

5 March 2018

Our Ref: P-16188

General Manager

Waverley Council

PO Box 9,

BONDI JUNCTION NSW 1355

Email: Lee.Kosnetter@waverley.nsw.gov.au

Dear Lee,

RE: 2017SCL055 DA | 552 TO 568 OXFORD STREET, BONDI JUNCTION

City Plan Strategy & Development P/L (CPSD) acts on behalf of the proponents for the above-mentioned Development Application (DA). The purpose of this correspondence is to:

1. Summarise the proponent's response to the Planning Panel's deferral items from the meeting of 30 November 2017, and address any matters raised by Council to this response as outlined in their supplementary assessment report;
2. Respond to other matters raised by Council, not related to the deferral items, in its supplementary assessment report; and,
3. Seek modifications to various draft conditions of consent which are unreasonably onerous or will be impractical during the detailed design and construction phase.

Overall, we are disappointed with the report prepared by Council and wish to reinforce that the proponent and the project team has always sought to collaborate with Council and consider their position impartially. Similarly, the proponent considered the deferral items genuinely and in doing so, has satisfied their objectives.

It is worth noting that Council has stated in the recent report that the six-storey podium to Adelaide Street *"remains the principal point of difference between the Council's controls and the applicant's proposal"*. Given that the Panel has already dealt with this issue and found its preferred option to be 'Option C', we respectfully submit that this issue has been determined by the Panel.

Summary of Proponent's Response to Deferral Items & Response to Matters Raised by Council

The specific reasons for deferring the matter and the manner in which they have been addressed are discussed on the following page:

Deferral Matters

1. *"Submit an amended proposal which is based on the design presented at the meeting as Option C, which appears to mediate the DCP's requirement of a six-storey podium in Oxford Street to the visual conditions of Adelaide Street, which are different from those in Oxford Street"*

The amended proposal strictly adheres to this deferral item.

The project architects, UP Architects/Kann Finch have simply integrated 'Option C' façade elements into the design of the building. As the Panel may recall, the project architects had already developed 'Option C' at the last Panel meeting (30/11/2017). At the Panel meeting, 'Option C' was clearly articulated as a material change to the first six levels on Adelaide Street and a continuation of the Oxford Street podium architectural language, around the corner to Adelaide Street, in order to mediate Council's desire for a visual expression of a six-storey podium element on Adelaide Street. An image reflecting these changes was presented at the last Panel meeting and the Panel may also recall that 'Option C', was selected by Mr Kosnetter, in the meeting as Council's preferred Scheme. As such, contrary to any inference from Council's report, the applicant has adopted the 'Option C' scheme as required by the Panel.

In response to Council's concerns that the changes aren't substantive with respect to the floor plan, we provide that they weren't intended to substantially alter the floor plan, nor was this inferred at the previous Panel meeting (30/11/2017). Rather, they were intended to *"mediate the DCP's requirement of a six-storey podium in Oxford Street to the visual conditions of Adelaide Street, which are different from those in Oxford Street"* (page 1 of Planning Panel's deferral notice dated 30/11/2017). The amended proposal achieves this and, therefore, Item 1 of the deferral has been complied with.

This aside, contrary to Council's suggestion, 'Option C' includes a number of detailed changes. When considered collectively, they alter the appearance of the Adelaide Street façade substantially and, importantly, in line with the Panel's objective. Those detailed design changes include:

- Extending the depth and changing the colour of the level 6 horizontal fin so as to achieve further differentiation between Lower Ground - Level 6, and the remainder of the tower.
- Changing the colour of the vertical fins between Level 2 and Level 6 on Adelaide Street, so as to add further differentiation to the lower portion of the envelope.
- Incorporating steel balustrades to the balconies between Level 2 and Level 6 on Adelaide Street so as to reflect and integrate with the architectural language of the 6-level podium along Oxford Street.
- Extend the roof of the Lower Ground and Ground Level 'retail box' further along the Oxford Street frontage, adding further integration of the corner elements and increased presence at ground level.
- Increasing the width of the outer most columns along the Adelaide Street elevation, between levels 2 to 6, to assist with the corner integration of the Adelaide and Oxford Street facades and to increase presence at the corner.

All of the above were reflected in the image tabled as 'Option C' at the last Panel meeting (30/11/2017), and were integrated in the latest design, by default.

2. *"Provides commercial use on the first floor"*

Item 2 of the Panel's deferral notice requires the conversion of the first floor from residential to commercial uses.

While the Proponent maintains that there is little demand for commercial property within the immediate precinct, as evidenced in the absence of such in other recently approved, surrounding developments, **this item has, however, been precisely and strictly adhered to.** Specifically, all seven (7) dwellings previously proposed on the first floor have been replaced with 407m² (full floor) of commercial space.

3. *"Complies with the maximum FSR of 7:1"*

Item 3 of the deferral notice sought amendments to the proposal's GFA such that it complies with the maximum 7:1 FSR prescribed by WLEP 2012.

This item has been precisely and strictly adhered to in the amended plans. Specifically, the GFA has been reduced from 8010.0m² to 7889.8m², resulting in a FSR of 7:1. The reduction in GFA is partially a result of responding to the Panel's other deferral items, such as converting the first floor to commercial uses and relocating plant room.

4. *"Relocates the plant room from the ground floor"*

Deferral item 4 requires the relocation of plant room from the ground floor. UP Architects/Kann Finch has relocated as much of the plant room from the ground floor as is possible. For example, 2 x 80,000L water tanks were relocated to Basement Level 4. The Stormwater detention tanks/rainwater tanks were relocated to partially subterranean (Lower Ground level) as these are required to be above the invert level and so could not be situated any lower.

It is not possible, however, to relocate all plant room below natural ground level. As the Council would appreciate, air intake and condensor units, for example, need to be located above ground as they require direct access to an air source. In the case of the subject site, they need to be located above Grafton Lane for safety and security purposes. Further, the extent and position of the remaining plant at Ground level, is consistent with the location of plant room in the immediately adjoining 'The Vue' development.

In its supplementary assessment report, Council suggests the changes are inadequate as they do not result in any substantive changes to the Oxford Street ground level streetscape presentation. Council also states that the amendments reduce the quantity of retail GFA at both the Lower Ground and Ground Level.

Our understanding of the intent of this deferral item was to increase retail GFA at Oxford Street. We don't believe the intent was linked to modifying the Oxford Street retail frontage. This aside, the amended scheme would, in fact, achieve both outcomes. That is, the ground floor now presents as four (4) distinct retail tenancies to Oxford Street, with frontage proportions which are similar to the traditional retail terraces the proposal would replace. Their depth has increased and is now also similar to traditional terraces, ensuring the tenancies achieve a conventional appearance, but are also functional. It should also be recognised that the proposal relies on high quality materials and finishes, further enhancing the Oxford Street retail presentation. They include off white masonry cladding to the façade, glazing, as well as new pavers for the footpath area, as prescribed by Council's public domain manual.

Council's supplementary assessment report also states that, as a result of relocating plant room, the retail floor space at Ground Level has been reduced to 309m² from 380m². This is incorrect. The originally submitted Ground Floor plan included 280m² of retail floor area, whereas the amended proposal has increased to 309m², plus a newly proposed retail terrace,

further activating the corner of Adelaide Street and Grafton Lane. As the retail terrace does not satisfy the definition of GFA it has been excluded from the increased retail area, even though we expect it to be a highly utilised space for a food related tenancy for example. The following table provides a comparison between the original submitted Ground Level floor plan, and the amended Ground Level floor plan in response to the deferral item. The area highlighted blue demonstrates the retail/commercial floor space in both plans. It is clearly evident that the amended floor plan provides more retail/commercial floor space.



As indicated in the supplementary assessment report, it is acknowledged that Lower Ground retail GFA has decreased from 95m2 to 40m2. However, this is mostly as a consequence of responding to the deferral item in question. That is, some of the plant room has been relocated from Ground Level to the partial subterranean portion of the Lower Ground level, subsequently reducing retail GFA. In the case of this proposal, stormwater tanks cannot be located any lower than Lower Ground level so as to satisfy Council's stormwater discharge specifications. As a result, some plant room was relocated into some of the area which was previously partial subterranean Lower Ground retail GFA.

As the Lower Ground retail floor area that has been removed was located well below the footpath level of Adelaide Street, it would have provided negligible streetscape activation. For the same reasons, it would generally be regarded as sub optimal retail or commercial floor space. That part of the Lower Ground retail which would have offered any tangible activation, has been retained. Overall, the amended Lower Ground retail floor space does not represent a net loss in terms of streetscape appearance and/or the provision of functional commercial floor space.

Based on the above constraints, this deferral item has been adhered to.

5. "Includes a 'Sustainability Design Report' that satisfies the requirements of Part B2, cl 5.2 of the DCP..."

The proponent was required to prepare a sustainability report in accordance with Part B2, Clause 5.2 of the Waverley Development Control Plan 2014 (WDCP 2014). It was later clarified that the requirement for a sustainability report is from Clause 2.6 of the WDCP 2014.

In the first instance, we note that the SEPP BASIX applies to the residential component of this proposal and that a BASIX certificate has been provided. Furthermore, clause 9(1) of the SEPP provides:

- *"The competing provisions of a development control plan under Division 6 of Part 3 of the Act, whenever made, are of no effect to the extent to which they aim:*
 - *to reduce consumption of mains-supplied potable water, or reduce emissions of greenhouse gases, in the use of a building to which this Policy applies or in the use of the land on which such a building is situated, or*
 - *to improve the thermal performance of a building to which this Policy applies."*

In other words, the requirements of clause 2.6 of the WDCP 2012 are superseded by the SEPP BASIX. Nonetheless, the proponent had engaged Inhabit Australasia Pty Ltd to prepare a sustainability report to respond to the deferral item. As identified in Council's supplementary assessment report, it is acknowledged that there are minor typographical errors in the report, however, the nature of these minor errors have no bearing on the outcome of the Sustainability Report and assessment. These minor errors have since been corrected and the revised version is attached.

Notwithstanding this, as intended by Part B2, Clause 2.6 of the WDCP 2012, the sustainability report identifies that the proposal achieves a high standard with regard to reducing energy consumption. Specifically:

- Carbon dioxide from the proposal's residential component is 30% less than the BASIX benchmark;
- Heating and cooling loads for the proposal's residential component are less than the maximum BASIX benchmark;
- Water consumption from the proposal's residential component is estimated as being 40% less than the BASIX benchmark;
- Double glazed, low e-glass is provided for all glazing in the western façade;
- A photovoltaic system is proposed to supplement common area lighting and energy consumption;
- An electric charging station is proposed in the basement; and,
- Energy efficient light fittings, water fittings, VVVF lifts and variable speed fans for the mechanical exhaust system, are proposed.

This deferral item has been adhered to.

6. Site is Suitable with Respect to Contamination

The contamination assessment originally submitted with the DA was reviewed and updated by Douglas Partners. The updated version was submitted to Council in accordance with item 6 of the Panel's deferral notice. It confirms that the proposal can be made suitable for the proposed development and therefore **strictly adheres to this deferral item**. However, in the supplementary assessment report, Council suggests that the revised contamination report should be confirmed with a Site Audit Statement, or, that any Remedial Action Plan (RAP) is practical. Council further suggests that any consent should be deferred until one of these options are addressed.

The amended assessment by Douglas Partners satisfies SEPP 55 and the Managing Land Contamination Guidelines 1998. This aside, the proponent has engaged a Site Auditor (Easterly Point Environmental Pty Ltd) to confirm that the remediation actions outlined in the revised Douglas Partners assessment, inclusive of a Remediation Action Plan, as sought by Council in its draft condition, will be adequate in making the site suitable for the proposal. Their statement, as well as the Remediation Action Plan, accompanies this correspondence

separately. Any consent condition in this respect should be **operational** and not a Deferred Commencement Consent.

Other Matters Raised by Council

In addition to the specific reasons for deferring the application, the supplementary assessment report raises a number of other issues which are addressed as follows:

A) Refer DA to LEC for Conciliation and Determination

In its supplementary assessment report, Council effectively recommends that the DA be referred to the LEC for conciliation and determination. As the Council would be aware, Clause 23G of the Environmental Planning & Assessment Act, 1979, confers on the Panel Council's functions as a consent authority. The applicant respects the expertise of Panel members and the integrity of the process before the Panel. The applicant seeks to have the Panel determine the application. We respectfully submit that there is no basis for the approach suggested by the Council that the Panel should simply refuse the application to enable the Court to be the decision maker.

The Council may recall that at the last Panel meeting (30/11/2017) the Proponent requested the Panel's advice on making application to the LEC due to the 'deemed refusal' appeal period expiring in February 2018. The Panel noted the applicant's need to preserve their appeal rights and stated that the Panel would not be offended. The project team therefore had clearly communicated to Council and the Panel at the Panel meeting, that a LEC appeal would be lodged and that it was not the proponent's intent to complicate the DA assessment, but rather to maintain the proponent's 'deemed refusal' appeal rights.

It is unfortunate however that Council has seen the appeal to the LEC as a reason not to liaise with the proponent in relation to addressing the reasons for deferral (see extract below):

From: Lee Kosnetter [<mailto:Lee.Kosnetter@waverley.nsw.gov.au>]
Sent: Tuesday, February 6, 2018 4:35 PM
To: Carlo Di Giulio <carlod@cityplan.com.au>
Subject: RE: DA 245/2017 | 552 to 568 Oxford Street, Bondi Junction | Minutes from DRP meeting

Hi Carlo,

Beth has been engrossed in completing the report and now also the arduous task of preparing for the Appeal, so she may be difficult to reach.

Council accepts that the matters raised for deferment by the Panel have been addressed and we are likely to rely on the previous report for previous concerns we had with the application. We also need to provide conditions of consent so Beth is working on those with a view to ironing out as many issues as we can as conditions of consent.

We are yet to hear back from the engineers about the garbage loading but I suspect that will be unresolved.

Lee

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Nevertheless, it is reassuring that Council accepts that the matters for deferral have been addressed.

B) Waste Collection & Removalist Vehicles

As stated in the supplementary assessment report, Council is requesting an onsite loading bay to accommodate a 9m long and 3.8m high medium rigid vehicle, for the purposes of onsite waste collection and removalist vehicles. All vehicles must also enter and exit the site in a forward direction. This differs from all other advice previously provided by Council which is to accommodate a Large Rigid Vehicle (LRV) 10.6m long and 4.3m high, which is also as stipulated in the DCP.

We note that on submission of the revised proposal to Council, the issue of waste collection was raised by Council. The Proponent described to Council the numerous physical constraints relating to the accommodation of an LRV to which council requested a written submission for consideration, attached hereto.

Essentially, the key constraint remains the four-metre fall over the site. Increasing the height of the entry at Grafton Lane to accommodate Council's waste collection requirements, would be to the severe detriment of the Oxford Street retail amenity.

Further, it should be noted that at the same meeting with Council Officers, the Proponent requested a meeting with Council's Waste Engineer to discuss the above, but this request was refused by Council officers. The Proponent also advised Council officers that investigations into the actual collection process by Council waste collectors, in the immediate vicinity, is contrary to Council's advice, noting that waste is in many cases collected by Council from the kerbside and not from within the majority of the buildings. In those few occasions when Council's waste vehicles entered private property for waste collection, they reversed into the respective loading bays, rather than enter in a forward direction as required by relevant Development Consent conditions.

As such, it remains the proponent's intention to use a commercial garbage contractor which utilises small rigid vehicles (SRV) so that all collection can occur within the building. This is not only a preferred solution but one that the Panel has regularly accepted.

We further note that during the course of the DA assessment, Council has consistently stated that a loading bay must be provided on site for waste management purposes and removalist vehicles. However, we provide that the WDCP 2012 does not insist on onsite waste collection or making provisions for a medium rigid vehicle onsite for removalist vehicles. Further, our understanding of Part B1.2 of the DCP suggests onsite collection should only be provided for **if** it is possible to accommodate such vehicles onsite. There is no individual control which states that waste collection must take place on site. Neither is there a number of individual controls, which if read collectively, suggest that waste must be collected onsite.

As stated, evidence supports that a variety of waste collection practices occur throughout Bondi Junction. We note, for example, that kerb-side, council waste collection occurs for 'The Eclipse' and 'The Vue' which are accessible by Grafton Lane, as is the subject site. Further, Council's waste collection vehicles reverse into the loading bay at the recently completed 'Aqua' apartments, as opposed to entering in a forward direction, and also collect from the kerbside of Pine Lane for the newly constructed 'Capitol' building, for example.

On 28 April 2017, Council issued modified Development Consent 585/2015/B allowing for on street collection for a mixed-use development at 59 - 69 Oxford Street, Bondi Junction ('Mill Hill'). Given the WDCP 2012 does not include any control stating that waste collection must occur on site, as well as the variability of waste collection practices throughout Bondi Junction generally, we provide that the proposal's strategy is reasonable.

We reiterate, however, that it is the proponent's intention to rely on a private waste contractor that utilises small rigid vehicles. This is, in fact, a better design and operational outcome as it will allow onsite collection, unlike all other practices which currently occur in Grafton lane. It will

also minimise noise impact to dwellings in the proposal, as well as existing adjoining developments.

Suggested Amendments to Draft Conditions

The project team, including all consultants, have reviewed the draft consent conditions included as part of the supplementary assessment report. The table accompanying this correspondence outlines suggested amendments to some conditions, and the reason for such amendments.

Amendments to conditions are identified either in orange highlighting, or with bold strikethrough.

Conclusion

An amended scheme was resubmitted for Council's assessment which satisfies the deferral items provided by the Planning Panel on 30 November 2017.

Overall, it must be recognised that the proposal is of a high standard, particularly in terms of architectural design, urban design, internal amenity, and minimising natural resource usage. The proposal complies with the WLEP 2012 development standard for FSR. It marginally exceeds the standard for height. It was found to be consistent with the objectives and/or guidelines of the Apartment Design Guide. The proposal is overwhelmingly consistent with typical expectations for a multi storey development within a regional centre such as Bondi Junction, and as demonstrated in the previous Panel meeting (30/11/2017), Option C will make a positive contribution to the varied streetscape on Oxford Street and Adelaide Street. The subject site is effectively the last remaining development site in this particular 'pocket' of Bondi Junction. It will therefore complete the urban renewal process which has recently commenced in the subject area, as sought by relevant local and state based strategic plans. On this basis, we commend the Panel to grant an operative consent for the DA.

Should either the Panel or Council wish to discuss any of the matters raised above, please contact the undersigned on 8270 3500.

Yours Sincerely,



Stephen Kerr
Executive Director

Attachments:

- Remediation Action Plan
- Site Audit Statement
- Updated Accessibility Assessment
- Updated Sustainability Report
- Recommended amendments to conditions
- Heavy rigid waste vehicle analysis

CC: Sydney Eastern City Planning Panel Secretariat