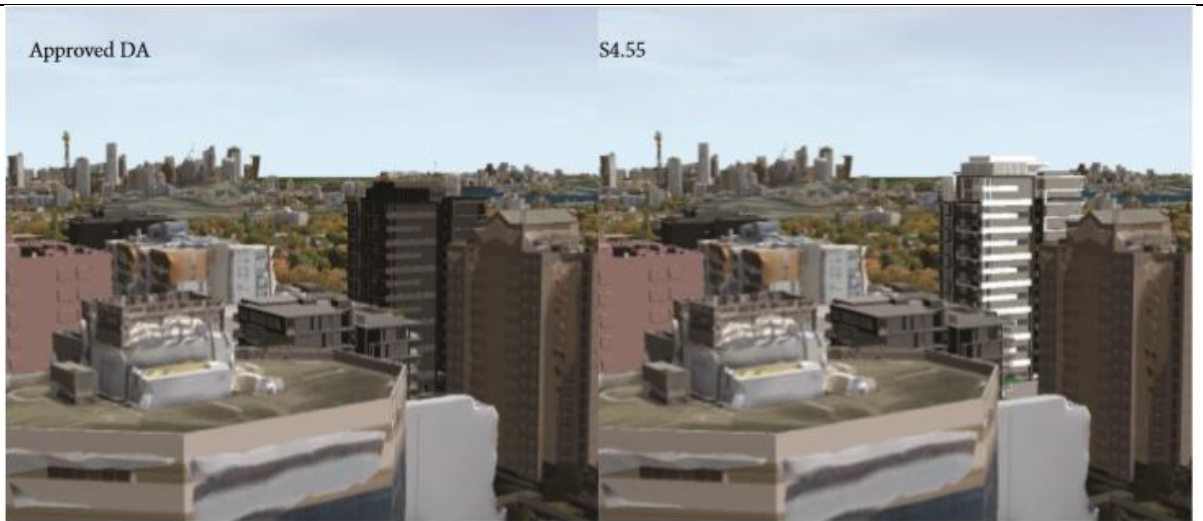


Figure 8: View 3 (RL 57.7) comparison between the approved (left) and proposed (right)



Figure 8: View 4 (RL 66.8) comparison between the approved (left) and proposed (right)



Figure 8: View 4 (RL 64.7) comparison between the approved (left) and proposed (right)

The NSW Land and Environment Court has articulated general principles with regard to views (see [Tenacity Consulting v Warringah Council \[2004\] NSWLEC 140](#)). This case states:

1. *The first step is the assessment of views to be affected. Water views are valued more highly than land views. Iconic views (eg of the Opera House, the Harbour Bridge or North Head) are valued more highly than views without icons. Whole views are valued more highly than partial views, eg a water view in which the interface between land and water is visible is more valuable than one in which it is obscured.*

The above 3D modelling indicates that the views to be impacted are views containing the Sydney Harbour Bridge and the Sydney Opera House which are iconic structures. Sydney Harbour views will also be impacted to a certain degree.

2. *The second step is to consider from what part of the property the views are obtained. For example the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic.*

An objector has provided photographs taken from standing from a number of apartments within 71-73 which are similar to those indicated by the 3D modelling. These photographs were taken from living areas and balconies from a standing position. The views are achieved from the front elevation of the building as indicated in **Figure 5** however are angled toward the north-west over the rear and side boundary of the subject site (57-75 Grafton Street).

3. *The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20% if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating.*

It is acknowledged that there are likely to be other views of Sydney Harbour and the City skyline from the affected properties however the iconic Harbour Bridge and Opera House views will be lost or predominantly obscured by the additional levels.

4. *The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable.*

This planning principle is considered particularly relevant to the subject modification, as the 3D modelling clearly indicates that a compliant development (even with the variation to the height development standard as approved) retains the iconic views from these apartments. The view impacts are a direct result of the additional two levels being sought. The two levels are in excess of both the height and FSR development standards and in this regard, the view loss is considered unreasonable.

In summary, the proposal will result in additional impacts upon surrounding properties by way of overshadowing and loss of iconic views.

Whilst the applicant has proposed a planning agreement to provide a monetary contribution for public works identified in Appendix 6 of the Planning Agreements Policy, the impacts of the proposed development is considered unacceptable and therefore the offer is not considered appropriate for acceptance.

3.2.7 Waverley Development Control Plan 2012 - Amendment No 8 (Waverley DCP 2012)

Clause 6A of SEPP 65 requires that DCP's cannot be inconsistent with the Apartment Design Guide (ADG) in respect of the following:

- (a) visual privacy,
- (b) solar and daylight access,
- (c) common circulation and spaces,
- (d) apartment size and layout,
- (e) ceiling heights,
- (f) private open space and balconies,
- (g) natural ventilation,
- (h) storage.

If a development control plan contains provisions that specify requirements, standards or controls in relation to a matter to which this clause applies, those provisions are of no effect. DCP 2012 contains provisions in relation to the above criteria and therefore assessment of those clauses is not duplicated in this report in Tables 4 and 5 as they are no longer relevant. Refer to Table 2 of this report for an assessment against the provisions of the ADG.

The relevant matters to be considered under the Waverley DCP 2012 for the proposal are outlined below:

Table 4: Waverley DCP 2012 – Part B General Provisions Compliance Table

Development Control	Compliance	Comment
1. Waste 1.4.1.1 Storage <ul style="list-style-type: none"> Bin storage area to be provided with rates in B1-2 1.4.1.2 – Residential <ul style="list-style-type: none"> > 3 storeys convenient waste transport system (ie. Chute) 	Yes	The waste storage area provides 4 more residential bins than required by the previously imposed condition. The new levels continue the chute system to the waste storage room. The amendments are considered satisfactory in regard to waste.
3. Landscaping and Biodiversity	Yes	The landscaping plan has been reviewed and is considered acceptable and is cohesive with the site and streetscape. Refer to previous comments by the DEAP in Table 1.
7. Accessibility and adaptability	Yes	In the event of approval existing conditions relating to accessibility and adaptability would continue to apply.
8. Transport 8.2 – On Site Parking Zone 1 <ul style="list-style-type: none"> Car parking Provision Rates Bike Parking 	Yes	The vehicular access and parking remain as approved. The proposal does not include additional parking for the additional units. Given that the rates within the DCP are a maximum control with the minimum being nil, no parking for the new apartments is compliant with the DCP. Additional bicycle parking to satisfy the DCP has been provided in the modified scheme.
10. Safety	Yes	The modified proposal does not contravene the objectives of this part of the DCP.
12. Design Excellence	No	Refer to discussion previously in this report.

Table 5: Waverley DCP 2012 – Part C3 Other Residential Development Compliance Table

This part applies to development that is subject to State Environmental Planning Policy (SEPP) 65 – Design Quality of Residential Apartment Development, including the residential flat buildings, shop top house or mixed use developments that are 3 or more storeys and contain 4 or more dwellings.

Development Control	Compliance	Comment
3.2 Height		
<ul style="list-style-type: none"> Refer to the LEP 	No	This matter is discussed above and does not meet the objectives of the DCP control.

Development Control	Compliance	Comment
3.3 Setbacks		
<ul style="list-style-type: none"> Setbacks to be consistent with building line along the street Setbacks above street frontage height are to be included where the adjacent buildings includes upper level setbacks 	Yes	<p>The proposal includes a minor change to the front setback on Grafton Street at the lower ground floor level bringing the front setback further toward the front boundary. This is a minor adjustment and is not unreasonable.</p> <p>The proposed two additional levels generally follow the alignment of the levels below except in the north-east corner as previously discussed.</p>
3.5 Building Design and Streetscape		
<ul style="list-style-type: none"> Sensitive to streetscape character and views. A streetscape and context analysis are to be provided in accordance with Part B12 Design Excellence. Sympathetic external finishes 	<p>No</p> <p>Yes</p>	<p>Refer to previous discussions regarding design excellence.</p> <p>The revised external finishes as recommended by the DEAP are considered acceptable.</p>
3.9 Landscaping		
<ul style="list-style-type: none"> Comply with part B3-Landscaping and Biodiversity 	Yes	Refer to Tables 1 and 4 for landscaping discussion.
3.10 Communal Space		
<ul style="list-style-type: none"> Communal open space may be provided on a podium or roof-top terrace provided the controls within this Part are met. In considering a roof-top terrace or deck, Council will consider the magnitude of the impact on both privacy and noise for neighbouring residents, with the reasonableness of the proposal. 	Yes	<p>The communal open space is to be retained on the roof level where optimal solar access is achieved.</p> <p>The proposed modification will increase the amount of communal space on the roof from approximately 85m² to approximately 110m². Privacy impacts are not unreasonable given the height difference between the subject building and those surrounding. There will also be sufficient separation distances to the adjoining buildings.</p>
3.13 Solar access and overshadowing		
Direct sunlight to north facing windows of habitable rooms and all private open space areas of adjacent dwellings should not be reduced to less than 3 hours between	<p>Yes</p> <p>No</p>	<p>Refer to Table 2 for assessment against solar access to the subject development itself.</p> <p>In terms of overshadowing of adjoining properties, this has been discussed in detail under Section 3.2.6 of this report. The additional</p>

Development Control	Compliance	Comment
9.00am and 3.00pm on June 21.		overshadowing impacts are considered unreasonable.
3.14 Views and view sharing		
<ul style="list-style-type: none"> Minimise view loss through design. Views from public spaces to be maintained. 	<p>No</p> <p>Yes</p>	<p>View loss has been discussed previously – refer to Section 3.2.6.</p> <p>There are no known views from the public domain that will be impacted by the proposal.</p>
3.15 Visual privacy and security		
<ul style="list-style-type: none"> Above ground open space must not overlook rooms and private landscaped areas of adjoining properties or be screened Prevent overlooking of more than 50% of private open space of lower level dwellings in same development Privacy be considered in relation to context density, separation use and design. 	Yes	<p>The additional levels will not result in additional privacy impacts to surrounding properties given the difference in height between the subject site and those adjoining.</p> <p>The proposal does not result in overlooking between apartments within the development itself.</p>
3.20 Building services		
<ul style="list-style-type: none"> Services on roof not to be seen from street or impact public or private views and be min 2m from the building edge 	Yes	The communal roof terrace and services contained on the roof have been previously approved. The subject modification will simply increase the height of the roof by another two levels, if approved. However, photovoltaic panels have been included on the roof as recommended by the DEAP (refer to Table 1).

Table 6: Waverley DCP 2012 - Part E1 Bondi Junction Compliance Table

Development Control	Compliance	Comment
1.2 Urban form		
<ul style="list-style-type: none"> Development must be sensitive to the streetscape character and views. A streetscape and context analysis is to be provided in accordance with Part B12 Design Excellence. 	No	As previously discussed, it is considered that the proposed additional levels are not sensitive to the streetscape character or views nor does the proposal exhibit design excellence.
1.9 Street alignment		

Development Control	Compliance	Comment
	Yes	<p>The proposed additional floor levels to the approved development maintain the street alignment and front setbacks of the approved development. The street alignment and front setbacks remain appropriate given the site orientation, constraints and location of surrounding buildings.</p> <p>There is no podium storey height control for Hegarty Lane stipulated in the DCP. However, the properties on the opposite side of Hegarty Lane have a consistent four-storey podium height as does the approved development at 55 Grafton Street adjoining to the west of the site. Although the subject development will provide five storeys in Hegarty Lane, the RL of the top of the podium is similar to the approved at 55 Grafton Street (due to the site being slightly lower). The increase in the height of the podium level on Hegarty Lane is considered acceptable given the streetscape in Hegarty Lane.</p>
1.11 Side and Rear boundary setbacks		
	Yes	<p>The proposed additional floor levels maintain the side boundary setbacks of the approved development. These setbacks were considered reasonable in the assessment of the original development application given the site orientation, constraints and context.</p> <p>The nil side setbacks of the additional floor levels on Hegarty Lane has no effect on the quality of privacy, outlook and light afforded to the additional apartments given that openings are oriented to the street frontages of the site.</p>
1.12 Building footprint		
<ul style="list-style-type: none"> Block edge to address street No blank walls to public streets. 	Yes	The proposal maintains the building footprint of the approved development, specifically the tower form footprint of the development.
1.13 Number of storeys		
<p>Maximum 19-storeys</p> <p>Lots are to ensure they do not overshadow neighbouring or adjacent residential lots so as to</p>	No	<p>The proposal will increase the building to 21-storeys exceeding the maximum storey control of the DCP by 2-storeys.</p> <p>The additional height (and storeys) is out of context with surrounding development and the</p>

Development Control	Compliance	Comment
preserve solar access to private open space.		desired future character as discussed previously in this report.
1.14 View, vista and tree preservation		
	Yes	The proposal will not impact upon any known view or vista from the public domain.
1.16 Building Elevations		
	Yes	The proposed additional floor levels are sufficiently articulated and reflect the building modulation and rhythm of the floor levels below.
1.20 Wind Mitigation		
<ul style="list-style-type: none"> Buildings > 9 storeys, wind tunnel study is required 	Yes	A wind tunnel study was submitted with the original application. An addendum from the author who prepared the original Wind Tunnel Study specifically addresses the proposed modifications to the approved development. The addendum concluded that the change of the building height of the approved development will result in negligible effects on the adjacent ground level pedestrian wind environment compared with the building height of the currently approved development. Further, the comfort level for the communal rooftop open space remains to adhere to accepted and recommended comfort wind criteria with the originally recommended mitigation measures.

3.3 Other Impacts of the Development

The proposed development is capable of complying with the BCA.

It is considered that the proposal will have an adverse environmental impact in the locality as it represents an overdevelopment of the subject site, is excessive in terms of bulk and scale, has an undesirable and unacceptable impact on the streetscape, and would adversely impact upon the amenity of the locality and surrounding built environment.

3.4 Suitability of the Site for the Development

The site is considered to be unsuitable for the proposed development.

3.5 Any Submissions

The modification application was notified for 21 days in accordance with *the Waverley Community Participation Plan*.

Twelve unique submissions were received. The issues raised in the submissions are summarised and discussed below.

Table 4: Summary of property addresses that lodged a submission

Property
10/350 Oxford Street, Bondi Junction
905/350 Oxford Street, Bondi Junction
W803/310-330 Oxford Street, Bondi Junction
E905/310-330 Oxford Street, Bondi Junction
1006, 310 Oxford Street, Bondi Junction
W1102/310-330 Oxford Street, Bondi Junction
1301/304-308 Oxford Street, Bondi Junction
23 Grafton Street, Bondi Junction
10 Mill Hill Road, Bondi Junction
52 Lawson Street, Bondi Junction
412/400 Maroubra Road, Maroubra
2302/71-73 Spring Street, Bondi Junction

Issues:

- Height
- Density
- Overshadowing and solar access
- Traffic and parking impacts
- Loss of views
- Privacy
- Streetscape and character impacts
- Not substantially the same development so should be a new DA

Response: These issues have been discussed previously in this report.

Issue: Lack of infrastructure to support density.

Response: Increased densities are appropriate in areas close to public transport. This is not a reason for refusal in a high-density zone.

Issue: Financial loss; Loss of property value.

Response: This is not a matter for consideration in the EP&A Act.

Issue: Loss of ventilation and pollution.

Response: Sufficient setbacks are provided to ensure adequate ventilation.

Issue: Issues/disturbance during construction.

Response: This is not a reason for refusal.

3.6 Public Interest

It is considered that the proposal will have a detrimental effect on the public interest.

4. REFERRALS

Stormwater (Infrastructure Services)

Conditions were recommended in the event of approval.

Land Information Officer (Digital Waverley)

Conditions were recommended in the event of approval.

Strategic Planning (Urban Planning Policy and Strategy)

If the proposed development were to be approved, a condition requiring that the owner/applicant enter into a planning agreement and pay a monetary contribution amount of \$3,814,200 should be imposed. Notwithstanding this recommended condition, for the reasons discussed within this report, the modification application is recommended for refusal.

Urban Design (Urban Planning Policy and Strategy)

The following comments were provided (summarised):

In summary, the proposed modifications relate to the additional 2 storeys and subsequent 13% gross floor area and 6.2m in height, which would breach both the height and FSR controls and cast significant shadows on the adjacent buildings to the south, which is not acceptable. In addition, the proposed additional level on the podium facing Hegarty Lane does not respond to the surrounding buildings along the lane and would negatively impact the relationship with the public domain and pedestrian environment. It is recommended that further form/footprint studies are undertaken to reduce overshadowing impacts and that the podium level facing Hegarty Lane is kept at the approved 4 storeys.

The issues raised have been discussed elsewhere in this report.

5. RECOMMENDATION TO SYDNEY EASTERN CITY PLANNING PANEL

That the Section 4.55 Modification Application be **REFUSED** by the Sydney Eastern City Planning Panel for the following reasons:

Report prepared by:



Kylie Lucas
Senior Development Assessment Planner

Date: 18/03/2021

**Application reviewed and agreed on behalf of
the Senior Assessment Group by:**



Mitchell Redi
Executive Manager, Development Assessment

Date: 14/04/2021

APPENDIX A – REASONS FOR REFUSAL

Having regard to section 4.15(1) of the Environmental Planning and Assessment Act 1979 the development application is refused for the following reasons:

1. The proposal does not satisfy the requirements of section 4.55 (2) (a) of the Environmental Planning and Assessment Act 1979, as the development the subject of the application is not substantially the same development as the development for which consent was originally granted.
2. The proposed development does not satisfy section 4.15 (1)(a)(i) of the Environmental Planning and Assessment Act 1979, as it is contrary to the following environmental planning instruments:
 - (a) *State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development* (SEPP 65) as the development fails to satisfy the following design quality principles specified by Schedule 1 of SEPP 65:
 - i. *Principle 1 – Context and neighbourhood* in that the proposed development does not achieve the desired urban form and built form quality envisaged for the area.
 - ii. *Principle 2 - Built form and scale* as the proposed development is out of scale with the desired future character for the area. The scale, bulk and height of the proposed development exceed that envisaged for the site.
 - (b) Waverley Local Environmental Plan (WLEP) 2012 as the development fails the following provisions:
 - i. Clause 4.3(1)(a) and (d) and (2) as the proposal will further exceed the maximum building height which will result in unreasonable amenity impacts and be incompatible with the desired future character of the locality.
 - ii. Clause 4.4(1)(b) to (d) and (2) as the proposal will exceed the maximum FSR permitted for the site and have unacceptable impacts.
 - iii. Clause 6.9(3) and (4)(d) as the proposal does not exhibit design excellence in that it results in unreasonable amenity impacts upon surrounding sites, provides unacceptable bulk and results in environmental impacts.
3. The proposal does not satisfy section 4.15 (1)(a)(iii) of the Environmental Planning and Assessment Act 1979, as the proposed development is contrary to Waverley Development Control Plan 2012, in respect to the following provisions:
 - (a) Part B12 – *Design Excellence*, specifically control (e) as the proposed development does not achieve design excellence as the relationship of the development to other development on neighbouring sites and environmental impacts have not been appropriately considered in the design.
 - (b) Part C3 – *Other Residential Development*.
 - i. Clause 3.2 *Height*, specifically objectives (a) and control (a), as the proposal exceeds the maximum height permitted and does not respond to the desired scale and character of the street and area.
 - ii. Clause 3.13 *Solar Access and Overshadowing*, specifically objective (d) control (d) in that the proposal unreasonably overshadows adjoining buildings.
 - iii. Clause 3.14 *Views and View Sharing*, specifically objective (a) and control (a) as the proposal results in the loss of iconic views from neighbouring properties.

- (c) Part E1 – *Bondi Junction*;
 - i. Clause 1.13 *Number of Storeys*, specifically objective (f) and controls (a), (c) and (d) as the proposal exceeds the maximum height of building development standard of 60m and the maximum storey control of 19-storeys. The proposed modification will provide an inconsistent height along Grafton Street and will not preserve solar access to adjoining properties.
- 4. The proposed development does not satisfy section 4.15 (1)(b) of the Environmental Planning and Assessment Act 1979, as the proposal will have an adverse environmental impact in the locality as it represents an overdevelopment of the subject site, is excessive in terms of bulk and scale, undesirable and unacceptable impact on the streetscape, and would adversely impact upon the amenity of the locality and surrounding built environment.
- 5. The proposal is contrary to 4.15 (1)(c) of the Environmental Planning and Assessment Act 1979, as the development is excessive in bulk and scale and is therefore considered unsuitable for the site.
- 6. The proposal is not considered to be in the public interest for the reasons outlined above contrary to Section 4.15 (1)(e) of the Environmental Planning and Assessment Act, 1979.