

COUNCIL ASSESSMENT REPORT

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| Panel Reference | 2017SCL055 |
| DA Number | DA-245/2017 |
| LGA | Waverley Council |
| Proposed Development | Demolition of buildings and the construction of a 19 storey mixed use building with basement parking |
| Street Address | 552-568 Oxford Street, Bondi Junction |
| Applicant/Owner | Honeykent Pty Limited, Denscen Pty Ltd |
| Date of DA lodgement | 21 June 2017 |
| Number of Submissions | 34 |
| Recommendation | Refusal |
| Regional Development Criteria (Schedule 4A of the EP&A Act) | Clause 3 – General Development that has a capital investment value of more than \$20 million. The Capital Investment value of the proposal is \$37.5 million |
| List of all relevant s79C(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 |
| 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 • Clause 4.6 statements |
| Report prepared by | Beth Matlawski – Senior Development Assessment Officer |
| Report date | 16 November 2017 |

Summary of s79C matters

Have all recommendations in relation to relevant s79C matters been summarised in the Executive Summary of the assessment report? **Yes**

Legislative clauses requiring consent authority satisfaction

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? **Yes**

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? **Yes**

Special Infrastructure Contributions

Does the DA require Special Infrastructure Contributions conditions (S94EF)? **Not Applicable**

Conditions

Have draft conditions been provided to the applicant for comment? **No**

1. EXECUTIVE SUMMARY

Council is in receipt of a development application from Denscen Pty Ltd for a 19 storey mixed use building at 552 to 568 Oxford Street, Bondi Junction.

The building proposes to replace a row of 6 properties each containing one and two storey terrace shops with a mixed use building containing basement parking, 3 commercial spaces, and 90 residential apartments (a mix of studio, 1, 2 and 3 bedroom units). Combined, the area of the site is 1127m² with a 3m RMS road widening to Oxford Street. There is a gentle slope from Oxford Street (south) to Grafton lane to the rear (north).

Prior to submission of this DA, Council provided advice to the applicant on 2 alternative schemes for the site. The key advice provided related to the urban form of the building in relation to the development controls identified for the site.

The development application submitted deviates from the advice provided and seeks variations to the FSR and height development standards in the LEP. Clause 4.6 submissions have been provided for each which are attached to this report.

The podium level has not been designed in accordance with the area specific planning controls for Bondi Junction in Part E1 of the DCP, failing to provide the 6 storey street wall for the whole site, diverse retail spaces at ground floor and commercial space at first floor level to activate and create employment opportunities in the Bondi Junction Centre. The six storey podium is the consistent urban form throughout Bondi Junction which was identified as the best urban outcome in the 2013 Bondi Junction Urban Design Review. The applicant disagrees with this design approach and the podium level is proposed with a low 1-2 storey wall to Adelaide Street, including excessive plant areas located above ground level, removing the opportunity for genuine commercial space to activate the space.

The result of this design approach is a larger portion of floor space contained within the tower form of the building that has a heavy and wide profile, creating visual, shadowing and view impacts on surrounding towers. A more slender tower would create view corridors between buildings and more equitable view sharing. The tower form also increases overshadowing to Waverley Mall in the morning which could be addressed by a better design by increasing the tower setback to Adelaide Street and the adjoining building to the east, creating a slimmer tower form.

The submission for the FSR non-compliance with Clause 4.4 of the Waverley Local Environmental Plan is not considered to sufficiently address Clause 4.6(3) and applying flexibility to the control in this case is not considered to be in the public interest, failing clause 4.6(4) and therefore development consent should not be granted.

34 submissions have been received to the proposal and some of the issues raised are considered to have merit, as they can be addressed by a more considered design of the podium and tower.

Aside from the key issues above, there are some other issues regarding apartment amenity, on site garbage collection, car parking, materials and finishes, energy efficiency and the building alignment which need to be addressed in a re-design of the building.

For these reasons, Council concludes that the proposal does not adequately comply with the provisions of the Waverley LEP and DCP, contrary to Section 79C(a), resulting in unreasonable impacts on the surrounding locality which is contrary to Section 79C(b). Therefore the proposal is considered unsuitable for the site failing section 79C(c). For these reasons, approval of the application is considered to be against the public interest against Section 79C(e).

2 PREAMBLE

2.1 Site and Surrounding Locality

The site includes 552 to 568 Oxford Street, Bondi Junction which comprises a row of 6 properties each containing low one and two storey terrace shops. Combined, the area of the site is 1127m² and is affected by a 3m RMS road widening to Oxford Street. There is a gentle slope from Oxford Street (south) to Grafton lane to the rear (north). The site has 3 road frontages with Oxford Street to the south, Adelaide Street to the west and Grafton Lane to the north. See map below.



Adjoining the site across the rear lane to the north, is a mixed use building known as the 'Eclipse' which addresses Adelaide Street and is seen from Syd Einfeld Drive. Directly adjoining the building to the east is a recently constructed 19 storey mixed use building at 570 Oxford Street, known as 'The Vue'. The Westfield Development is located on the other side of Adelaide Street to the west. Surrounding development is predominantly mixed use buildings, with commercial uses at the lower levels and residential above, ranging from 12 to 19 storeys.

Figure 1: Site Map



Figure 2: View of the site from corner Hollywood Avenue & Oxford Street



Figure 3: Site viewed from Oxford Street (from the south/east)

2.2 Relevant History

Prior to the submission of this DA, the applicant presented two schemes for review. The key commentary in the advice related to the urban form of the building. The applicant was advised in summary, to follow the DCP guidelines which requires a 6 storey podium and distinct separation to the tower to reduce the visual impacts of the tower for pedestrians on the street as well as mitigating wind downwash for pedestrian comfort. As well as setback from the podium, the tower form should be slender to facilitate cross ventilation, provide high quality amenity to occupants of the building, provide view corridors between buildings and provide greater solar access to public spaces and other buildings.

Council has been consistent with all buildings approved in the Bondi Junction Centre (under the current 2012 LEP - apart from 570 Oxford Street, as a Gateway site) in enforcing a clear delineation between podium and tower, in order to maintain the objectives of those controls. The key urban design objective is a 6 storey street wall with a thin tower on top which is appropriately positioned to provide a clear delineation between the podium and tower by an appropriate setback, or other means to enhance the streetscape.

The applicant was also advised on matters relation to garbage collection, sustainability, internal amenity.

2.3 Proposal

The application proposes a 19 storey mixed use building, defined as shop top housing under the Waverley LEP 2012. Specifically the development includes the following

- Basement Parking (4 levels and 88 car spaces total) including;
 - 75 residential spaces
 - 13 visitor spaces
 - 18 motorcycle spaces
 - 90 bicycle storage cages
 - 10 bicycle spaces for visitors
 - bicycle spaces for retail staff
- Lower Ground and Ground floor retail (3 commercial premises with a total 375m² GFA)
- Common open space atop the podium, level 6
- 90 residential apartments from levels 1 to 17 (with a total GFA of 7635m²) including the following mix;
 - 1 x studio
 - 31 x 1 bedroom units
 - 51 x 2 bedroom units
 - 7 x 3 bedroom units



Figure 4: Photomontage of the proposal

3. ASSESSMENT

The following matters are to be considered in the assessment of this development application under section 79C of the *Environmental Planning and Assessment Act 1979* (the Act).

3.1 Section 79C (1)(a) 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.

3.1.1 SEPP (Building Sustainability Index – BASIX) 2004

A BASIX Certificate has been submitted with the development application. Should the application be approved, a standard condition should be imposed to ensure that the measures detailed in the BASIX Certificate are implemented.

3.1.2 SEPP 55 Remediation of Land

The applicant provided a Preliminary Site investigation, prepared by Douglas Partners (Project 85822.010) dated June 2017 to determine whether the site is potentially contaminated.

The report identifies that there was previously a dry cleaner in operation on one of the sites and concludes that the site can be made suitable for the proposed development subject to further investigations including;

- **Hazardous Building Material Assessment:** It is recommended that a hazardous building materials assessment of the existing buildings should be undertaken prior to demolition; and
- **Detailed Site Investigation (DSI) incorporating waste classification:** A detailed contamination investigation to target the filling and groundwater should be undertaken following demolition of the current site buildings due to site access issues. The DSI will provide information on the contamination status of soils and groundwater, as well as a waste classification required for disposal of surplus soils during basement excavation.

Council's Health and Compliance Officer has recommended that if the application be approved, it be subject to a deferred commencement consent requiring a site audit statement to be provided clearly stating that the site will be suitable for the intended use.

3.1.3 SEPP (Infrastructure) 2007

The site is not identified to be within the railway corridor nor immediately adjacent to the rail corridor, therefore consultation with Transport for NSW is not required, nor an assessment against an assessment against clause 85 and 86 of the SEPP. The site is not located on a classified road, therefore an assessment against clause 101 of the SEPP is not required.

3.1.4 SEPP 65 (Design Quality of Residential Apartment Development)

The application was referred to the Waverley Design Excellence Panel on 21 August 2017. The Panel's review of the proposed development with regard to the nine design quality principles under the SEPP is summarised below with a planning response to each. The panel recommended that the scheme be amended and returned for review. A design verification statement was provided by Simon Fleet,

registered architect from Urban Possible. The applicant provided a response to this commentary via email on 13 October 2017, however this is not considered to adequately address the issue relating to the podium and the tower relationship. There remains a fundamental difference in opinion between the applicant and the Council as to the appropriateness of the podium wrapping around the whole site.

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

| Principle | Panel's Comment | Planning Comment |
|----------------------------|---|---|
| 1. Context & Neighbourhood | <p>The site is a very prominent corner at the eastern end of the Oxford St Mall. The Panel was concerned that the view from the Mall achieved the best possible urban outcome.</p> <p>The proposal does not fully resolve the design of the podium street frontage in relationship to the tower.</p> | <p>This matter is agreed. The proposed tower form is not articulated, and the low podium form to Adelaide Street does not provide a visual separation to the tower below, appearing monolithic, contrary to the objectives of the DCP controls for the Bondi Junction Centre.</p> |
| 2. Built form & Scale | <p>The proposed tower is too close to the Adelaide St frontage for the low level podium to make an acceptable transition to the tower element.</p> <p>As a symmetrical form, the tower does not effectively address the corner or express as mid-block or corner building in a manner that the Panel would consider an agreeable urban form outcome.</p> <p>The overall width of the symmetrical tower form lacks a vertical emphasis that could visually present as a more slender building form.</p> <p>This could be resolved by moving the envelope further east up to an 18m separation from the Vue Apartments to allow a greater setback from Adelaide St.</p> <p>This would enable the n-w façade to be lengthened while keeping the current orientation, and enable a more vertical corner expression while maintaining views from apartments on Harley Place.</p> | <p>This matter is agreed. A higher podium, 6 storeys to match the remaining podium would address this matter.</p> <p>This matter is agreed.</p> <p>It is agreed the tower form should be more slender.</p> <p>Certainly that would address the issue to Adelaide St but it would have a greater impact if it moved closer to the adjoining Vue apartments, as the site currently only provides 5m of the 20m distance separation between the two forms. The site plan, drawing 0011 demonstrates the proportion of separation provided by each building. It would be preferred that a more generous tower setback from Adelaide Street should be achieved by providing a more slender tower, not by moving it closer to the adjoining building.</p> |

| Principle | Panel's Comment | Planning Comment |
|--------------------------------------|--|--|
| 2. Built form & Scale (continued) | <p>This approach may also increase solar access to the public domain of Adelaide St to the south and improve solar access and views for the corner apartment.</p> <p>To improve the podium to tower to podium relationship on Oxford St, the Panel suggested the 6 storey façade could continue to the s-w corner and return for one bay on the west elevation.</p> <p>More vertical emphasis could also be achieved by more recessive treatment of the balcony separation between adjacent units on the west elevation.</p> | <p>Providing an amended tower form to provide better solar access to the Waverley Street Mall is favoured by Council.</p> <p>The applicant has responded to these comments noting that various forms were tested and the proposal is considered the best urban design response to the site.</p> <p>The applicant is open to making changes to the balcony treatments and also suggested to make <i>'changes to the detailing, materiality and colour tone of the 2 storey retail unit fronting Adelaide Street to integrate this element back into the main body of the building. These changes are complemented by some adjustments to the extent of the awnings at the corner interface, to help to interlock and unify the different compositional elements'</i>. Council does not agree that the above changes are sufficient in achieving the DCP outcomes.</p> |
| 3. Density | The Panel supported the reduction in FSR from the earlier scheme. | The previous Pre-DA scheme proposed at 15% variation to the maximum development standard, however a variation of 1.5% is proposed in this application and is discussed in the consideration of the LEP development standards later in this report. |

| Principle | Panel's Comment | Planning Comment |
|------------------|--|--|
| 4.Sustainability | <p>The Panel felt that while the Applicant indicated the facade treatment was meeting BASIX requirements, the manner in which solar access is achieved could be revisited in order to achieve a better urban outcome. Improving solar access to the s-w corner apartment could offset any loss of solar access to n-w apartments. While the detail for vertical blades was appreciated on the west and east facades, the Panel was not convinced these were sufficient to address the significant solar exposure that units on these orientations would receive in summer.</p> | <p>The applicant proposes to enhance the façade performance by revising the façade east and west building facades by the following;</p> <ul style="list-style-type: none"> • <i>Enhance external shading: Adding additional, deeper vertical fins to each building face, as well as a smaller horizontal element at each floor level. These elements improve the external shading of the glass surfaces;</i> • <i>Improve cross ventilation potential: Adding an additional openable window to each of the apartments to the east and west faces, thereby increasing the cross ventilation potential of each apartment by approximately 50%;</i> • <i>Enhance glass performance: Changing the solar heat gain coefficient (SHGC) of the glass from 0.30 to 0.23, resulting in a significant reduction in heat load entering each apartment.</i> <p>The applicant states that this will reduce heat gain by 20-34%.</p> <p>Council's DCP requires the submission of an Energy Assessment report to reduce emissions beyond a BCA compliant building which has not been provided and is discussed later in this report.</p> |
| 5. Landscape | <p>The treatment of the communal landscaped open space was supported.</p> | <p>No further comments in this regard.</p> |

| Principle | Panel's Comment | Planning Comment |
|---|--|---|
| 6. Amenity | <p>The proposal configuration to unit which receive solar access and ventilation targets is supported.</p> <p>The amenity of the units in the podium could be improved with a slightly larger light well.</p> <p>The S/W unit in the podium needs improved outdoor space.</p> <p>The façade of the 6 storey podium to Oxford St was well considered, as was tower elevation above. However the balustrade for the first level of podium units should be changed to a solid or translucent detail for privacy from Oxford St.</p> | <p>A discussion of solar access is included in the ADG assessment below.</p> <p>The applicant has noted that the lightwell on the eastern side of the podium is the same size as that on the constructed Vue apartments, however that corresponding light well has dimensions of 3m (depth) x 7m. The lightwell should correspond more with the adjoining building.</p> <p>The applicant has agreed to modify the balustrade from glass to solid metal and notes that there is a Juliet balcony on the S/W unit, however this is not indicated on the plans.</p> <p>Room dimensions are required on the plans to demonstrate compliance with the minimum room sizes in the ADG.</p> <p>They were not provided</p> |
| 7. Safety | For improved visibility around from Adelaide St to Grafton Lane, the n-w of the podium retail should be more transparent by relocation of the F3 services to allow glazing to continue into the lane | The applicant has noted that relocating the hydrant booster further along Grafton Lane is not possible due to fire brigade advice and that the location is a better outcome, rather than the alternative which is Oxford Street. |
| 8. Housing Diversity and Social Interaction | The entry lobby is reasonably generous but provision for some bench seating to allow for social interaction would be recommended. | This matter can be addressed by condition of consent and the applicant is open to providing this. It is councils views that residential lobby takes up too much of the Oxford Street frontage which should be activated by retails uses. |
| 9. Aesthetics | The Panel recognized the significant effort the Applicant had made in consideration of the complex design parameters for this site in such a dense precinct. Subject to further review of the envelope as noted above, the Panel supported continuation of the vertical emphasis in the façade composition. | Additional information on the materials and finishes of the proposed development is required. |

Clause 6A Development control plans cannot be inconsistent with Apartment Design Guide

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 as such, these provisions of the DCP no longer have effect.

An assessment against the provisions within the ADG is provided in the table below and these controls have been deleted from the DCP table as they are no longer relevant.

Table 2: Apartment Design Guide

| Design Criteria | Compliance | Comment |
|---|------------|--|
| 3F Visual privacy | | |
| <ul style="list-style-type: none"> Min separation distances from side boundaries | | |
| <ul style="list-style-type: none"> Up to 25m (5-8 storeys) – 9m (or 3m non-habitable) | No | The podium (up to 6 storeys) has predominantly no setback to the boundaries, following the urban design guidance of the DCP. |
| <ul style="list-style-type: none"> Over 25m (9+ storeys) – 12m (or 6m non habitable) | No | The tower form does not comply with the 12m setback from the site and rear boundaries. This matter is discussed in the issue section below. |
| 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 | Yes | <ul style="list-style-type: none"> 70% of units receive at least 2 hours mid-winter. |
| <ul style="list-style-type: none"> A maximum of 15% receive no direct sunlight between 9am-3pm mid-winter. | No | <ul style="list-style-type: none"> A large portion of the apartments are dual aspect. 23% of the apartments receive no sunlight between 9am and 3pm at midwinter. The applicant notes that only 12.2% of the apartments receive no sunlight, however they include the west facing apartments on the south western corner of the building (cnr Oxford & Adelaide St) which receive sunlight after 3pm which does not comply with the control. The applicant's expert believes that this is sufficient solar access for amenity, |

| Design Criteria | Compliance | Comment |
|--|---------------------|---|
| | | however it doesn't comply with the control. The merits of this are discussed below. |
| 4B Natural ventilation | | |
| <ul style="list-style-type: none"> All habitable rooms are naturally ventilated | Yes | All habitable rooms are provided with at least one window for natural ventilation. However, the type or extent of the window operation is not clear on the plans. |
| <ul style="list-style-type: none"> Layout of single aspect apartments to maximise natural ventilation | Yes | The single aspect apartments in the podium are studio and 1 bedrooms and are not excessive in depth with living rooms and bedrooms located closest to the external wall. |
| <ul style="list-style-type: none"> 60% units within the first 9 storeys to be cross ventilated | No | The applicant's figures indicate that in the first 9 storeys 36 of the 53 units are cross ventilated, equating to 68% of the building but this includes the single aspect units 2.02, 3.02, 4.02, 5.02, 6.02 and 7.02 which are not considered to be adequately cross ventilated. When those are excluded from the calculations (30 units cross ventilated instead of 36), the development does not comply with the standard, being 47% |
| 4C Ceiling heights | | |
| <ul style="list-style-type: none"> Habitable rooms – 2.7m Non-habitable rooms – 2.4m | Yes | The building provides 3.1m to 3.3m floor to floor heights, which should accommodate a 2.7m floor to ceiling height, however a detailed section of each typical apartment should be provided to demonstrate compliance with this control. |
| <ul style="list-style-type: none"> Ceiling heights contribute to the flexibility of building use over the life of the building. | No | More generous floor to ceiling heights have not been accommodated in the lower podium levels to provide flexibility and for future conversion for non –residential uses as required by the guide. |
| 4D Apartment size and layout | | |
| <p>The following minimum internal areas apply:</p> <ul style="list-style-type: none"> Studio = 35 m² 1 Bed = 50 m² 2 Bed = 70 m² 3 Bed = 90 m² Add 5m² for each additional bathroom (above 1) Add 12m² for each additional bedroom <p>Other controls:</p> <ul style="list-style-type: none"> Rooms must have a window 10% of the floor area | Yes | The applicant's schedule which provides details of each unit type on drawing 920, 921, 922, indicate that the apartments meet the minimum requirements. |
| | No details provided | Although the apartments comply with minimum sizes, no dimensions have been provided on the |

| Design Criteria | Compliance | Comment |
|---|-------------------------------|---|
| <ul style="list-style-type: none"> Room depths max 2.5 x ceiling height Bedrooms 9m² or 10m² depending on master or not Width of living rooms | | <p>plans to demonstrate that the room dimensions comply with the following requirements;</p> <ul style="list-style-type: none"> minimum glazed area to each habitable room. Bedroom dimensions and area. Robe dimensions <p>This matter should be addressed prior to determination of the application.</p> |
| 4E Private open space and balconies | | |
| <p>All apartments provide primary balcony as follows:</p> <ul style="list-style-type: none"> 1-bed – 8m² & 2m depth 2-bed - 10m² & 2m depth 3+bed - 12m² & 2.4m depth | No | <p>Some of the south facing units orientated to Oxford Street have Juliet balconies, failing the controls. This part of the podium should be provided as commercial floor space if apartments with sufficient amenity cannot be provided.</p> <p>The treatment of balconies is a matter which should also be addressed for aesthetic reasons.</p> |
| 4F Common circulation and spaces | | |
| <ul style="list-style-type: none"> Max of 8 units accessed off a circulation core on a single level | Yes | The podium levels have a maximum of 7 units accessing the one circulation core. In the tower there is a maximum of 5 units accessing the one circulation core. |
| <ul style="list-style-type: none"> Maximum 40 units sharing a single lift | Yes | The building has 90 apartments and there are two lifts proposed which is sufficient for resident convenience. |
| 4G Storage | | |
| <p>In addition to kitchens, bathrooms and bedrooms, the following is provided:</p> <ul style="list-style-type: none"> 1-bed – 6m³ 2-bed – 8m³ 3+bed – 10m³ | Insufficient details provided | Drawings 920, 921 and 922 note that each apartment will achieve adequate storage depending on their type, however the details have not been shown on the floor plan, or in the basement plans to verify that the plans reflect what is noted in the SEE. This matter should be addressed prior to determination. |

The following is a detailed discussion of the issues identified in the compliance table above in relation to the SEPP 65 ADG.

Visual Privacy and Distance Separation

The Apartment Design Guide has controls to ensure that separation between windows and balconies is provided so that visual privacy is achieved. The guide recommends up for a building up to 25m (5-8 storeys), a 9m separation be provided for habitable rooms and balconies and 3m for non-habitable rooms. For over 25m (9+ storeys) a 12m separation is recommended of 6m for non-habitable rooms.

Given the site is located on a corner with two frontages, therefore there is only 1 side boundary to the east adjoining 'The Vue' at 570 Oxford Street and the rear boundary to 'The Eclipse' at 1 Adelaide Street. The proposal does not comply with the setback controls to either boundary.

The distance separation between the towers of the respective buildings are shown at drawing 11 (Site Plan).

The drawings demonstrates that the setback to the boundary is not achieved to the site boundaries, but demonstrates the shared distance separation between the buildings. The privacy impacts are considered to be adequately addressed to the Eclipse building to the north at 1 Adelaide Street which is predominantly orientated to the north, and turns its back to the subject site.

However the proposal does not adequately provide a sufficient setback to the adjoining building to the east, 'The Vue' with the distance of the tower form to the side boundary approximately 7m and the shared distance between the towers nominated as 20.5m. Less than half that distance separation should be provided by the proposal and if a variation was to be considered, the distance between the two towers should at least be equitable. The privacy impacts to the adjoining eastern tower is not sufficiently addressed with no privacy treatments proposed on the sides of the balconies to prevent overlooking.

Solar Access and Daylight And Private Open Space and Balconies

Some of the units proposed within the podium level of the building have low amenity, particularly those which have a single orientation to Oxford Street to the south. These units receive no direct solar access and some do not have access to private open space.

The ADG acknowledges that not all apartments within a development will receive solar access, but places a limit on what is considered reasonable to be 15% of the whole development. As noted in the table above, the solar access analysis on drawing 903 indicates that only 11 of the 90 units (which are south facing) do not receive solar access. The drawing, SEE and ADG assessment is unclear in identifying the solar access afforded to the apartments located in the tower in the south west corner of the building, specifically units 2.01 through 11.01 (closest to the corner of Adelaide and Oxford Street).

The DA package includes a Solar Access, Overshadowing and Cross Ventilation Peer Review of the project. The document reveals that the units 2.01 through 11.01, in the south-west corner of the typical floor plates, and labelled 'West' on the solar access compliance drawing 903 do not receive sun until after 3pm, and then only until 4pm.

The expert accepts that the late afternoon sun after 3pm on June 21 can be safely considered to satisfy the performance objectives of the ADG control. It is only with these apartments which received sun after 3pm that the development would comply with the 15% limit to apartments that receive no solar access.

The Waverley Design Excellence Panel suggested that the light well on the eastern side of the podium be increased in depth to facilitate the infiltration of more light with the podium level apartments and Council agrees with this recommendation.

The applicant has noted in the ADG assessment that 93.3% of apartments have primary balconies as required. A small handful of apartments located in the podium levels that face the main street (Oxford Street) have Juliet balconies in lieu of full 2m deep balconies.

Apartments which are south facing, exposed to a busy road and in the podium level are not going to have the best amenity in terms of quality private open space. It is for this reason that the ADG and DCP guides development to provide more generous floor to ceiling heights to create better proportioned

rooms for smaller apartments and a sense of more space to improve amenity and liveability as a trade-off for limited private outdoor space. This also allows flexibility of building use of over the life of the building to be converted to other non-residential uses.

The development does not comply with the commercial floor space requirements of the DCP and if sufficient private open space cannot be provided for the residential apartments in the podium level facing Oxford Street to comply with the ADG, it is recommended that this space be amended to commercial floor space.

Insufficient information

Insufficient details has been provided within the DA package relating to the layout of the apartments, specifically bedroom sizes, living room dimensions, storage within the units, and basement levels to confirm compliance with the key controls relating to resident amenity and usability specified in the ADG.

3.1.5 Waverley Local Environmental Plan 2012 (Waverley LEP 2012)

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

Table 3: Waverley LEP 2012 Compliance Table

| Provision | Compliance | Comment |
|---|------------|---|
| Part 1 Preliminary | | |
| 1.2 Aims of plan | No | <p>Due to the lack of commercial floor space provided within the development, the proposal fails to adequately satisfy the following aims of the LEP;</p> <p><i>2(a) to promote and co-ordinate a range of commercial, retail, residential, tourism, entertainment, cultural and community uses to service the local and wider community,</i></p> <p><i>2(b) to maintain and reinforce Bondi Junction as the primary commercial and cultural centre in Sydney's eastern suburbs</i></p> |
| Part 2 Permitted or prohibited development | | |
| <p>Land Use Table - B4 Mixed Use Zone</p> <p>Zone objectives</p> <ul style="list-style-type: none"> To provide a mixture of compatible land uses. To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling. To encourage commercial uses within existing heritage buildings and within other existing buildings surrounding the land zoned B3 Commercial Core. | Yes | <p>The proposal is defined as shop top housing which is permitted with consent in the zone.</p> <p>The proposal does not achieve the zone objective 'to provide a mixture of compatible land uses', as there is insufficient commercial space provided (particularly at first floor level) to satisfactorily achieve this aim.</p> |
| Part 4 Principal development standards | | |
| <p>4.3 Height of buildings</p> <ul style="list-style-type: none"> 60m | No | 61.5m at the rear of the site to Grafton Lane. Breach of 1.5m or 2.5% over the maximum |
| <p>4.4 Floor space ratio</p> <ul style="list-style-type: none"> 7:1 Site Area: 1127m² Permissible GFA: 7,889m² | No | <p>Proposed GFA: 8,010m²</p> <p>Proposed FSR: 7.1:1</p> <p>Breach of 121m² or 1.5% over the maximum</p> |

| Provision | Compliance | Comment |
|---|----------------|---|
| 4.6 Exceptions to development standards | See discussion | The application is accompanied by a written request pursuant to clause 4.6 of Waverley LEP 2012 to vary the height and FSR development standards. A detailed discussion of the variation to the development standards is presented below this table. |
| Part 5 Miscellaneous provisions | | |
| 5.1 Relevant consent authority | Yes | The development site is affected by a road reservation on the Oxford Street frontage. The proposed development makes provision for future road widening in accordance with the Land Reservation Acquisition Map. |
| Part 6 Additional local provisions | | |
| 6.2 Earthworks (3) The consent authority must consider the matters listed in Clause 3(a) to (h). | Yes | A preliminary geotechnical desktop study for the report was provided with the application outlining the site conditions and concludes that a further report providing instructions for construction are required. This matter can be addressed as a condition of consent if required. |
| 6.5 Active street frontages in the Bondi Junction Centre | Yes | It is considered that the active frontage to Oxford Street can be improved with more retail space and the provision of first floor commercial activity as required by the DCP. |

The following is a detailed discussion of the variations sought to the Height and FSR development standards in the Waverley LEP 2012.

Exceptions to Development Standards

Council is able to grant consent to a development that contravenes a development standard of Waverley LEP 2012 having regard to the provisions of clause 4.6 of Waverley LEP 2012 and considering a written request by an applicant to vary such development standard. The heads of consideration under clause 4.6 of Waverley LEP 2012 for a development varying a development standard are as follows:

- *Clause 4.6(3) (a) - that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case*
- *Clause 4.6(3)(b) - that there are sufficient environmental planning grounds to justify contravening the development standard*
- *Clause 4.6(4)(a)(iii) - the proposed development will be in the public interest because it is consistent with objectives of the particular development standard and the objectives for development within the zone in which the development is proposed to be carried out.*
- *Clause 4.6(5)(a) - whether contravention of the development standard raises any matter of significance for State or regional environmental planning*
- *Clause 4.6(5)(b) - the public benefit of maintaining the development standard*
- *Clause 4.6(5)(c) – other relevant matters.*

Clause 4.3 Height of buildings

The proposal has an overall building height of 61.5m, which exceeds the height of buildings development standard of 60m prescribed under clause 4.3 of Waverley LEP 2012 by 1.5m or 2.5%.

A written request pursuant to clause 4.6 of Waverley LEP 2012 has been made, seeking to vary the development standard. The justification presented in the written request is summarised as follows:

- The site reaches a maximum height of RL 143.80 AHD, translating to a maximum height of 61.5m to the top of the lift overrun when measured from the southern (Grafton Lane) boundary. The proposal's height is, in fact, compliant when measured from the southern boundary (Oxford Street), and only marginally non-compliant when measured from the eastern and western (side) boundaries.*
- Any development of the subject site will be influenced by the 4.5m north - south gradient which traverses the subject site. Due to the site's relatively limited depth, it would be onerous to require 'stepping' throughout the floor plan, or even the roof plan, in order to achieve compliance. To do so would result in an impractical floor plan, and an awkward resolution to any envelopes at the top of the proposed tower.*
- It should also be noted that the proposal does not seek to achieve additional habitable storeys above the maximum permitted building height. Rather, the height exceedance relates mainly to services such as lift over runs, as well as the top most portion of the northern, eastern, and western façade. Further, as the height non-compliance is limited primarily to the northern elevation, it does not result in any amenity related impacts to existing surrounding shop-top-housing developments, such as view loss, overshadowing or solar access. Therefore, whilst absence of environmental impact does not, by itself, represent sufficient environmental planning grounds to justify contravening a development standard, it is a notable reference in this case.*
- Compliance with the development standard would be unreasonable and unnecessary in the circumstances of this development, there are sufficient environmental planning grounds to justify the contravention, the development achieves the objectives of the development standard and is consistent with the objectives of the B4 Mixed Use Zone, the proposed development, notwithstanding the variation, is in the public interest and there is no public benefit in maintaining the standard; and the variation does not raise any matter of State or Regional Significance.*

Council's response:

The consent authority must not accept a variation under Clause 4.6 unless the applicant has adequately addressed subclause (3) and must also consider whether the proposal will be in the public interest because it is consistent with objectives of the development standard and applicable zone (which is subclause 4).

The applicant's diagram below demonstrates the extent of the height non-compliance, as described in the Clause 4.6 submission. It is agreed that the height variation will not be visually obvious from the public domain, and would not result in the building appearing out of context with the other recently approved buildings in the vicinity with the same height restriction.

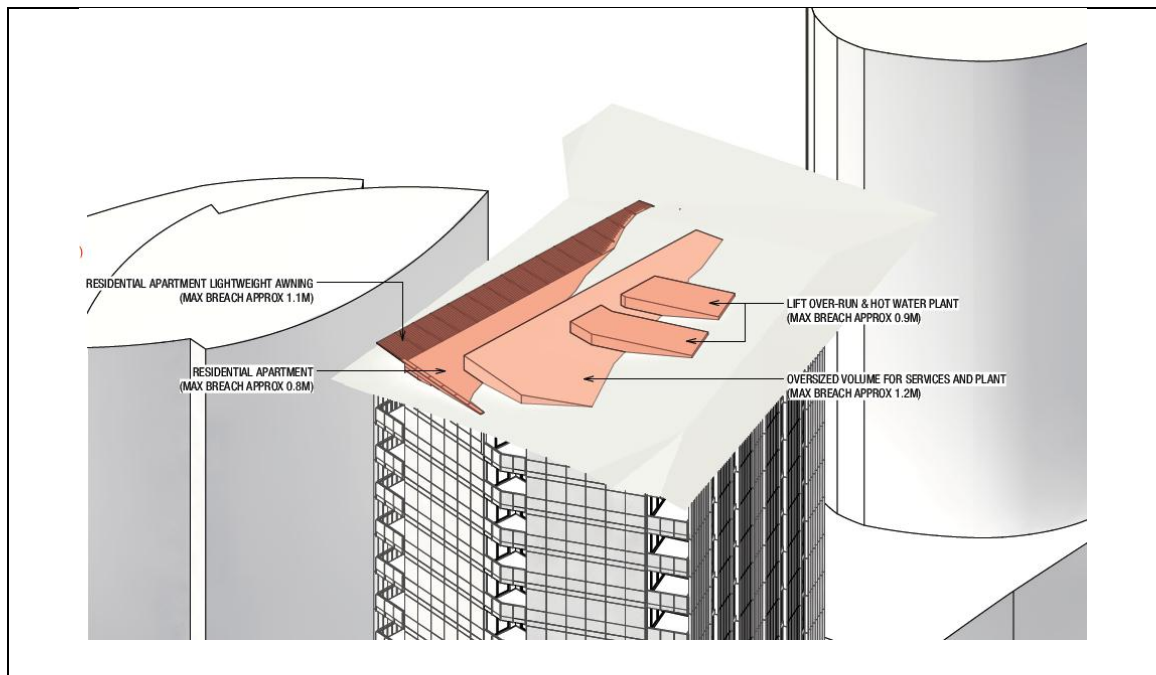


Figure 5: Red area highlighting the extent of the height non-compliance.

It is argued by the applicant that the height non-compliance occurs to the nature of the slope and given this predominantly occurs to the northern side of the building closest to the lane, the amenity impacts that result are acceptable.

It is agreed the non-compliance which predominantly relates to the northern side of the building to the rear would not have a significant impact to the streetscape, as the more dominant corner to Adelaide Street and Oxford Street frontage complies with the 60m height limit. Similarly, the lift overrun and plant room being located within the middle of the tower form will not be visually obvious from the public domain and is similar to other high density buildings in the area. It will be visible from other buildings within the vicinity, however this is inevitable in a dense town centre where impacts between the buildings is reciprocal. It is accepted that the plant room and lift overrun will have negligible overshadowing impacts being located in the middle of the tower.

During the notification period, Council has received submissions noting a loss of view from the adjoining residential flat buildings at;

- 241 Oxford Street (to the north west)
- 251 Oxford Street (across the road from the site to the south)
- 253 Oxford Street (across the road to the south east of the site)
- 257 Oxford Street (across the road further south east of the site)
- 570 Oxford Street (directly adjoining to the east of the site).
- 2A Hollywood Avenue (to the south of the site).

Those views identified are to the city in some cases and to Manly and the harbour in other cases. The leading edge of the building to Oxford Street complies with the height limit, and any views obscured by the proposed roof articulations and plant beyond this point to the north are not considered unreasonable in this case.

Similarly, the breach to the roof height limit which occurs at the northern side of the building at the rear of the site, is not considered to be unreasonable, given the leading edge of the building at Oxford Street complies with the height limit. The views currently obtained over the site are enjoyed due to

the site being underdeveloped and to retain such views is not expected, given the zoning of the land. Council has issues with the bulk and proportion of the tower, including its positioning in relation to the podium below as a reduction in bulk of the tower would facilitate view sharing around the building, however this is discussed later in further detail later in this report.

In consideration of the objectives of the zone and the height development standard, the proposal is considered not to be against the objectives and in particular, objective (d) which is *to ensure that buildings are compatible with the height, bulk and scale of the existing character of the locality and positively complement and contribute to the physical definition of the street network and public space.*

The building is commensurate with the height of new mixed use buildings within the vicinity which have comparable height non-compliances for similar reasons relating to plant equipment, lift overruns, balustrading and shading to common open space areas.

Council has been consistent in its approach to breaches to height for plant and lift overrun and minor deviations which respond to the slope of the land and the proposed building remains to be consistent with objectives of the development standard and applicable zone. It is considered that there are sufficient environmental planning grounds to justify contravening the development standard for the minor breach to the height limit and a variation to the development standard in this instance would not be against the public interest.

Clause 4.4 Floor space ratio

The proposal has an overall gross floor area of 8,010m², which equates to an FSR of 7.1:1, which exceeds the floor space ratio development standard of 7:1 prescribed under clause 4.4 of Waverley LEP 2012 by 122m² in gross floor area, a variation of 1.5%.

A written request pursuant to clause 4.6 of Waverley LEP 2012 has been made, seeking to vary the development standard. The justification presented in the written request is summarised as follows:

- *The exceedance of the FSR is contributed to a technical non-compliance associated with the location of building service elements comprising a garbage room, fire egress and storage area on Lower Ground level (i.e. the basement). Their location is predominantly under natural ground level but partly situated above ground level due to the sloping topography affecting the site, thereby included in GFA calculation.*
- *Therefore, the contravention of the development standard is the result of a technicality associated with the definition of "gross floor area" and "basement".*
- *The location of these service is pertinent to the practicality and ongoing servicing of the development throughout its lifecycle, particularly with respect to garbage removal. It will improve the internal amenity of residents as the storage areas are located in an appropriate location which can be easily accessed from multiple entry points. The garbage rooms can be accessed along Grafton Lane utilising the single proposed vehicle access point.*
- *Further, the finished floor level of the ground level, as proposed, achieves the expected relationship with Oxford Street (i.e. it is mostly level or convenient access to/from Oxford Street and the proposed ground floor tenancy). The proposed ground floor's finished floor level, however, renders it, in part, 1 metre above existing ground level. Conversely, the ground floor finished floor level could be 'pushed' down such that it is not greater than 1 metre above*

existing ground level (and therefore the basement below would not be GFA), but this results in a poor relationship with Oxford Street.

- The maximum GFA exceedance is 122sqm. This is a 1.5% increase to the maximum FSR, less than a 10% variation and therefore, not an unreasonable contravention of the development standard. Further, it does not contribute to bulk or scale with respect to the external appearance of the building.*
- The development proposes an FSR of 7.1:1, with 375sqm of commercial floor space and 7,431.5sqm of residential floor space. The proposal therefore provides adequate floor space for three (3) commercial tenancies and residential dwellings, bringing numerous tangible benefits to the immediate and wider community such as new employment opportunities, tenancies for shops and local services and dwellings to immediately contribute to housing supply. In this regard, the development provides adequate floor space to support the Bondi Junction Centre.*
- The exceedance of the FSR is contributed to building services included in GFA calculation as a result of the sloping topography of the site, largely the result of a technicality. The maximum GFA excess is 122sqm and does not restrict the site's, or adjoining sites, potential to provide floor space to support the Bondi Junction Centre. It should be noted that the excess GFA is minor relative to the proposal and other developments in Bondi Junction. It is not a quantity which would allow for an unanticipated advantage for example.*
- The contravention of the development standard will not affect the appearance of the development, as a tower-on-podium design, with a proposed height and density consistent with the surrounding development.*
- As is concluded in the SEE, the proposal's overall height is substantially compliant with the WLEP 2012. Its podium is strictly compliant along the Oxford Street frontage, and achieves a high level of integration with the podium at the recently completed 'The Vue'.*
- The minor nature of the FSR exceedance would not render the proposal's overall bulk as unreasonable. Rather, both the proposed podium and tower are consistent with established and recently completed developments at the northern end of Oxford Street.*
- Reference can also be made to the urban design review of the proposal, undertaken by Architectus, confirming that the proposal's built form outcomes are acceptable, and more specifically, of a high standard.*
- It has been demonstrated earlier that the proposal achieves the objectives of the standard and respective land use zone, despite non-compliance. It has also been demonstrated that the proposal achieves a 'better planning outcome'. Specifically, the finished level of the ground floor tenancy, which is a contributing reason to the non-compliant FSR, achieves a better relationship and level of activation with Oxford Street, than compared to a compliant scheme*
- Whilst absence of environmental impact does not, by itself, represent sufficient environmental planning grounds to justify contravening a development standard, it can be a notable reference. The SEE accompanying the DA concludes that the proposal is without any unreasonable environmental impacts. Specifically, the SEE, in conjunction with specialist reports, concludes that the proposal will achieve suitable solar access to future occupants as well as existing surrounding development. It was also found that the proposal's overshadowing impacts are*

reasonable, as is its urban design outcomes. Ventilation to the proposed dwellings are consistent with the intent of SEPP 65 and the ADG. This request, therefore, provides that the proposal's absence of unreasonable environmental impacts can be considered as one means to justify the FSR contravention.

- *In light of the above, this request provides that there are sufficient environmental planning grounds to justify the contravention.*

Council's response:

The consent authority must not accept a variation under Clause 4.6 unless the applicant has adequately addressed subclause (3) and must also consider whether the proposal will be in the public interest because it is consistent with objectives of the development standard and applicable zone (which is subclause 4).

The applicant's main justification for the exceedance to the FSR control is related to the location of building service elements which are located on the lower ground floor, which is partly above ground level and therefore is required to be calculated in the GFA calculation. It is contested by the applicant that compliance with the control is unreasonable, and that there are sufficient environmental planning grounds to justify contravening the standard and that the proposal provides a better planning outcome for the site.

The diagram below shows the lower ground and ground levels, the blue indicating the calculable GFA and the green indicating the additional floor area included in the GFA calculations on the account of it being located above ground.

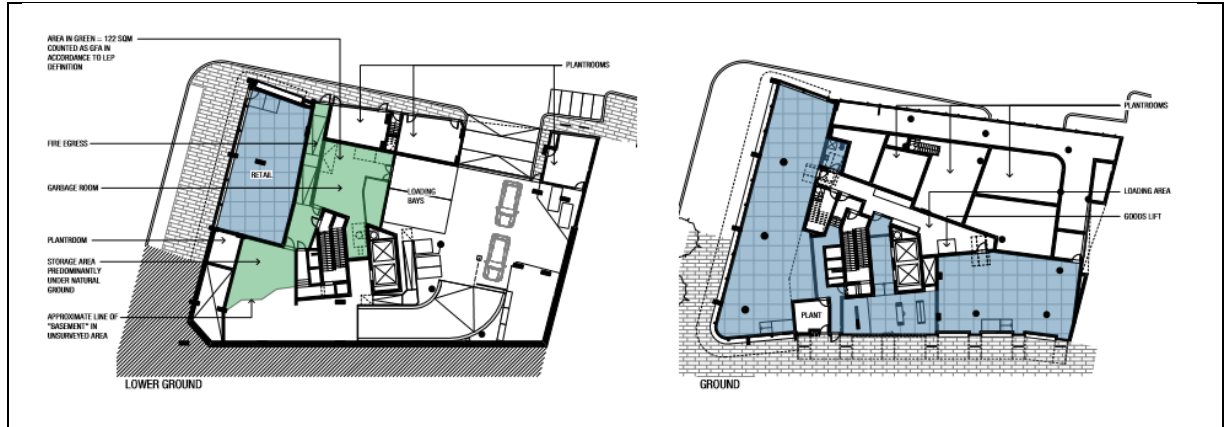


Figure 6: Calculable GFA in ground and lower ground levels.

Council has an issue with the amount of calculable floor space in the podium levels. As seen from the plans above, a large percentage of these floor plates, are void of calculable floor space, instead filling the tower form with more floor space resulting in poor separation between buildings and a wider tower than anticipated by the urban design controls in the DCP.

All plant and storage space should be located in basement levels, allowing for commercial floor space on the ground and lower ground floors.

The applicant refers to the case of *Moskovich v Waverley Council* [2016] where the court accepted a departure from a development standard where there was a better streetscape and internal and external amenity outcome than a complying development. In that case, the replacement building which

was approved by the Court was the same height as the existing buildings it replaced and avoided having entirely subterranean buildings when viewed from busy Bondi Road and as such was considered a 'better planning outcome'. There is very limited relevance in this Court example to this development site.

Council argues that the building as proposed in this application does not demonstrate a better planning outcome than a building which complies with the FSR development standard. Rather, the building is considered to have a poor planning outcome, with services (including 160,000L of water tanks) located at ground floor level, removing the opportunity for commercial floor space and retail activity. As a whole the podium level is considered to be poorly designed, failing to provide sufficient loading area for on-site garbage collection, lack of commercial space and reduced retail activity at ground floor level. This is discussed in detail later in this report.

A better planning outcome for the site would be a building which provides all plant equipment below ground, genuine usable commercial floor space within the podium (at the ground and first floor levels at least) and a thinner tower on top. The concentration of more floor space in the podium levels, would reduce the amount of floor space available in the tower for a thinner profile resulting in a better relationship to the street as well as facilitating view sharing between buildings and improved shadow impacts.

Objective (b) of Clause 4.6 is to *achieve better outcomes for and from development by allowing flexibility in particular circumstances*. The proposal does not provide a better planning outcome for the and therefore applying flexibility to the control is inappropriate.

The applicant has stated the case the strict compliance with the control in this case is unnecessary, as the proposal would be consistent with the objectives of the development standard.

In consideration of this, objective (a) of Clause 4.4 is *to ensure sufficient floor space can be accommodated within the Bondi Junction Centre to meet foreseeable future needs*. The proposal fails to provide commercial floor space at first floor level, as required by the DCP, nor provides higher floor to ceiling heights to provide flexibility for future uses within the podium level. The retail space to Adelaide Street is a welcome activation to this street, however the retail space provided to Oxford Street is limited to two spaces, replacing 6 existing terrace shop fronts. This reduces the diversity and activity to the street. Without the provision of commercial floor space at first floor level, Council may not reach the employment targets, which is why this is included as a DCP control. This matter is discussed later in this report in further detail. The proposal is not considered to achieve objective objectives 1(a) of Clause 4.4.

Objective (c) is to ensure that buildings are compatible with the bulk, scale, streetscape and existing character of the locality. As discussed within this report, the poor resolution of the podium and the resulting profile of the tower form is not considered to be compatible with the streetscape and this is attributed to the distribution of floor space within the building, which results in a breach to the FSR development standard.

Objective (d) is to establish limitations on the overall scale of development to preserve the environmental amenity of neighbouring properties and minimise the adverse impacts on the amenity of the locality. The proposal by virtue of the distribution of the scale and massing is considered to have adverse impacts on the locality.

In addition to the objectives of the development standard, Council has also considered the planning principle established in the Land and Environment Court Case of *Webhe v Pittwater Council* [2007], to

determine whether the development standard is 'unreasonable (the objectives is achieved despite the non-compliance) or unnecessary (no purpose would be served in achieving compliance)'. The considerations are below;

- (a) Would the proposal, despite numerical non-compliance be consistent with the relative environmental planning objectives?*

Objective 1(d) of the Floor Space Ratio Development Standard (Clause 4.4) is 'to establish limitations on the overall scale of development to preserve the environmental amenity of neighbouring properties and minimise the adverse impacts on the amenity of the locality'.

The purpose of providing development standards is to provide limitations in order to give certainty to the public on development expectations in the area. To provide limitations through development standards is therefore necessary.

- (b) Is the underlying objective or purpose of the standard not relevant to the development thereby making compliance with any such development standard unnecessary?*

The development standards for this zone have recently been increased in response to state planning objectives. The objective and purpose of the FSR development standard is therefore relevant and compliance is necessary.

- (c) Would the underlying objective or purpose be defeated or thwarted were compliance required, making compliance with any such development standard unreasonable?*

The objectives of the development standard would not be defeated with strict compliance with the controls. The site has the highest FSR permitted in the LGA for mixed use buildings, and there is no reason why compliance within the FSR development cannot be achieved on site with better internal planning of the development. Compliance with the maximum FSR can reasonably be achieved.

- (d) Has Council but its own actions, abandoned or destroyed the development standard, by granting consents that depart from the standard, making compliance with the development standard both unnecessary and unreasonable?*

Within the newly up zoned Bondi Junction area no consent authority (Council, JRPP, WDAP or LEC) has granted consent for any development consent beyond the maximum FSR, unless it has been adequately balanced by the public benefit of a planning agreement for public works to the Bondi Junction area. Therefore the control has not been abandoned or destroyed.

- (e) Is the zoning of particular land 'unreasonable or inappropriate' so that a development standard appropriate for that zoning was also unreasonable and unnecessary as applied to that land. Consequently compliance with that development standard is unnecessary and unreasonable?*

The site has recently been up-zoned in the Bondi Junction LEP 2010, now the LEP 2012. The site has one of the highest FSR's the area, which considered appropriate for the Bondi Junction Centre. The applicant has not argued that the zoning is inappropriate for the site. The zoning for the site is not out of context with the area and is not unreasonable or inappropriate.

In conclusion, it is considered that there is insufficient justification to deem the FSR development standards for this site and compliance with the controls 'unreasonable or unnecessary' in this case.

In addition, pursuant to Clause 4.6(5) the Director General must consider, in deciding whether to grant concurrence;

- (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
- (b) the public benefit of maintaining the development standard, and*

When considering the public benefit, the consent authority is to look to the objectives of the development standard (which were discussed above) and the zone. The objectives of the B4 Mixed Use Zone are not achieved with this application, as the zone seeks to provide a mixture of compatible land uses, and to integrate suitable business, office, residential, retail and other development in its accessible location to maximise public transport patronage and encourage walking and cycling. As noted earlier, the proposal fails to provide sufficient commercial space, as required in the DCP to sufficiently provide a mix of uses to achieve the objectives of the zone.

Bondi Junction has recently experienced a significant uplift in development potential following extensive studies, analysis and community consultation, culminating in the WLEP 2012. On this particular site, the maximum FSR has more than doubled from the Waverley and Woollahra Joint Local Environmental Plan 1991- Bondi Junction Commercial Centre from 3:1 to the current LEP FSR control of 7:1.

The purpose of development standards are to stipulate the maximum development potential of a site and provide certainty to the public and facilitate economic and orderly use of land. Council sees that there is a public benefit in maintaining the integrity of the development standards. To support the non-compliance with the floor space control as a result of poor distribution of floor space would undermine in the integrity of the standard, against the interests of the public.

Council disagrees with the applicant in that the proposal, despite the non-compliance, would achieve the objectives of the zone, and the development standard and the proposal does not present a more superior planning outcome for the site.

Summary

The proposal is not in the public interest as it is not consistent with the objectives of the development standards for FSR or the objectives of the B4 Mixed use zone. From the discussion above, the proposed 1.5% breach to the FSR control fails to maintain the integrity and credibility of the controls for the Bondi Junction and according to Clause 4.6 the consent authority must not consent to the application.

3.1.6 Waverley Development Control Plan 2012 - Amendment No 5 (Waverley DCP 2012)

Despite the failure to address Clause 4.6 of the LEP, the relevant matters to be considered under the Waverley DCP 2012 are outlined below:

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

| Development Control | Compliance | Comment |
|---|------------|---|
| 1. Waste | No | <p>Due to the site location, it is recommended that innovative waste management infrastructure such additional compactors for bulk cardboard and packaging is provided to reduce bin numbers, and the basement level needs to be re-designed to accommodate Council's medium sized rigid vehicle to collect residential waste from within the property. This is the standard set for all new development in Bondi Junction.</p> <p>This matter needs to be resolved at DA stage and cannot be addressed as a condition of consent.</p> |
| 2. Energy and water conservation | No | <p>A "Sustainability Design Report" report was submitted by the applicant which has been developed by Inhabit Australasia Pty Ltd. This report does not satisfy the requirements of Part B2 -Clause 5.2 of the Waverley Development Control Plan.</p> <p>The applicant is required to submit an Energy Assessment Report prior to Construction Certificate should the DA be approved.</p> |
| 6. Stormwater | No | <p>The proposal is unsatisfactory with regard to stormwater details. This matter can be addressed as a condition of consent.</p> |
| 7. Accessibility and adaptability <ul style="list-style-type: none"> • Must comply with e DDA 1992, the relevant Australian Standards and the BCA. • 10% of the development to be adaptable and certified | Yes | <p>An access report prepared by Accessible Building Solutions was submitted which concludes that the proposal can achieve compliance with the access provisions of the BCA, SEPP 65 and the essential requirements of AS4299 – Adaptable Housing.</p> <p>Nine (9) adaptable units are required and units 1.04, 1.06, 2.05, 2.07, 3.05, 3.07, 4.05, 4.07 & 5.07 has been designated as adaptable units. The access report notes that at DA stage there is insufficient information to certify compliance with the Standard, however concludes that the units can comply with the spatial requirements of AS4299 for Adaptable Housing. A condition is to be recommended in this regard should the application be approved.</p> |

| Development Control | Compliance | Comment |
|--|--|---|
| <p>8. Transport</p> <p><u>Car parking</u> 90 residential units including:</p> <ul style="list-style-type: none"> • 1 x studio • 31 x 1 bedroom units • 51 x 2 bedroom units • 7 x 3 bedroom units <p>Retail Space: 375m²</p> <p><u>Bicycle Parking</u> 1 space per unit 1 visitor space per 5 units 1 per 150m² of commercial/retail GFA</p> <p><u>Motorcycle Parking</u> 3 per every 15 car spaces</p> <p><u>Loading Bay</u> Required for over 50 dwellings</p> <p><u>Urban Design</u></p> <p><u>Traffic & Transport Management Plan</u> Required for over 15 units</p> <p><u>Care Share</u> 1 for every 90 dwellings</p> | <p>No</p> <p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p> <p>No</p> | <p>Basement parking provides for 88 car spaces including;</p> <ul style="list-style-type: none"> • 75 residential spaces - (57 required for SEPP, 65 required for DCP) • 13 visitor spaces – Complies with SEPP (18 required for DCP) <p>No retail car parking is provided which complies with DCP minimum of nil.</p> <p>90 bike storage cages – Complies 10 bike spaces for visitors - Complies 3 bicycle spaces for retail staff – Complies</p> <p>18 motorcycle spaces – Complies. Motor cycle spaces however are provided outside of the building in the laneway.</p> <p>A loading bay is provided, however it is deficient in size to accommodate Council's garbage trucks (medium rigid vehicle) and therefore requires re-design.</p> <p>The proposal follows the urban design guidance of the DCP with the vehicle entrance to the basement accessed via the rear lane.</p> <p>The traffic report states that the proposal would have no material impact on the operation or performance of the surrounding road network and accordingly no external road/intersection improvements are required to facilitate this development.</p> <p>The development should provide 1 car share care space.</p> |
| <p>10. Safety</p> <p>Design and management of the built environment to reduce the opportunity for crime.</p> | <p>Yes</p> | <p>A Crime Risk Assessment report was provided with the application which makes recommendations to address the crime prevention principles. Should the application be approved, those recommendations should be incorporated into the construction certificate drawings and conditioned accordingly.</p> |

| Development Control | Compliance | Comment |
|--|------------|---|
| 11. Public art Public Art is encouraged to enhance the LGA. | Yes | The application proposes public art in the rear Grafton Lane and near the bottom of the Adelaide Street frontage. If the application is approved, a condition of consent should be imposed regarding having the works |

Table 5: Waverley DCP 2012 – Part C2 Multi Unit and Multi Dwelling Housing Compliance Table

| Development Control | Compliance | Comment |
|---|--------------------|---|
| 2.4 Excavation | | |
| <ul style="list-style-type: none"> No fill to raise levels | Yes | No fill is proposed. |
| <ul style="list-style-type: none"> Minimum setback of 1.5m from side boundaries | No | Excavation is proposed to all boundaries, apart from the road widening to Oxford Street. This is an acceptable building form for buildings within Bondi Junction. The vehicular access is from within the podium directly to the lane. |
| <ul style="list-style-type: none"> Under building footprint except main access ramp | Yes | The basement level is wholly below ground. |
| <ul style="list-style-type: none"> Basements no more than 1.2m out of the ground | Yes | A Geotechnical report has been provided with the application. |
| <ul style="list-style-type: none"> Geotechnical report required when > 3m in depth or 25% slope | Yes | |
| 2.5 Setbacks – Superseded by Urban Design controls in Part E1. | | |
| 2.6 Length and depth of buildings | | |
| <ul style="list-style-type: none"> Max building length: 24m | No | This control applies to lower scaled development. |
| <ul style="list-style-type: none"> Max unit depth: 18m | Yes | The units are no deeper than 18m providing sufficient amenity |
| <ul style="list-style-type: none"> Max depth of single aspect unit: 8m | Yes | The depth of the single aspect apartments have been minimised to maximise amenity, although it is suggested that the single aspect apartment on the southern elevation be provided with more substantial floor to ceiling heights to improve the amenity. |
| 2.7 Building separation | | |
| 9+ storeys- over 25m | No | The controls in the DCP align with the guidance of the ADG. The purpose of the controls it so ensure that there is appropriate massing and spaces between buildings, assist in providing residential amenity, privacy, ventilation, sunlight and daylight access and outlook. Whilst Council has acknowledged that the proposal may not strictly apply given the constraints of the site, the distance separation provided to the adjoining eastern tower is considered insufficient, to the detriment of the outlook and amenity of surrounding buildings. This matter is discussed in the issues section below. |
| <ul style="list-style-type: none"> 24m btw habitable rooms | No | |
| <ul style="list-style-type: none"> 18m btw habitable rooms & non habitable rooms | Partial compliance | |
| <ul style="list-style-type: none"> 12m btw non-habitable rooms | | |

| Development Control | Compliance | Comment |
|---|------------|--|
| 2.8 Building design and streetscape | | |
| <ul style="list-style-type: none"> Respond to streetscape | No | The podium of the building aligns with the recently constructed eastern building at 570 Oxford Street, but the scale of the podium to Adelaide Street does not respond to the streetscape controls or objectives in part E1 of the DCP. |
| <ul style="list-style-type: none"> Sympathetic external finishes | No | The finishes need refinement to achieve design excellence. It is particularly poorly resolved to Oxford Street where it appears as the back end of building. |
| 2.11 Vehicular access and parking | | |
| <ul style="list-style-type: none"> Integrated into the design | Yes | The basement car parking area is accessed through the ground level and integrated into the design of the podium. |
| <ul style="list-style-type: none"> Secondary to pedestrian entrance | Yes | The vehicle entrance is separate to the main residential entrance on Oxford Street. |
| <ul style="list-style-type: none"> Maximum of 1 x 2-way driveway | Yes | Only 1 driveway is proposed, which allows 2 way traffic in and out of the site and is accessed via the rear to Grafton Lane. |
| <ul style="list-style-type: none"> From rear of side where possible | Yes | It is unclear whether there is sufficient sight lines for pedestrians walking along the footway in the lane, therefore this would need to be addressed. |
| <ul style="list-style-type: none"> Pedestrian safety | Yes | |
| 2.12 Pedestrian access and entry | | |
| <ul style="list-style-type: none"> Entry at street level | Yes | There are no issues with the location of the residential lobby to Oxford Street, however the width of the space reduces the space for retail activity to the main shopping street of the site. |
| <ul style="list-style-type: none"> Accessible entry | Yes | |
| <ul style="list-style-type: none"> Legible, safe, well-lit | Yes | |
| 2.13 Landscaping | | |
| <ul style="list-style-type: none"> Minimum of 30% of site area landscaped. | Yes | The ADG requires that 7% of the site, deep soil zones should be provided. The building footprint controls in part E1 of the DCP do not support the requirements for deep soil planting. A landscaped common open space is provided atop the podium level and the applicant is willing to provide street trees which adequately addresses the objectives of the controls. |
| <ul style="list-style-type: none"> 50% of the above is to be deep soil. | | |
| 2.14 Communal open space | | |
| <ul style="list-style-type: none"> The ADG (section 3D) requires 25% of the site area to be nominated as communal open space | Yes | 282m ² has been provided for communal open space which is 25% of the site area, complying with the ADG. |
| <ul style="list-style-type: none"> Minimum 50% of communal area must receive 2 hrs of sun in the ADG and 3 hrs in the DCP. | Yes | The solar access diagrams indicate more than 2 hours of sunlight between 9am and 12noon, will be received, however a large part of this space is roofed and it is unclear whether the shadow diagrams take this into consideration. |
| <ul style="list-style-type: none"> Accessible | Yes | The common space is accessible by lift. |

| Development Control | Compliance | Comment |
|---|------------|---|
| 2.15 Private open space- Superseded by the ADG | | |
| 2.16 Solar access and overshadowing | | |
| <ul style="list-style-type: none"> Adjoining properties to retain minimum of three hours of sunlight during winter solstice | Yes | The applicant's expert has noted that the proposal will not result in a loss of more than 2 hours of sunlight to residential units within adjoining developments. |
| 2.17 Views and view sharing | | |
| <ul style="list-style-type: none"> Minimise view loss | No | Submissions regarding view loss have been received from units within the following surrounding buildings; 253 Oxford Street (Harley Place) 253 Oxford Street (Capitol) 241 Oxford Street (The Aqua) 2A Hollywood Avenue (The Oscar) This matter is discussed in the submissions section below. |
| 2.18 Visual privacy and security | | |
| <ul style="list-style-type: none"> Prevent overlooking of more than 50% of private open space of lower level dwellings in same development | Yes | The balconies of the development are located away from each other to prevent direct overlooking within the development. Privacy hasn't adequately been addressed on the eastern side to respond to overlooking to 570 Oxford Street. More generous separation between buildings should be provided to address this issue, as well as mitigating screening measures. |
| 2.19 Apartment size and layout - Superseded by the ADG | | |
| 2.20 Ceiling heights - Superseded by the ADG | | |
| 2.21 Storage - Superseded by the ADG | | |
| 2.22 Acoustic privacy | | |
| <ul style="list-style-type: none"> Internal amenity by locating noisy areas away from quiet areas | Yes | Bedrooms and wet areas, are co-located on common walls, to avoid noise from plumbing and inconsistent uses (living areas away from bedrooms). |
| 2.23 Natural ventilation - Superseded by the ADG | | |
| 2.24 Building services | | |
| <ul style="list-style-type: none"> Must have a minimum of 2m setback from the building edge | No | Hot water plant and the lift overrun is proposed on the roof, as is a large area reserved for condensers and services. These are within 2m of the edge of the tower, closest to the Oxford Street frontage and likely to be seen from surrounding towers. This matter is unresolved, and details of plant and screening should be indicated at DA stage. |
| <ul style="list-style-type: none"> Mail boxes to be provided near the main entrance. | Yes | Mail boxes are provided in the ground floor lobby. |

Table 6: Waverley DCP 2012 – Part D1 Commercial and Retail Development Compliance Table

| Development Control | Compliance | Comment |
|---|------------|---|
| 1.1 Design | | |
| 1.1.1 Frontages | No | A continuous awning should wrap around the entire street frontage in line with the proposed development at 570 Oxford Street and should step down with the topography of Adelaide Street. The proposed awning at the corner is too high and should wrap around the corner of Adelaide Street into Grafton Lane for a minimum of 6m to improve the pedestrian comfort at the corner of the site. |
| 1.1.2 Lighting | Yes | Details regarding lighting can be resolved as a condition of consent. |
| 1.1.3 Amenity | No | All new retail, commercial and mixed developments shall incorporate within the building plant rooms and any associated facilities required for the future use of the premises. The plans have insufficient toilets for future tenants, or mechanical shafts to accommodate future food and drink premises. |
| 1.2 Noise | | |
| | No | All mechanical plant should be located in the basement of the building to avoid impacts to adjoining properties. |
| 1.3 Hours of operation | | |
| Mon to Sat: 7am to 11pm Sunday 7am to 10pm | Yes | Should the application be approved, a condition should be imposed stipulating the base hours of operation stipulated in Part B4 of the DCP. |

Table 7: Waverley DCP 2012 - Part E1 Bondi Junction Compliance Table

| Development Control | Compliance | Comment |
|--|------------|---|
| 1.2 Urban form | | |
| <ul style="list-style-type: none"> 6 storey wall Tower to be setback from street edge Slender tower | No | <p>The proposal does not follow the key podium height controls, and is too small at Adelaide Street frontage.</p> <p>The tower form is not sufficiently setback from the podium and is not slender, being disproportionate to the podium/base. This is discussed in further detail below.</p> |
| 1.3 Building use | | |
| Oxford Street- Primary shopping street | Yes | Two retail spaces are proposed to the Oxford Street frontage. |
| Adelaide Street – Secondary shopping street | Yes | One retail space is proposed to Adelaide Street. |
| 1 st floor to be commercial | No | No commercial space has been provided at first floor level. |

| Development Control | Compliance | Comment |
|---|------------|---|
| 1.4 Access and movement | | |
| 1.4.1 Arcades, through-site links and squares | No | The site is nominated to have a through site link, and a link could introduce more retail space and activation of the rear lane. |
| 1.4.2 Vehicular and service access to lots | Yes | The vehicular access to the proposed building is via Grafton Lane which is the preferred option. |
| 1.4.4 On-site parking | Yes | The car parking is contained within 4 basement levels below ground, following the guidance of the DCP. |
| 1.5 Subdivision | | |
| Design of buildings is to interpret the small lot subdivision pattern on street i.e. 6m grid | Yes | The DCP requires the design of the building elevations to interpret the small lot subdivision pattern along the street front. The applicant has sought to achieve this on the Oxford Street frontage through the off white vitrified cladding with vertical reveals, however the Oxford Street frontage can be improved in appearance. |
| 1.7 Active street frontages | | |
| Oxford Street is identified as a Primary Shopping Street Adelaide Street is a secondary Shopping Street | Yes | Activate street frontages have been provided both to Oxford Street and Adelaide Street, although an additional retail space should be provided in lieu of the large residential lobby. |
| 1.8 Street alignment and front setbacks | | |
| Buildings are to have front elevations aligned to the street boundary | No | The whole podium level is set off the Oxford Street boundary. |
| Tower forms to be setback 6m from podium | No | The tower form is not setback 6m from the podium below. This matter is discussed in the Issues section below. |
| 1.9 Separation | | |
| Figure 17 demonstrates that there should be a minimum of 12m between podium of an adjoining building and 24 between the towers of adjoining buildings. Refer to Apartment Design Guide also. | No | The podium of the site is set to the wall of the podium to the east at 570 Oxford Street which is an acceptable urban outcome, however the void to/light well should be increased in depth to provide more light to those podium apartments. The tower setbacks to the adjoining northern and eastern buildings are 18 and 20m respectively. This is discussed in the Issues section below. |
| 1.11 Building footprint | | |
| Residential tower forms: Dwelling no greater in 8m depth from source of light | Yes | The general controls which apply to this clause, aim to achieve narrow cross section buildings, providing natural cross ventilation and light to avoid mechanical ventilation. The units achieve compliance with the ADG in this regard. The single aspect units are no deeper than 8m. |

| Development Control | Compliance | Comment |
|---|------------|--|
| 1.12 Building orientation | | |
| <ul style="list-style-type: none"> Block edge to address street | No | The podium/block form is recommended to be increased to 6 storeys to better address Adelaide Street. |
| <ul style="list-style-type: none"> No blank walls to public streets. | No | The Oxford Street frontage of the tower incorporates 4 large vertical expanses of vitrified cladding which appears to turn its back to Oxford Street, the main primary frontage of the site. |
| 1.13 Number of storeys | | |
| Maximum of 16 Storeys with a 6 storey podium/street wall | No | The DCP requires a maximum of 16 storeys for this site, and a block edge/podium of storeys on the Oxford Street frontage. It is acknowledged that 19 storeys can be achieved, however the building would benefit from greater floor to ceiling heights within the podium level. |
| 1.14 View, vista and tree preservation | | |
| Public vistas to be retained | Yes | The view corridor from the public domain down Adelaide will be retained. |
| 1.15 Open spaces at the street front | | |
| <ul style="list-style-type: none"> Only for public buildings where appropriate | Yes | Although the podium is not proposed to be strictly aligned to the street boundaries, no open space at any part of the front of the site is proposed. |
| 1.16 Design excellence | | |
| Development consent must not be granted for development to which this Section applies unless the consent authority considers that the development exhibits design excellence. | No | Council's assessment reveals a number of issues with the proposal which results in the building not satisfying the considerations of design excellence. These include the bulk, massing and modulation of the building, distribution of the floor space, lack of commercial activity and absence a commitment to sustainable design solutions. |
| 1.17 Building elevations | | |
| Facades should be articulated, visually integrated into the building and street as well as functional | Yes | The facades of the building are articulated with openings and screening. Concerns are raised over the Oxford Street tower elevation, which requires further refinement and review. |
| 1.18 Awnings and colonnades | | |
| <ul style="list-style-type: none"> Height range of 3.2m - 4.2m To step with topography Be consistent in appearance | No | The awning should align with the adjoining property at 570 Oxford Street and step down with the topography of Adelaide Street and extend to the property boundary. The awning at the corner appears too high to provide weather protection for pedestrians. |
| 1.19 Designing buildings for flexibility | | |
| Design building to permit adaptation for other future uses, with minimal structural and service alteration | No | The building fails to provide sufficient floor to ceiling heights at Level 1 which is proposed to accommodate residential units. This level should be redesigned as commercial space. |

| Development Control | Compliance | Comment |
|--|------------------|--|
| 1.20 Ceiling heights | | |
| <i>Minimum floor to floor heights:</i> <ul style="list-style-type: none"> Ground floor: 4m First floor: 3.5m Above first floor, commercial uses: 3.5m | Yes No Yes | Ground Floor: 4.2m First floor: 3.3m Podium level: 3.1m for residential uses |
| 1.21 External living areas – Superseded by ADG controls. | | |
| 1.22 Wind mitigation | | |
| <ul style="list-style-type: none"> Buildings > 9 storeys, wind tunnel study is required | Yes | A wind report has been submitted which states the wind conditions for the majority of the development generally satisfy the desired wind comfort criteria, subject to wind mitigating treatments such as trees, planters, screening and roofing. |
| 1.23 Reflectivity | | |
| <ul style="list-style-type: none"> Mitigate reflective surfaces to a maximum of 60% of facade surface area above ground level Report required for buildings with high levels of glazing. | Yes | The reflectivity report submitted with the application makes recommendations to address to reduce solar glare to pedestrians or motorists in the surrounding area, or to occupants of neighbouring buildings, to comply with the DCP. |
| 1.24 Roller shutters | | |
| <ul style="list-style-type: none"> Prohibited on shopfronts | Yes | Roller shutters are not proposed in the documentation submitted with the DA. This will form a condition of consent should the application be approved. |

The following is a detailed discussion of the issues identified in the compliance tables above in relation to the Waverley DCP 2012.

Podium Scale and Design

The proposed built form does not align with the area specific planning controls for Bondi Junction in Part E1 of the DCP, contrary to the desired future character of Bondi Junction. The Waverley DCP requires a six storey podium to create a suitably scaled street wall on the subject site. The six storey podium is the consistent urban form throughout Bondi Junction which was identified as the best urban outcome in the 2013 Bondi Junction Urban Design Review. The review which formed the basis of the DCP controls states that:

In the Bondi Junction Centre context a 6 storey block edge would be used to define the central commercial area with high density development potential. It is assumed that a mixed use building would have 2 to 6 commercial storeys on the lower levels with residential uses above, either in form of a perimeter block edge or as a slender tower. Viewed from the street level, a 6 storey block edge makes the street wall more dominant than a potential tower above.

The proposal provides a six storey podium along the Oxford Street frontage, continuing the existing street wall introduced by the neighbouring development at 570 Oxford Street, however the street wall reduces significantly on the Adelaide Street frontage to a 1 – 2 storey scale.

The 6 storey podium should continue from the Oxford Street frontage around the corner to Adelaide Street, matching the adjacent Westfield podium height, as shown in Council's modelling below. This has been the advice provided to the applicant in the Pre-DA.



Figure 7: Podium relationship with adjoining site

The purpose of the podium controls is to relate to a human scale streetscape and encourage passive surveillance on all frontages, being a part of the Bondi Junction Centre. As a key site on a primary pedestrian street in Bondi Junction, the building on the site must strongly address the corner. The single storey podium on the corner of Oxford and Adelaide Streets undermines the objectives of the street wall and appears unresolved.

Podium Layout

The Waverley DCP (Part E1, Clause 1.3 and Clause 1.7) requires that the ground floor must be predominantly retail with active frontages, and the first floor must be designed for a commercial use.

Only 3 retail spaces are provided within the ground and lower ground of the building to Oxford Street and Adelaide Street. As the primary shopping street in Bondi Junction, the proposal removes 6 active frontage terrace shops to Oxford Street and proposes 3 tenancies with a total of 375m² of retail space. To the Oxford Street frontage, only 2 retail tenancies are proposed, and a residential lobby which occupies a large expanse of the Oxford Street façade which should be dominated by the active retail functions.

Council anticipates that a new consolidated development would improve activation to the street to this particular area which is undergoing change, rather than reducing activity to the street which this proposal appears to do. The DCP requires that the 6m small lot subdivision pattern which reflects the original shop fronts on Oxford Street should be provided to encourage a human scale in buildings, to provide diversity of shop fronts along street and encourage the highest and best use of land along shopping streets.

Additionally, the DCP requires that at minimum commercial space be provided at first floor level with floor to floor heights of 3.5m, rather than more residential accommodation. The building as a whole lacks commercial space, which is required for Council to meet the employment targets set by the Central District Plan (CDP). Approximately 7,000m² of commercial space has been lost with recent mixed use developments and a further 64,000m² is expected to be lost according to internal studies /

Bondi Junction Urban Design Review; further underscoring the importance of commercial space provision to meet the EDP targets

The lower levels of the podium are considered to be poorly designed, failing to provide sufficient clearance in the lower ground levels to allow a Council's garbage truck to enter the site, which is a medium rigid vehicle, accommodating a small rigid vehicle only. This also excludes most removalists vans and limits the delivery vehicles for future commercial tenancies to small rigid vehicles.

The traffic report submitted with the application notes that garbage collection is to be undertaken by a private waste contractor as Council's garbage truck exceeds the available dimensions within the loading dock.

This is an unacceptable outcome for a new development, as residents of the development will have the financial impost of paying for a separate residential waste service, when Council residential waste collection is structured into their Council rates.

The residents are therefore likely to abandon a private waste collection arrangement and then have insufficient basement loading area to accommodate Council's waste collection service, resulting in bins for 90 units being presented for collection, creating unnecessary clutter and congestion to the lane. This is an objectionable outcome for a site which has no restrictions in terms of excavation (ie. no rail corridor beneath). The applicant was advised in the Pre-DA that the building should be designed to accommodate Council's waste collection vehicles, and there is no justification for any alternative in this case. Instead of providing sufficient loading facilities, the proposal provides an overall total of 88 car parking spaces, in excess of the 70 spaces (57 residential and 13 visitor spaces) required under the RMS rates for 90 units referred to in the ADG.

As noted in the consideration of Clause 4.6 of the LEP earlier in this report, the layout of the podium level is considered inefficient, with at least 300m² of floor space at the ground level occupied by plant, including air conditioning condensers, rain water tanks, stormwater detention, hydrant pump/sprinkler valves and 160,000L water tanks. There are no limitations to the extent of excavation on this site (ie. no rail corridor underneath) and given that the proposal provides excessive car parking which exceeds the rates stipulated in the RMS Traffic Generating Guidelines, there is no justified reason why these services are not contained in the basement of the building. The inefficient use of the lower ground and ground floor is not supported, and plant facilities are to be provided below ground level and real useable commercial space provided instead.

Also, the location of the structural column at the corner of the commercial space is not ideal aesthetically or functionally for future tenants, nor have mechanical ducting or sanitary facilities been incorporated into the design to support a future food and drink premises as a type of retail use.

The proposed podium form is not supported, particularly the 1-2 storey form to Adelaide Street, the lack of commercial space, and activity to Oxford Street, failing the objectives (a)(b) and (c) of Clause 1.2 of Part E1 of the DCP and objectives (c) and (d) of Part Clause 1.3 of Part E1 of the DCP which are summarised below;

- *To coordinate building massing along streets and across blocks.*
- *To ameliorate the effects of existing unevenly scaled and massed buildings.*
- *To mitigate the visual effect of tall buildings on the street.*
- *To increase the diversity and range of shopping and recreational opportunities for people who live, work and visit the Centre.*
- *To enhance community safety by increasing activity in the public domain on week nights and on weekends.*

Tower Form and Distance Separation

The Urban Form Controls in Part E1 of the DCP require the street wall/podium to be 6 storeys with a tower form setback from the street edge of 6m. An extract which demonstrates the desired building form is below.

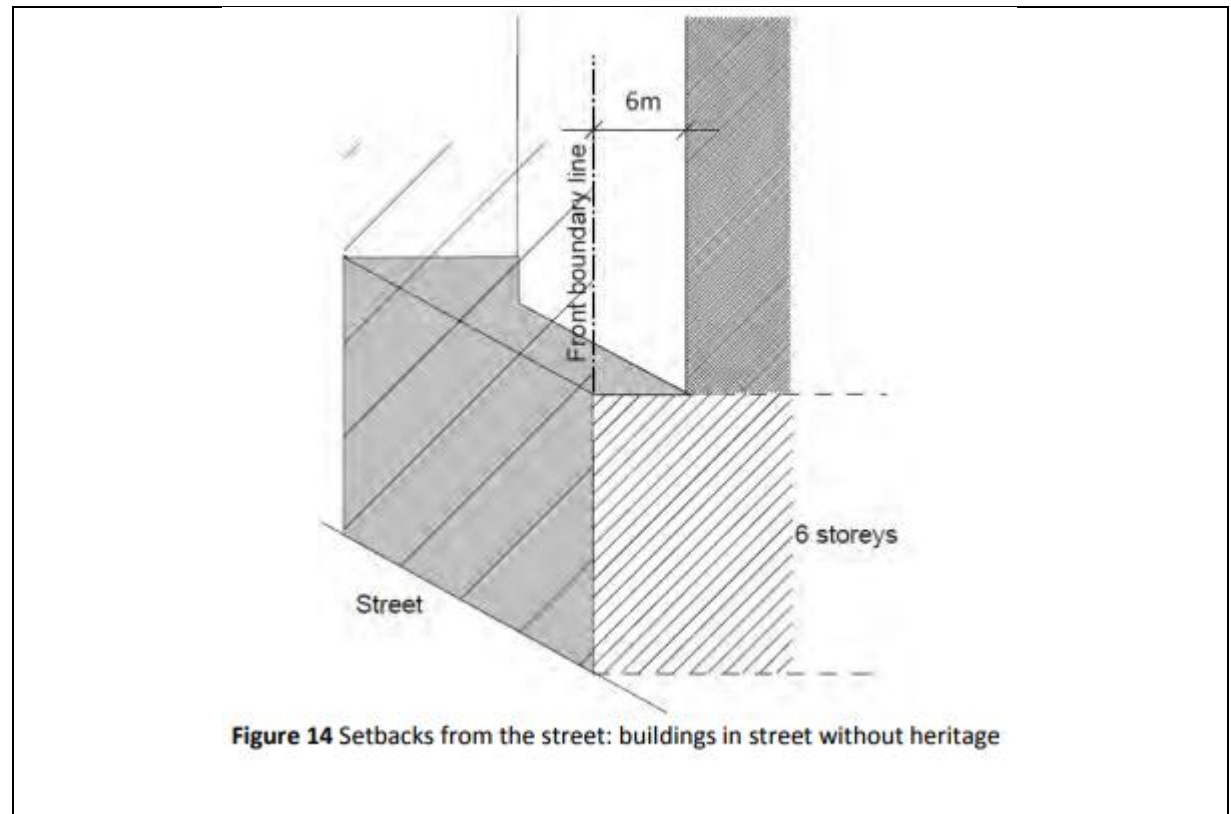


Figure 8: Extract from Part E1, Clause 1.8

It is recognised that a 6m setback between the tower and podium may be difficult given the constraints of the site, however a setback which provides a clear separation should be provided to achieve the objectives of the controls.

Particularly on the Adelaide Street frontage, the proposed tower form is an extrapolated 19 storey form from the ground and as a result appears monolithic from the street. The proposed single level podium proposed along Adelaide Street results in a tower form that dominates the streetscape rather than achieving the objective to 'mitigate the visual effects of tall buildings on the street'. The Waverley Design Excellence Panel had a similar reaction to the form of the building.

Council has been consistent with all buildings approved in the Bondi Junction Centre (under the current 2012 LEP - apart from 570 Oxford Street, as a Gateway site) in enforcing a clear delineation between podium and tower, in order to maintain the objectives of those controls. A setback between the podium and tower will improve the overshadow impacts to the public space in Waverley Mall.

The Apartment Design Guide requires building separation for a building over nine storeys and above 25m, to provide a distance separation of 24m between habitable rooms and balconies, 18m between habitable and non-habitable rooms and 12m between non habitable rooms.

The proposal however does not adequately provide equitable distance separation to the adjoining building to the west, the Vue, with the distance between the two tower forms nominated as 20.5m,

with less than half that distance provided by the subject development with the tower form set 7m from the common boundary, as shown in the figure below. The distance between the two should be equitable.

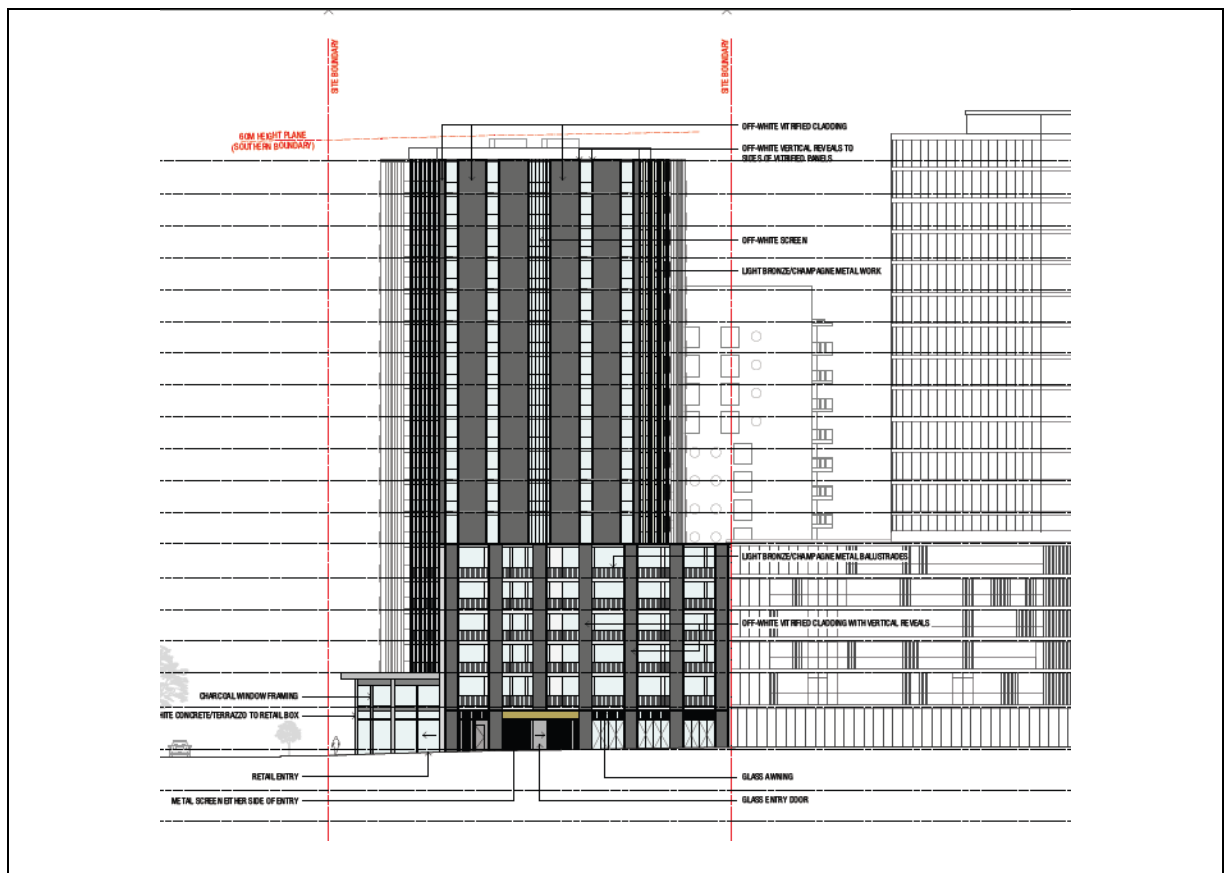


Figure 9: Distance separation, demonstrated by the southern elevation/Oxford Street elevation

The lack of separation between the adjoining eastern building at 570 Oxford Street and failure to provide a setback to the podium below illustrates that the tower form is disproportionate to the podium, contrary to CCP control 1.2 (c) which requires tower forms to be slender.

Slender towers facilitate cross ventilation, provide high quality amenity to occupants of the building, encourage view corridors, provide greater solar access to public spaces and other buildings and clearly differentiate between the podium and tower elements. The proposed tower, by virtue of the failure to comply with the setback controls and inequitable distribution of floor space, as discussed in the consideration of Clause 4.6, is not a slender tower form. The applicant has submitted an architectural peer review which disagrees with Council's view that the tower form is in appropriate in size.

It is clear from inspecting the visual impact from units within adjoining properties, that providing a more slender tower would not only have benefits to provide visual privacy, but also break up the visual massing between large tower forms and facilitate view sharing. Below is a photo taken from a unit within 241 Oxford Street which demonstrates that the proposed tower form will enclose the gaps currently provided between the 'Eclipse' development (white building) and 'The Vue' building at 570 Oxford Street which currently provides views to Sydney Harbour and Manly.

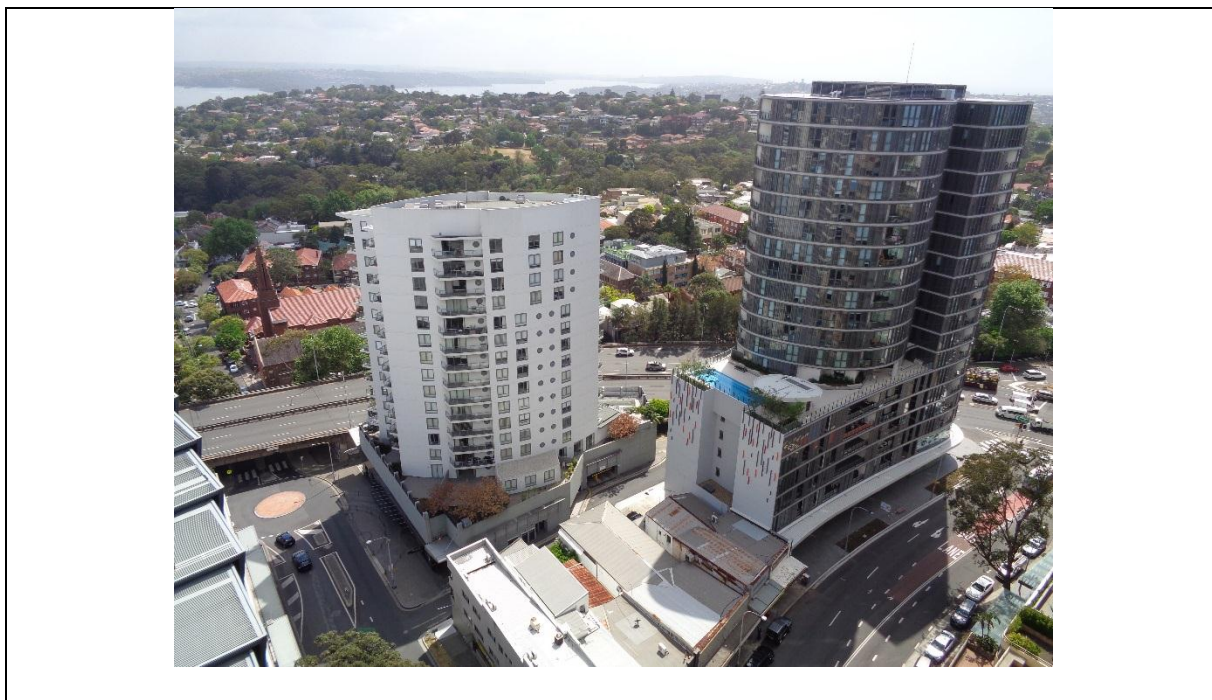


Figure 10: Outlook from top level of 'The Aqua' building at 241 Oxford Street, Bondi Junction

Front building alignment

The DCP states that the built form within the centre is to be built aligning with the street boundary. Whilst Council can consider slight deviations from the boundary for architectural reasons, the ground floor level of the proposed building does not align with any of the boundaries, apart from the podium wall to the eastern boundary adjoining 570 Oxford Street.

There are 3 key issues that arise from setting the walls back from the property boundary. Firstly, from an urban design perspective, buildings that are setback from the street alignment can reduce the activity to the street and setting buildings on boundaries helps to emphasise whether the space is public or private. On that note, Council's manager of traffic and development is concerned with the ambiguity created between public/private space to the rear lane, particularly the proposal to reform the kerb and gutter to make private land appear as public space to accommodate motorcycle parking.

Secondly, the ambiguous nature of the boundary between the public/private land creates conflict between the land owner and Council regarding maintenance, repairs and insurance, requiring legal intervention to resolve such issues.

The third complication relates back to the floor space ratio of the building, poor planning and distribution of floor space with the podium levels. This matter has not been addressed in the Statement of Environmental Effects and Council is unconvinced that this is appropriate for the site.

Materials, Finishes and Aesthetics

The Oxford Street elevation lacks cohesive resolution and doesn't strongly address Oxford Street. The primary building façades should address Oxford Street and Adelaide Street, however the proposal appears to turn its back to Oxford Street with large expanses of blank façade. This is demonstrated by drawing 205.

To improve pedestrian amenity, a continuous awning should wrap around the entire street frontage in line with the proposed development at 570 Oxford Street and should step down with the topography

of Adelaide Street. The proposed awning at the corner is too high and its impact on pedestrian amenity is questioned. The Design Excellence Panel noted that it was critical that the material and details are well resolved, and requested actual samples of the intended finishes and fixing must be included prior to determination of the application. Council is unconvinced that the proposed finishes achieve design excellence.

3.2 Section 79C(1)(b) – Other Impacts of the Development

Based on the discussion within this report, the proposal will have a detrimental effects on the locality.

3.3 Section 79C(1)(c) – Suitability of the Site for the Development

The proposal is considered unsuitable for the site for the reasons discussed within this report.

3.4 Section 79C(1)(d) – Any Submissions

The application was notified for 21 days and a site notice erected on the site, in accordance with *Waverley Development Control Plan 2012, Part A – Advertised and Notified Development*.

34 submissions were received, two of those were from Planning Consultants representing the Body Corporate of surrounding buildings. The issues raised in the submissions are summarised and discussed below.

Table 7: Summary of surrounding properties which lodged a submission

| Property |
|---|
| 241 Oxford Street, Bondi Junction (The Aqua) |
| 251 Oxford Street, Bondi Junction (Harley Place Building) |
| 253 Oxford Street, Bondi Junction (The Capital Building) |
| 257 Oxford Street, Bondi Junction (Harbour view Building) |
| 570 Oxford Street, Bondi Junction (The Vue building) |
| 2A Hollywood Avenue (The Oscar Building) |
| 1 Adelaide Street, Bondi Junction (The Eclipse) |

Issue: Visual aesthetic given height and position

Response: Many of the submissions comment on the deterioration of visual aesthetics given the size and positioning of the proposed building. Other comments note that the bulk and scale of the development is out of proportion to every other development in the area and that the breadth and height of the building creates an end to end high rise ‘wall along Oxford Street from the Old Head Road intersection to Westfield with no gaps between each building’. This type of commentary is provided in most submissions and it is agreed that the tower form of the building is too large and does not provide sufficient visual relief between buildings. The report discusses in detail Council’s preference for a podium which addresses the street and provides genuine floor space to promote activity in Bondi Junction, which in turn would facilitate a slimmer tower, providing visual relief to the building mass and facilitate view sharing and improve solar access.

Issue: View Loss

Response: Submissions regarding loss of views were received from units within all of the buildings noted in the table above, apart from 1 Adelaide Street, Bondi Junction (The Eclipse), which will retain it's northern vista to the harbour.

The direction of the views over the site for each property are described below;

- 241 Oxford Street, Bondi Junction (The Aqua) –Towards Manly and Sydney Harbour
- 251 Oxford Street, Bondi Junction (Harley Place Building) – To the Harbour Bridge and Harbour
- 253 Oxford Street, Bondi Junction (The Capital Building) - To the Harbour Bridge and Harbour
- 257 Oxford Street, Bondi Junction (Harbour view Building) – Views to the south end of the site
- 570 Oxford Street, Bondi Junction (The Vue building) – Views to Botany Bay and views to the Harbour and City
- 2A Hollywood Avenue (The Oscar Building) - To the Harbour Bridge and Harbour

Some of the buildings surrounding the site have enjoyed views over the subject site as a result of the building being undeveloped for some time, those include, the Harley building at 251 Oxford Street across the road and the Oscar Building at 2A Hollywood Avenue which has been the tallest building within the vicinity since the 1990s.

The other newly constructed buildings at 241 Oxford Street, 253 Oxford Street and 570 Oxford Street, currently enjoy views to the city and harbour due to the undeveloped nature of the site. In the assessment of these newly constructed buildings, Council has undergone view analysis and in each case it has been recognised that the view impacts from new developments may take significant views, however given the land has been up zoned, those impacts from development which meets all other relevant standards and controls were considered acceptable, as they were anticipated by the controls. Impacts which arise from non-compliant aspects however are carefully scrutinised and may not be acceptable.

It is evident from the buildings to the south of the site, that there are views to the east and west of the building that would serve to facilitate view corridors between buildings should the tower form have a thinner profile.

For example the building at 241 Oxford Street currently has a view corridor to the harbour and Manly between 570 Oxford street (The Vue) and 1 Adelaide Street (The Eclipse) which will be obscured by the proposed tower form and views would be more equitably shared by providing a larger setback to the building at 570 Oxford Street and providing more of a view corridor. This would also serve to benefit the visual bulk and view sharing between buildings for 251 and 253 Oxford Street. It is considered that view sharing can be improved by better design, thus failing the planning principles set by the Land Environment Court Case of Tenacity vs Warringah Council and is not supported by Council.

Issue: Shadowing impacts

Response: Between 9am and 3pm at mid-winter, the proposal will have shadowing impacts on 241 Oxford Street (The Aqua) in the morning period, 251 Oxford Street (The Harley) to the south of the site and 253 Oxford Street in the afternoon period of the day from 2:30pm.

The most affected building is the Harley to the south of the site which is overshadowed in the morning by the adjoining building at 570 Oxford Street and from the proposed building from 11:15am. Council has modelled a building with a slimmer tower which indicates that shadowing

impacts will be improved to the Harley building, by providing a more generous gap between the tower of 570 Oxford Street and the Adelaide Street frontage to afford more solar access to the most affected buildings.

Issue: Privacy impacts

Response: As discussed within this report, the tower form would benefit from a slimmer profile to reduce the bulk and scale of the building and separation to other towers within the vicinity which may improve privacy and overlooking impacts.

Objections relating to privacy have been raised from the towers located directly to the east and south of the site which have recently been constructed to reach the full development potential, similar to this application.

Overlooking to other buildings in a high density area is likely, however distance separation, placement and proportion of windows and privacy screening are mechanisms which can deal with direct overlooking in a high density environment. Provided that appropriate distance is provided between buildings, privacy is generally a matter that can be treated through the design treatments noted above.

Issue: Noise, traffic and congestion

Response: Objections are raised to increase in noise and traffic from another building within the vicinity with 90 residential units, particularly to Grafton Lane.

The proposed building replaces 6 terrace style shops, therefore the traffic generation will be more than the existing buildings. The Traffic report submitted with the application notes that the traffic *"volumes during the AM and PM peak period would equate to additional vehicle trips being generated every 8.6 minutes in the AM peak and 15 minutes in the PM peak. These volumes are considered to result in minimal impacts on the surrounding road network. Net traffic volume increases of such a low order would have no material impact on the operation or performance of the surrounding road network and accordingly no external road/intersection improvements are required to facilitate this development. Furthermore, computer modelling techniques available to analyse intersection performances are not sensitive to such small changes"*.

Council's Manager of Traffic and Development has raised no issues in this regard. Should the application be approved, a traffic management plan will be required to be submitted to address traffic movement for construction vehicles to ensure residential access to Grafton Lane is not compromised for other residents.

With regard to noise from traffic, many of the objectors are residents from the new towers recently occupied in close vicinity which should have been constructed in accordance with the Building Code of Australia to ensure that sound transmission from external noise sources to within the building is not unreasonable.

Issue: Deterioration in lifestyle quality

Response: This comment was regular in most submissions and is interpreted to be a culmination of all amenity impacts. In a high density environment, it is unreasonable to expect that other undeveloped sites with the same zoning and density development standard will remain undeveloped. Therefore some of the amenities that some apartments in adjoining buildings that are currently

enjoyed are not guaranteed forever. The concerns regarding privacy and overlooking can be appropriately mitigated through design, however the loss of some sunlight or views which are currently enjoyed is likely given that the site is currently underdeveloped.

Council is not supporting this application, however the objectors should have a reasonable expectation that this site will be developed in the future, to a similar density to the buildings in which were recently constructed and similarly scrutinised by Council. A building that follows the statutory and DCP planning controls for the site which has acceptable streetscape and amenity impacts is likely to be supported.

Issue: Noise from construction

Response: Noise from construction works is not a matter which would warrant refusal of the application. Should the application be approved, conditions of consent will be imposed regarding noise during construction, including construction hours, and the submission of a noise management plan to ensure that the noise does not exceed the acceptable limits during construction.

Issue: Population density

Response: The objectors have noted that Bondi Junction has become too dense. The Waverley Local Environmental Plan sets the strategic framework for the local government area. 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. This is not a matter which warrants refusal of the application.

Issue: Concerns regarding the units within the building being sold without DA approval

Response: The objector raised concerns regarding being approached to purchase a unit within the building, prior to it being determined, noting that this has given them the impression that the development is 'fait compli' prior to the application being assessed by Council.

Council has assessed the application following the provisions of the Environmental Planning Assessment Act and Regulation, and in this report considers all the relevant matters under Section 79C. The applicant's actions do not influence Council's assessment and decision making processes.

Issue: Concerns regarding Clause 4.4B of the LEP.

Response: This clause regarding affordable housing has since been repealed from the LEP.

3.5 Section 79C(1)(e) – Public Interest

It is considered that the proposal will be against the public interest and should not be supported.

4. REFERRALS

4.1 Urban Design, Shaping Waverley

Council's Coordinator of Urban Design and Heritage has reviewed the proposal and the comments related to the podium and tower relationship have been discussed within this report. Of particular note, are the urban design teams concern's regarding overshadowing to Waverley Mall. Other matters raised are below.

The proposed 'back of house' on the ground floor level is not an appropriate design response for the site. The area should include a commercial use and encourage passive surveillance to the rear laneway, particularly in the evening. Landscaping elements and trees should be introduced to Grafton Lane to improve the look and feel of this space.

The site is identified in the Waverley DCP for a future through site link to activate the rear laneway. An arcade style development with active frontages on either side could be introduced into the proposal. This space could be double height, naturally lit and ventilated. The comments provided by the Design Excellence Panel relating to the amenity of the apartments are accurate. Additional information and further consideration is required to optimise solar access and natural ventilation, including increasing the size of the light well in the podium to increase internal amenity. Additional information on the materials and finishes of the proposed development is required prior to assessment.

4.2 Contamination and Noise – Safe Waverley

The applicant provided a Preliminary Site Contamination Investigation to determine whether the site is potentially contaminated. The report identifies that there was previously a dry cleaner in operation on one of the sites and concludes that the site can be made suitable for the proposed development subject to further investigations. Council's Health and Compliance Officer has recommended that if the application be approved, it be subject to a deferred commencement consent requiring a site audit statement to be provided clearly stating that the site will be suitable for the intended use. Conditions of consent regarding noise during construction and noise from mechanical plant during operation were also recommended.

4.3 Traffic, Parking and Road Widening – Creating Waverley

Council requires that garbage collection (both domestic and commercial) be collected from within the site and the vehicle access door on Grafton Lane has not been designed to have a suitable head clearance in accordance with the relevant Australian Standards to allow for a Medium Rigid Vehicle (MRV) to enter the site, nor is the loading dock sufficient in size to accommodate a MRV.

The loading dock must be designed to accommodate a MRV to accommodate Council's garbage collection vehicle, as well as removalist trucks that will use this bay for tenants moving in/out. Parking around the site is limited by the existing 'No Stopping' zones and other parking restrictions, therefore it is inappropriate to rely on the street to service the site.

No retail parking has been provided and given the location, it is recommended 1 space be provided per retail tenancy. Council doesn't support the existing alignment of kerb and gutter in Grafton Lane as shown on Drawing LG to realign a portion of kerb and gutter onto private land to cater for parking of 5 motorcycles. Should the application be approved, a Public Domain Plan detailing all works proposed on the 3 frontages of the site is required to be submitted for Council approval.

On land zoned B4 Mixed Use the ADG stipulates that the minimum parking requirement for residents and visitors should be provided in accordance with the RMS Guide to Traffic Generating development (RMS) or the DCP parking rates, whichever is the lesser. Based on the two rates, 57 resident car parking spaces and 13 visitor car spaces are required under the RMS Guidelines and 65 resident parking spaces and 18 visitor car spaces under the DCP. The RMS rates should therefore be adopted for the development.

Council's Manager of Traffic and Development has recommended that given the limited street parking, the minimum number of visitor parking spaces should be as per the Waverley DCP requirements (18 instead of 13) and should be nominated to be on level B01. According to the SEPP, Council cannot insist on the higher DCP rate for visitor car parking. It is noteworthy that the number of car parking spaces overall for the development does not comply with either the DCP rates or the RMS rates which require 70 spaces and instead proposes 88 car parking spaces. How these spaces will be allocated has not been nominated on the plans.

4.4 Stormwater – Creating Waverley

The stormwater report provided with the application is not satisfactory with respect to stormwater details. The report/maps do not comply with the Waverley Development Control Plan 2012 in reference to Waverley Council Water Management Technical Manual in respect to the following matters:

- OSD tank and its details are required in drawing format, which includes storage volume, plan, cross & long sections of OSD tanks, invert level, orifice centreline level, top water level, orifice plate details, overflow system etc.
- If the site discharge is more than 25 l/s then the stormwater disposal system to be connected to the council's underground drainage system and the connection details are required before assessment could be made.

4.5 Waste disposal and collection and Sustainability – Sustainable Waverley

The Sustainable Waverley Team have reviewed the proposal and noted that the following should be provided for the development;

- Innovative waste management infrastructure such as additional compactors for bulk cardboard and packaging is recommended to reduce bin numbers.
- Council's waste collection vehicle will be required to drive onto the property to collect residential waste and recycling bins, therefore the site must be designed to allow collection vehicles to enter and exit the property in a forward direction and have adequate vehicle clearance.
- In accordance with Part B2 -Clause 5.2 of the Waverley Development Control Plan, any mixed use development with cost of works of more than \$3 million, must provide an Energy Assessment Report which recommends design solutions to reduce the predicated operational energy demand and greenhouse gas emissions of the proposed development by 30% less than a reference building (ie. BCA, Section J compliant only). The construction certificate plans are to incorporate the recommendations of the approved Energy Assessment Report. Any modifications required to respond to the approved Energy Assessment Report which are not consistent with the approved plans will require the submission of a Section 96 Modification Application.

5.0 SUMMARY



Based on the discussion above, Council concludes that the proposal does not adequately comply with the provisions of the Waverley LEP and DCP, contrary to Section 79C(a), resulting in unreasonable impacts on the surrounding locality, contrary to Section 79C(b) and the proposal is therefore unsuitable for the site failing section 79C(c).

For these reasons, approval of the application is considered to be against the public interest against Section 79C(e) and Council recommends that the application be refused.

6.0 RECOMMENDATION TO SYDNEY CENTRAL PLANNING PANEL

That the Development Application be **REFUSED** by the Sydney Central Planning Panel for the following reasons:

1. The proposal fails to comply with the aims of the Waverley LEP 2012, specifically Clause 1.2 (2)(a)(b) as the development fails to provide sufficient retail/commercial space at the ground and first floor level of the building facing Oxford Street. The proposal therefore fails to promote a range of the commercial and retail uses, and this in turn fails to contribute to Bondi Junction being the primary commercial (and cultural) centre in Sydney's eastern suburbs.
2. The proposal fails to adequately address the objectives of the B4 Mixed Use zone which strives to provide a mixture of compatible land uses.
3. The proposal fails to comply with Clause 4.4 of Waverley Local Environmental Plan, which requires a maximum floor space ratio of 7:1. The development proposes an FSR of 7.1:1. The proposed floor space results in a building which has the majority of floor space in the tower form (and conversely a lack of floor space in the podium), creating adverse impacts on the streetscape and amenity of adjoining properties, contrary to objective (c) and (d) of the development standard.
4. The development fails to comply with Waverley Development Control Plan 2012, Part E1, Clause 1.1 as the podium/block edge to Adelaide Street is not 6 storeys in scale, failing to comply with control (a), and Figure 13, failing objective (c) to mitigate the visual effects of tall buildings on the street.
5. The development fails to comply with Waverley Development Control Plan 2012, Part E1, Clause 1.1 (b) as the tower form is not sufficiently setback from the block edge form as illustrated by Figure 14 of the DCP, resulting in unacceptable bulk to the street and surrounding buildings, contrary to objective (a) and (b) of the control.
6. The development fails to comply with Waverley Development Control Plan 2012, Part E1, Clause 1.1 (c) as the tower form is not considered to be slender enough to encourage view corridors, provide greater solar access to public spaces and other buildings, or clearly differentiate between the podium and tower elements.
7. The first floor of the development does not provide commercial floor space contrary to the Waverley Development Control Plan 2012, Part E1, Clause 1.3 (b) and therefore does not provide sufficient variety of uses within the building, failing to achieve objectives (a)(b) and (e).

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| Report prepared by:  | |
| Beth Matlawski Senior Development Assessment Planner Date: 9 November 2017 | |
| Report reviewed by:  Lee Kosnetter Manager Development Assessment (South) Date: 15 November 2017 | |

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