

# Council Report

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| <b>Panel Reference</b>   | 2018 SCL010   |
| <b>DA Number</b>   | DA-482/2017   |
| <b>LGA</b>   | Waverley Council  |
| <b>Proposed Development</b>  | Demolition of existing commercial building and construction of 19 storey mixed use building.  |
| <b>Street Address</b>  | 59-75 Grafton Street, Bondi Junction  |
| <b>Applicant/Owner</b>   | Clygen Pty Ltd  |
| <b>Date of DA lodgement</b>  | 10 November 2017  |
| <b>Number of Submissions</b>   | 21 individual submissions plus petition   |
| <b>Recommendation</b>  | Approval subject to conditions  |
| <b>Regional Development Criteria (Schedule 4A of the EP&amp;A Act)</b>             | Clause 3 – General Development that has a capital investment value of more than \$30 million. The Capital Investment value of the proposal is \$30,395,000  |
| <b>List of all relevant S4.15 (1)(a) matters</b>                                   | <ul style="list-style-type: none"> <li>• State Environmental Planning Policy 55 - Remediation of Land</li> <li>• State Environmental Planning Policy 65 - Design Quality of Residential Flat Development</li> <li>• State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004</li> <li>• State Environmental Planning Policy (Infrastructure) 2007</li> <li>• State Environmental Planning Policy (State and Regional Development) 2011</li> <li>• State Regional Environmental Plan (Sydney Harbour Catchment) 2005</li> <li>• Waverley Local Environmental Plan 2012</li> <li>• Waverley Development Control Plan 2012</li> </ul> |
| <b>List all documents submitted with this report for the Panel's consideration</b> | <ul style="list-style-type: none"> <li>• Architectural Plans</li> <li>• Statement of Environmental Effects</li> <li>• Clause 4.6 statement</li> <li>• Letter of Concurrence – Sydney Trains</li> <li>• Submissions</li> </ul>   |
| <b>Report prepared by</b>  | Beth Matlawski  |
| <b>Report date</b>   | 18 April 2019   |

## Summary of s4.15 matters

Have all recommendations in relation to relevant s4.15 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 summarised, 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? **Yes**

## 1 EXECUTIVE SUMMARY

The application, as amended seeks consent for the demolition of the existing 9 storey commercial/office building and other structures on the site and the construction of a 19 storey shop top housing development also known as a mixed use development. Proposed are retail and commercial uses at ground and upper ground level, 78 residential dwellings on Levels 1 to 17 with a mix of studio, 1, 2 and 3 bedroom apartments and multi-level car stacker within the building form (above ground). A through-site link is proposed from Hegarty Lane (rear) to Grafton Street (front) for public use to access the commercial and retail uses within the development and stimulate the lane which is changing as active uses present to the space.

The site is zoned B4 Mixed Use and shop top housing is a permitted use in the zone. The site has the highest development standards in the Local Government Area, with a height limit of 60m and floor space ratio (FSR) of 6:1. The proposal has been amended to comply with the maximum GFA permitted for the site, but proposes a minor exceedance to the height control to accommodate the lift overrun, common open space and a portion of the building at the front, northern aspect of the site (to Grafton Street). A statement addressing Clause 4.6 has been submitted by the applicant and is available for the Panel's consideration as the consent authority. Minor exceedances responding to the topography of the land and to provide quality roof top open spaces have been accepted on other sites within the Bondi Junction Area.

Vehicular access to the site is proposed via the existing entrance to the site at Grafton Street. Due to the excavation constraints of the site and train line below, a mechanical vehicle stacker is proposed as an efficient way of providing parking without dominating floor space above ground which instead should be used for active uses, rather than service type uses. Providing multiple levels of above ground parking levels is not considered a desirable urban design outcome.

The proposal has been assessed against the principles of the SEPP 65 (Design Quality of Residential Apartment Development) and amended where appropriate to address feedback from Council's Design Excellence Panel. The building has been designed to meet the requirements of the Apartment Design Guide (ADG) meeting the key guidelines relating to solar access, cross ventilation and private open space requirements of the development. Testing of the proposed trickle ventilation system is required to ensure that apartments within the podium can be adequately ventilated if windows and doors need to be closed to deal with noise from the road. This is addressed a consent.

The configuration of the units meets the guidelines for room sizes, storage and layout and has acceptable amenity. The development provides 2 areas of common open space for residents of the development which is less than the ADG benchmark, but the quality of the spaces provided on Level 5 and roof are considered to provide acceptable amenity.

The visual separation controls are predominantly met, and acceptable on merit following the guidance of the ADG. The proposal seeks to replace a smaller, broader building with close setbacks to all boundaries, with a taller building, setback further from the side, front and rear boundaries to respond to the guidance of the ADG. The urban form of the building complies with the controls of the Waverley Development Control Plan 2012 (DCP) by providing a 6 storey podium (or street wall) and 6m separation between the tower form and podium. A lower podium is proposed to Hegarty Lane to address bulk and scale.

A letter of concurrence from Sydney Trains for the works which are over the rail lane (train line) was provided to Council, which included conditions of consent if the application is approved.

Twenty submissions and a petition containing 304 signatures were received to the application when notified twice during the assessment process. The matters raised are discussed in this report and can be summarised to relate to overdevelopment of the Bondi Junction area, loss of commercial building, height, overshadowing, views, privacy, parking, traffic and nuisances during construction. Some of these matters have been addressed with the recommendations of the report and other matters are not considered to have sufficient merit to warrant refusal of the application.

The proposal has been considered against Section 4.15 of the Environmental Planning and Assessment Act 1979 and based on the assessment below is recommended for approval subject to conditions.

## 2 PREAMBLE

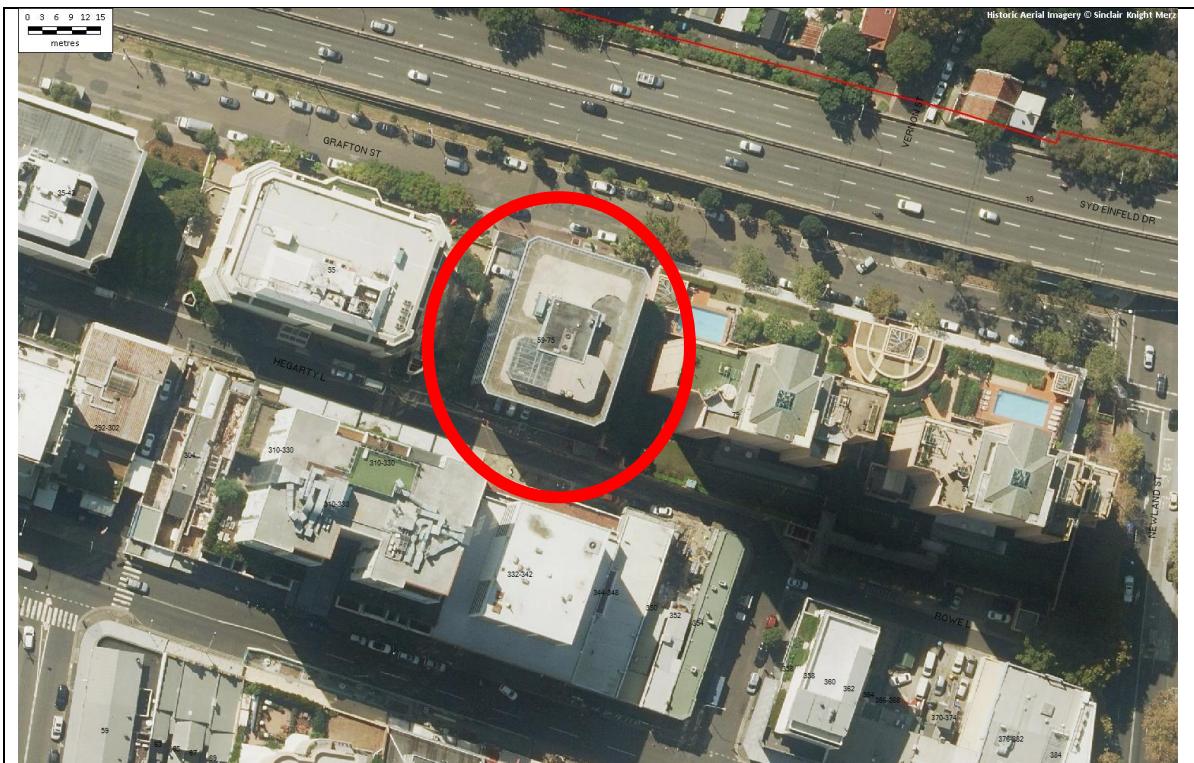
### 2.1 Site and Surrounding Locality

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

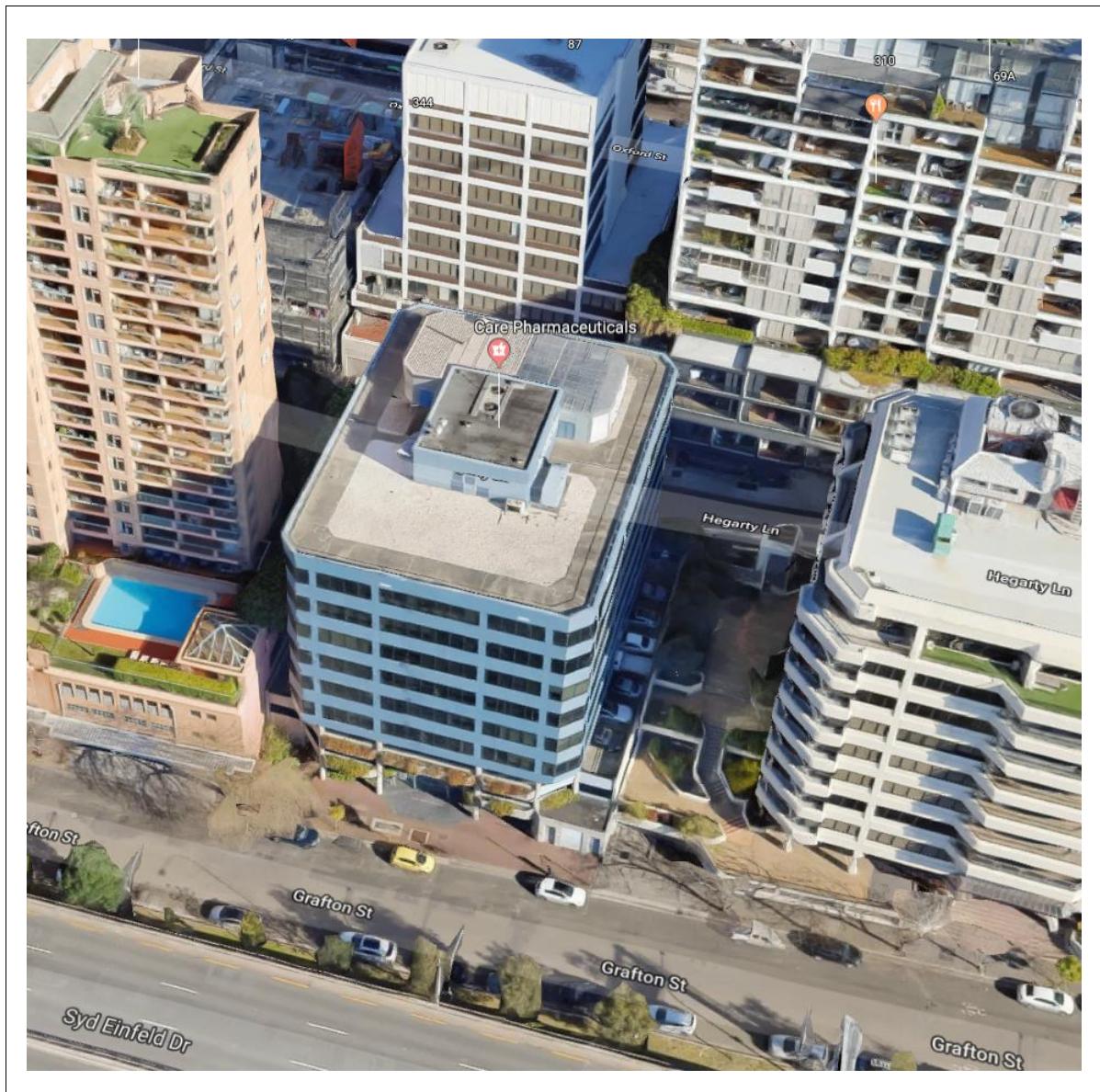
Currently on site is a 9 storey commercial building and the Bondi Junction Rail corridor is located beneath the site. Vehicular access is provided from Grafton Street and Hegarty Lane to 3 levels of car parking located predominantly above ground level.

The site is burdened by a right of way and easement for electricity and transit. A substation is located on Grafton Street at the front of the site within the front property boundary and a street tree on the footpath. Across the road to the north of the site is Syd Einfeld Drive (expressway) at an elevated height above Grafton Street. To the west of the site is an 8 storey commercial building (55 Grafton Street, where a development application, DA-155/2018 is currently under assessment for a 20 storey mixed use building). While, to the east (79-81 Grafton Street) is a mixed use development including two residential towers atop a podium, respectively 18 and 20 storeys in height with a Wilson public parking garage located above ground in the lower podium levels the building.

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



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



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

## 2.2 Relevant History

The applicant submitted a Pre-Lodgement application prior to the submission of this formal DA. Advice was given to the applicant in March and June 2017. Key issues raised in that advice to the applicant included;

- Height and FSR compliance
- Acknowledgement of the rail corridor beneath the site preventing further excavation underneath the site.
- Excessive above ground parking in the podium similar to the existing arrangement is not supported
- Tower setbacks and distance separation
- Singular cross over point to be provided
- Active uses to be provided to Hegarty Lane
- On site waste collection to be provided
- Sustainability and building efficiency
- Materials and Finishes
- Internal amenity of apartments and common open spaces

- Openness of proposed through site link

The DA was lodged on 10 November 2017, prior to gazettal of LEP, Amendment 10. This is relevant as the objectives of the Clause 4.3 and 4.4 were amended on 15 December 2017 after the lodgement of this application on 10 November 2017.

The Sydney Eastern City Planning Panel inspected the site and were briefed on the matter on 10 May 2018 after a preliminary assessment was undertaken.

The proposal has been amended during the course of the application in response to matters raised by the Waverley Design Excellence Panel and Council staff.

A development application has been lodged for the adjoining western site at 55 Grafton Street, Bondi Junction, however is still under assessment. The plans submitted with this application, sketch in the proposed podium and tower of that proposal (not determined) for context. That application will be considered by the Sydney Planning Panel at a later date.

## 2.3 **Proposal**

The application seeks permission for the demolition of the existing commercial office building and other structures on the site and the construction of a 19 storey shop top housing development comprising:

- 17 storeys of residential accommodation incorporating 78 dwellings on Levels 1 to 17 with the following mix:
  - 10 studio apartments
  - 25 x 1 bedroom apartments
  - 30 x 2 bedroom apartments
  - 13 x 3 bedroom apartments
- 5 commercial/retail spaces located on the Lower Ground and Upper Ground Levels with a gross floor area (**GFA**) of 475m<sup>2</sup>.
- 8 level mechanical car parking system accommodating 79 car spaces, accessed from Grafton Street.
- Car share space and loading dock in the lower ground floor.
- A pedestrian through site link connecting Hegarty Lane to Grafton Street.
- Public Art is to be incorporated to Hegarty Lane.
- Common Open Space at Level 5 and on the rooftop.
- Electrical substation to Grafton Street.
- Ancillary facilities comprising storage space, garbage rooms and plant rooms.
- The completed building will likely be strata subdivided, however this has not been applied for in this application.



**Figure 3:** Photomontage of the proposal from an elevated level.



**Figure 4:** Photomontage of the proposal from Hegarty Lane with through site link.

### **3 ASSESSMENT**

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

#### **3.1 Section 4.15 (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), the Local Environmental Plan (LEP) and the Waverley Development Control Plan (DCP).

##### **3.1.1 SEPP (Building Sustainability Index – BASIX) 2004**

An amended BASIX and NatHERS Certificate with NatHERS stamped plans has been submitted with the development application, however the latest set of drawings which adjusts anomalies and detail in the plans does not have a NatHERS stamp. This will be addressed as a condition. A standard condition is recommended ensuring the measures detailed in the BASIX and NatHERS Certificate are implemented.

##### **3.1.2 SEPP 55 - Remediation of Land**

A detailed site assessment has been prepared by CETEC Professional Scientific Solutions concluding that the site is suitable for the proposed future land use. Therefore on this basis, the requirements of SEPP 55 – land contamination have been met. Conditions of consent is recommended to ensure that the "recommendations" as outlined in Section 8 of the Preliminary Soil Investigation Report prepared by CETEC Professional Scientific Solutions [Project no CN180814] dated August 2018 are implemented.

##### **3.1.3 SEPP (Infrastructure) 2007**

The development site is located within the Bondi Junction rail corridor and proposes excavation, therefore on 1 December 2017, the application was referred to the rail authority, Sydney Trains pursuant to Clause 59(1) of the Environmental Planning and Assessment Regulation 2000 requesting that concurrence be granted by as required by Clause 86 of the Infrastructure SEPP.

A letter of concurrence from Sydney Trains, which included conditions of consent was provided to Council on 14 August 2018. Those are provided as an attachment and included in the recommended conditions.

##### **3.1.4 Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005**

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

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

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

- boat storage facilities.

The proposed development may be partially visible from the immediate foreshores and waterways of Sydney Harbour and therefore clause 25 of the SREP are to be taken into consideration in the assessment of the application. The proposed development will be similar in stature to other buildings along Grafton Street, and lower than the tallest buildings in the Bondi Junction area. The proposal will add to the skyline of Bondi Junction but have a negligible impact on the visual and scenic qualities of Sydney Harbour, including its islands, foreshores and tributaries. The proposed development is considered acceptable with regards to the relevant matters for consideration under the SREP.

### 3.1.5 SEPP 65 Design Quality of Residential Apartment Development

The application has been referred to the Design Excellence Panel (DEP) on multiple occasions, including with the Pre-DA scheme submitted in 2017, then again when the DA plans were amended in December 2017 and again on 22 October 2018.

Commentary against the nine design quality principles under SEPP 65 were provided by the Panel in October 2018 and amended plans have since been submitted to Council to address these matters raised. Council's response to how the amended plans address each matter is provided in the table below under planning comment (whereby it was deemed unnecessary to return the latest amended plans back again to the DEP for further comment).

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

| Principle 1 – Context and Neighbourhood  |
|--|
| <ul style="list-style-type: none"> <li>• New buildings on the opposite side of Hegarty Lane need to have wider setbacks and allow for light and street trees wherever possible to provide some amenity for the increased number of units and people.</li> <li>• This development should set back a minimum of 1-1.2 metres from its Hegarty Lane boundary for a footpath. The setback should be dedicated to Council and not overhung by any part of the building.</li> <li>• The through site link needs to be of high quality finishes and design and better activated to improve the neighbourhood connectivity, safety and opportunity for small service businesses along the new through-site link</li> <li>• The adjacent site to the west at 47-55 Grafton Street has had a DA proposal submitted recently. The potential for collaborative urban design outcomes may have been explored however it would be good to see more detail on the interface of the two.</li> <li>• The section BB provided is unclear with regard to the relationship of the neighbour's podium and planter.</li> </ul> |

**Planning Comment:**

Council has encouraged active uses to Hegarty Lane to align with the Bondi Junction Complete Street's project to provide high quality streets, laneways and spaces in Bondi Junction and active uses are proposed to the through site link. The podium component of the building to Hegarty Lane has been amended providing further setbacks to comply with the ADG to address distance separation between buildings and better spaces on the street. The through site link has been amended to provide commercial spaces throughout the building and an outlook through the site from Hegarty Lane through the building to Grafton Street. The applicant has demonstrated through 3D modelling that you will be able to see through the building from the plaza area of the Hegarty Lane frontage.

Details have been provided by the applicant of the relationship with the adjoining proposed building at 55 Grafton Street. The design of that building remains unresolved at the time of publishing this report.

**2. Built form & Scale**

- The site has a 60m height control and should not be exceeded by any part of the building including plant, lift overruns or communal space.
- The setback to Hegarty Lane and requirement for more activation/increased retail space along the through site link could cause a reduction of one bay of mechanical parking.
- The retail in Grafton Street should turn the corner and not be obstructed by services, so that its presence can be noticed from the link.
- Detailed sections through the link showing line-of-sight and looking east and west would be recommended for review. Good CPTED design, natural daylight and solar access is a clear expectation in the ADG for common circulation areas.
- The transition from the L5 podium to the tower form on both north and south elevations does not appear as well resolved as it might be.
- The Panel recommends that Levels 5 and 6 are reduced in area and the Level 5 terraces be reconfigured to create common outdoor space on the north-west corner.
- On the Hegarty Lane frontage the Panel was concerned about the built form relationship and suggested that the podium be reduced to 4 storeys (Ground + 3) instead of 5.
- Consideration should be given to applying the Level 5 plan to Level 4 in terms of the setback from the eastern side boundary and Hegarty Lane.
- The massive blade between the Type A and Type B apartments on Levels 3 and 4 should be deleted.
- The current frame on the stacker should be deleted and the proposed artwork should be considered in a number of ways, including treating the whole as an art object.

**Planning Comment:**

The proposed height of the building is discussed under the considerations of the LEP and Clause 4.6. This is not a matter covered by the Apartment Design Guide, rather a statutory matter for the consent authority.

The setback to Hegarty Lane has been increased to continue the pedestrian footpath in front of the mechanical parking bay.

A retail space has been provided on either side of the Hegarty Lane through site link to improve activation to the space.

The services that were located in the through site link at the Grafton Street frontage have been relocated to provide an activated frontage around the corner of the shop from the frontage to the through site link.

A 3D model was provided which demonstrates that pedestrians from Hegarty Lane will be able to see through the link to the Grafton street frontage. Due to the slope of the land, this is not achievable from the Grafton Street entrance which is at a lower level, however the stairs to the upper level will draw interest to the upper levels of the building.

Amendments have been made to the Hegarty Lane podium to simplify the two built forms.

A common open space area has been provided atop the podium at Level 5 of the building, removing an apartment.

The podium component of the building to Hegarty Lane has been amended to be reduced in height from 5 storeys to 4 storeys to better respond to the scale of the podium across the lane.

The level 4 plan has been adjusted to provide the 6m setback similar to level 5.

The type A and B apartments have been modified to address this matter.

The framing around the car stacker has been simplified in form and the car stacker is proposed as a piece kinetic art.

**3. Density**

- The applicant notes the proposal has a compliant FSR of 6:1. However the Panel considers that the proposal has a number of amenity, bulk, scale, height, shadow, setback and servicing issues that suggest the site's development is restricted by controls other than FSR.
- A more detailed plan analysis of distances between surrounding developments would assist in understanding compliance or otherwise to ADG setback requirements.

**Planning Comment:**

The LEP is the statutory document which sets the development standard for the site. The development has been amended to address the commentary of the Design Excellence Panel and Council. Amendments made result in a building form that complies with the maximum FSR permitted for the site of 6:1.

The amended plans detail the separation between the adjoining buildings on drawings 2200, 2201, 2300, 2301, 9003 and 9004. Distance separation between buildings has been clarified in the assessment table below and meets the intent of the controls.

#### 4.Sustainability

- Balconies facing Syd Einfeld Drive suffer from road noise requiring windows and doors to be shut. Passive systems should be investigated to reduce the total reliance on air-conditioning for these units which don't have an alternative aspect.
- A large canopy roof over rooftop common space with solar panels would be a good outcome. This would increase amenity and sustainability. The roof should be within the height control.
- The Panel noted that a reduction in car parking would be supported due to the excellent access to public transport, however, corresponding improvement to the quality of the public domain, walkability and permeability would need to be provided.

#### Planning Comment:

A passive trickle ventilation system has been proposed to provide natural fresh air into the residential apartments in the podium fronting Syd Einfeld Drive where wind and noise may require doors to be shut in noisy periods. The wind consultant recommends testing to verify that this will provide ventilation and a condition is recommended in this regard. It is noted that the building has been designed to comply with the cross ventilation targets in the Guidelines.

Council did not support the roof canopy of the common open space as it added to the bulk of the building. An alternative common open space is provided at level 5 podium level of the building which will provide areas with shade. Photovoltaic cells are proposed in the Energy Efficiency report and will be required to be detailed at the construction certificate phase of the development.

Car parking is discussed in the consideration of Part B of the DCP below. Under the current Amendment 6 DCP, the development would have a minimum rate of nil. This application however was lodged when Amendment 5 DCP was in force. This matter is discussed later in this report.

#### 5. Landscape

- The rooftop and podium levels should have increased landscape area which is irrigated and maintained. This will increase amenity and help to mitigate some of the wind velocities. Landscape treatments to communal spaces should complement the potential for subdivision of those areas to enable use by multiple resident groups.
- The tree in the south west corner of the site on Hegarty Lane should be provided with unhindered deep soil area with no raised planter. The tree species should be selected for a canopy that will reach at least 12m.
- Opportunities for the provision of additional street trees to Hegarty Lane and Grafton Street should be discussed with Council.

#### Planning Comment:

An additional common open space area has been provided at Level 5 of the building atop the podium in the amended plans to provide diverse space for residents of the building to use. Landscaping treatments are proposed around these spaces for aesthetic, privacy and wind mitigation reasons.

The tree in the open courtyard area to Hegarty Lane was proposed in response to the Panel's previous comments. The applicant has noted that the soil depth of 1m, as the depth is restricted by the basement level below. The tree is proposed with a height of 6-8m when planted to provide an immediate impact. At maturity the landscaping plan states that it will reach a height of up to 15m. Street trees to Grafton Street are a part of the complete streets project and will be recommended as a condition of consent.

## 6. Amenity

- In some instances there are gaps in the screen continuity on the west elevation, and for L17 the south facing bedroom balcony, no blades are shown on the eastern side.
- The diagrams for cross ventilation show the central north facing units on L1-L4 as contributing to the 60% target, but it is not clear how these can do so. Further clarification is required of how the ADG target is achieved.
- Unit layouts for some L1-L4 units show bedrooms receiving the benefit of solar access over living areas. Amendments to study areas were suggested.
- For the communal roof terrace the Panel noted the absence of an accessible unisex toilet, and this would be considered necessary, along with potential for outdoor BBQ facilities.

### Planning Comment:

The panel makes comment about the building separation controls in Part 2F of the ADG, which provides guidance for developing DCP controls. The visual privacy controls in Part 3F have been met and privacy screening provided where appropriate and are detailed in the assessment table below. The ADG cross ventilation targets have been met. This does not include the central north facing units. A ventilation system in the façade has been proposed to allow some ventilation into those units when windows would primarily need to be shut to address road noise. The layout of the podium units has been amended to remove the large study areas and to provide better layouts to address these issues. An accessible toilet and facilities have been provided to the roof.

## 7. Safety

- There remains potential to improve the permeability and surveillance of common and public areas associated with the through-site link.

### Planning Comment:

The through site link has been amended numerous times throughout this application. The link has clear retail frontage which opens out on to the public area and provides clear lines of sight. Unfortunately due to the slope of land there will be a change in levels which will create a break in the thoroughfare. Conditions of consent are recommended to appropriately manage this space which is similar to others within the area.

## 8. Housing Diversity and Social Interaction

- The proposal demonstrates sufficient housing diversity however there are a large number of amenity issues that are yet to be addressed and there is scope for further enhancement and reconfiguration of the communal spaces.

### Planning Comment:

The proposal provides a large mix of apartment types and an additional communal open space area has been provided at level 5 of the building, as well as open courtyard area to Hegarty Lane.

## 9. Aesthetics

- The Panel considers that the separate solutions to environmental, privacy, noise and amenity issues and the number of materials, finishes and colours, murals and public art need to be resolved more holistically to achieve appropriate aesthetic outcomes to make an outstanding contribution to the built form of Bondi Junction. The integration with the overall building design includes:
  - awnings to Grafton Street and to Hegarty Lane – alignment, materials, geometries need more consideration
  - public art – as discussed, the Panel would prefer this to be more integral to the architecture instead of an applied screen
  - balcony treatments for noise, wind and ventilation
  - the tower form in relation to the podium
  - reduction of bulk of the podium to Hegarty Lane
  - wall surfaces throughout – a reduction in rendered and painted surfaces.

### Planning Comment:

The amended plans were submitted to address all of the above comments. Awning details are difficult to finalise at this stage with the impending DA at the adjoining site to the west currently unresolved (other than via standard condition of consent). At present, there is no awning to 55 Grafton Street to align with. A condition is recommended to ensure that this matter is resolved in the final construction certificate drawings provided.

The Public art is a matter which should be resolved by condition of consent and involve Council's Public Art Officer and not typically a matter which is definitive at DA stage.

The balcony treatments have been assessed by the wind consultant and recommendations made. The tower form and podium to Hegarty Lane has been amended to be reduced in scale and more cohesive with the rectilinear form of the building. A condition of consent can be imposed to resolve the aesthetics of the proposal in the construction certificate documentation process. This is common for such scaled development, as further detailed design occurs during the construction certificate process. Council's Urban Designer has reviewed the amended plans and is satisfied that they address the commentary by the Panel.

## 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:

- visual privacy,
- solar and daylight access,
- common circulation and spaces,
- apartment size and layout,
- ceiling heights,
- private open space and balconies,
- natural ventilation,
- storage.

If a development control plan contains provisions that specify requirements, standards or controls in relation to a matter to which this clause applies, those provisions are of no effect. DCP 2012 contains provisions in relation to the above criteria and therefore assessment of those Clauses are not duplicated in this report as they are no longer relevant. An assessment against the provisions of Part 3 and 4 within the ADG is provided in the table below and these controls have been deleted.

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

| Design Criteria   | Compliance        | Comment   |
|---|-------------------|---|
| <b>Part 3 Siting the development</b>  |                   |   |
| <b>3A Site analysis</b>   | Yes               | The application and proposed building has considered the site, local and wider context.   |
| <b>3B Orientation</b>   | Yes               | The proposed building has been orientated and designed to relate the shape of the site, location of neighbouring buildings and public domain.   |
| <b>3C Public domain interface</b>   | Yes               | The proposed building provides a successful interface with the public domain and will improve the character and quality of the streetscape, particularly to the rear lane.  |
| <b>3D Communal and public open space</b>  | No                | <p>The roof top area provides 52.6m<sup>2</sup> of communal open space. The level 5 area provides approximately 154.7m<sup>2</sup> of communal open space for residents of the building a total of 207m<sup>2</sup>, equating to 16% of the site. This matter is discussed in the issues section below.</p> <p>The common open spaces are located on the northern of the building and will receive 2 hours of sunlight to comply with the ADG.</p> <p>Both spaces are accessible.</p> |
| <b>3E Deep soil zones</b><br><br>ADG control:<br>7% of the site, deep soil zones should be provided | Yes<br>(on merit) | <p>As the proposed building contains ground floor retail and first floor commercial uses, compliance with the deep soil zone control is not practical as the building has almost 100% site coverage.</p> <p>Despite the site constraints, soft landscaping is proposed around various parts of the building, including communal residential areas at level 5 and the roof terrace. The extent of the deep soil zones are acceptable for the site, development type and locality.</p>  |
| <b>3F Visual privacy</b>  | Yes               | The proposal meets the design guidance in this regard, and is detailed in the discussion below this table.  |
| <b>3G Pedestrian access and entries</b>   | Yes               | All pedestrian access entries are connected to and address the public domain, are easily identifiable and provide a strong connection with the streetscape.   |
| <b>3H Vehicle access</b>  | Yes               | The vehicular access point is the same as the existing point to Grafton Street and is considered the most appropriate being at the lower end of the site, minimising pedestrian conflicts, and is cohesive with the existing streetscape.   |
| <b>3J Bicycle and car parking</b>   | Yes               | The proposed development falls within the design criteria of Objective 3J-1 and the resident and visitor car parking requirements set out in the Guide to Traffic Generating Development  |

| Design Criteria  | Compliance | Comment   |
|--|------------|---|
|  |            | 2002 are applicable to the residential component of the building, as they are less than the requirements of the DCP. The proposal provides sufficient car parking spaces within the mechanical stacker which is proposed in lieu of the inability to excavate any further below the site due to the rail line underneath. Compliance with the rates is discussed in table 3 – part B of the WDCP in consideration of all the parking and transport requirements of the DCP.   |
| <b>Part 4 – Designing the building</b>   |            |   |
| <b>4A Solar and daylight access</b> <ul style="list-style-type: none"><li>Living rooms and private open spaces of at least 70% of units receive minimum of 2 hours direct sunlight between 9am-3pm mid-winter</li><li>A maximum of 15% receive no direct sunlight between 9am-3pm mid-winter.</li></ul>                              | Yes        | <ul style="list-style-type: none"><li>76% of units receive at least 2 hours mid-winter.</li><li>Most of the apartment have a north orientation to maximise sunlight with living areas featured on these aspects. Bedrooms are located to the south of the dual aspect apartments.</li><li>9 of the units are south facing and receive no direct sunlight which is 12% of the development.</li></ul> <p>The proposal is consistent with the remaining objectives of this part of the ADG ensuring that daylight access is satisfactory and incorporating shading in the warmer months.</p>   |
| <b>4B Natural ventilation</b> <ul style="list-style-type: none"><li>All habitable rooms are naturally ventilated</li><li>Number of units with natural cross ventilation is maximised:<ul style="list-style-type: none"><li>At least 60% of units naturally ventilated in the first 9 storeys of the development.</li></ul></li></ul> | Yes        | <ul style="list-style-type: none"><li>All habitable rooms within the development are provided with at least one window for natural ventilation.</li><li>16 of the units within the podium are not cross ventilated, however, 63% of the units within the first 9 storeys of the building area, complying with the design criteria.</li><li>79% of units in the whole building are cross ventilated within the building.</li><li>Most of the units have dual aspects and the middle south facing units from levels 5 to 16 are two storey maisonette style units to provide some cross ventilation.</li><li>A trickle ventilation system is proposed for those units facing Syd Einfeld drive to provide natural ventilation into those affected units if there is a need to address road noise.</li></ul> |
| <b>4C Ceiling heights</b> <ul style="list-style-type: none"><li>Habitable rooms – 2.7m</li><li>Non-habitable rooms – 2.4m</li><li>2 storey units – 2.7m main level (living) &amp;</li></ul>  | Yes        | The ceiling heights within all can comply with the minimum requirement, providing 3.1m floor to floor heights. A condition is recommended to ensure that the construction certificate drawings detail 2.7m floor to ceiling heights for each unit.  |

| Design Criteria  | Compliance | Comment   |
|--|------------|---|
| <p>2.4m upper floor where its area does not exceed 50% of the unit area</p> <ul style="list-style-type: none"> <li>• 4m for commercial spaces</li> </ul>   | Yes        | <p>The commercial spaces at the ground and first floor levels are provided with 4.2m- 4m floor to floor heights.</p>  |
| <p><b>4D Apartment size and layout</b></p> <p>The following minimum internal areas apply:</p> <ul style="list-style-type: none"> <li>• Studio = <math>35 m^2</math></li> <li>• 1 Bed = <math>50 m^2</math></li> <li>• 2 Bed = <math>70 m^2</math></li> <li>• 3 Bed = <math>90 m^2</math></li> <li>• Add <math>5m^2</math> for each additional bathroom (above 1)</li> </ul> <p>Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room.</p> <p>Maximum depth of open plan living layouts is 8m.</p> | Yes        | <p>All units have internal areas in excess of the minimum ADG requirements. In this regard, the proposed units sizes and layout are acceptable.</p> <p>The glazed area to each habitable room is of an acceptable size in relation to the dimensions of the room.</p> <p>The bedrooms have a satisfactory size to meet the intent of the design criteria. All kitchens are separate to the circulation spaces.</p> <p>All of the living areas in each apartment are open plan and do not exceed the 8m criteria.</p> <p>The proposal is consistent with the objectives of this part of the ADG.</p> |
| <p><b>4E Private open space and balconies</b></p> <p>All apartments provide primary balcony as follows:</p> <ul style="list-style-type: none"> <li>• Studio – <math>4m^2</math>, no min depth</li> <li>• 1-bed – <math>8m^2</math> &amp; 2m depth</li> <li>• 2-bed - <math>10m^2</math> &amp; 2m depth</li> <li>• 3+bed - <math>12m^2</math> &amp; 2.4m depth</li> <li>• Ground level, min <math>15m^2</math> &amp; 3m depth</li> </ul>  | Yes        | <p>Most of the units are provided with a balcony or courtyard accessed from the main living areas which meets the minimum requirements of the ADG in terms of area and depth. The design of the balconies and courtyards is integrated into, the architectural form, providing articulation to the building, as well as providing casual surveillance to the street. The finishes of the balconies is consistent with the palette of materials in the building overall. Screens or solid side walls are provided to enhance privacy.</p>  |
| <p><b>4F Common circulation and spaces</b></p> <ul style="list-style-type: none"> <li>• Max of 8 units accessed off a circulation core on a single level</li> </ul>  | Yes        | <p>No floor contains more than 8 units, therefore the development complies with this guideline.</p>   |
| <b>4G Storage</b>  | Yes        | The proposal provides separate storage within each apartment and bulk storage areas at each   |

| Design Criteria   | Compliance      | Comment  |
|---|-----------------|--|
| In addition to kitchens, bathrooms and bedrooms, the following is provided: <ul style="list-style-type: none"> <li>• 1-bed – 6m<sup>3</sup></li> <li>• 2-bed – 8m<sup>3</sup></li> <li>• 3+bed – 10m<sup>3</sup></li> </ul> |                 | level of the building. The storage provided meets the requirements and objectives of the ADG. Conditions are to be imposed to ensure compliance in this respect.   |
| <b>4H Acoustic privacy</b>  | Yes             | The amended proposal is accompanied by a thorough site analysis that has considered the constraints of the site, conditions and relationship to surrounding buildings and local context. This analysis has considered individual units exposure to acoustic privacy impacts and each habitable room has been designed to protect the acoustic privacy of future occupants and acoustic privacy of surrounding buildings. The amended proposal has adequately considered and addressed the design guidance requirements in 4H of the ADG. |
| <b>4J Noise and pollution</b>   | Yes             | An acoustic assessment has been provided to consider the impacts from road noise mechanical plant and car stacker. Recommendations have been made to minimise impacts from noise, meeting section 4J of the ADG.   |
| <b>Configuration</b>  |                 |  |
| <b>4K Apartment mix</b>   | Yes             | The proposal includes studio, 1, 2 and 3 bedroom units that will support a wide variety of household types and sizes. The apartment mix is considered appropriate taking into consideration the sites proximity to public transport options and the high density urban environment.  |
| <b>4M Facades</b>   | Yes (condition) | The proposed building incorporates a simple architectural design with each façade contributing to the visual interest of the building and character of the local area. Furthermore conditions of consent have been imposed to ensure that all building façade materials and finishes are appropriately reflected on the plans prior to the issue of a construction certificate.  |
| <b>4N Roof design</b>   | Yes             | The roof incorporates a common open space area and services areas and is cohesive relationship with the overall building design, streetscape and Bondi Junction centre.  |
| <b>4O Landscape design</b>  | Yes             | The proposed landscaping to the site is diverse with street tree proposed to Grafton Street, tree within the forecourt area to the lane, as well as around the podium level of the building and the roof. The proposed landscaping responds to the   |

| Design Criteria                             | Compliance | Comment   |
|---|------------|---|
|   |            | conditions of the site and is appropriate in a high density area.   |
| <b>4P Planting on structures</b>            | Yes        | The landscape plans concept plans address the objectives and design criteria in 4P of the ADG. A condition is to be imposed to ensure that the planting on structures has sufficient depth and structure.   |
| <b>4Q Universal Design</b>                  | Yes        | A condition is recommended to ensure that 20% of the apartments achieve a benchmark of silver level universal design features.  |
| <b>4S Mixed Use</b>                         | Yes        | This building is mixed use and incorporates active frontages to both streets and first floor commercial uses.   |
| <b>Performance</b>                          |            |   |
| <b>4U Energy</b>                            | Yes        | All apartments within the building incorporate passive environmental design, meeting the cross ventilation requirements in the ADG. Natural ventilation is incorporated in all apartments reducing the need for mechanical ventilation and climate control. Council's own policy to reduce greenhouse gas reductions by 30% than a Section J compliant building adds to achieving compliance with this guideline.   |
| <b>4V Water management and conservation</b> | Yes        | The energy assessment report submitted with the application notes that metering and monitoring strategy will be implemented to track energy and water use. This system will also monitor progress against performance targets and assist with the identification of leaks, faults or excessive consumption. Sub-metering will be provided for all major energy and water uses, supplying data to the Building Management System (BMS). This meets the objectives of section 4V. |
| <b>4W Waste management</b>                  | Yes        | The application proposes waste collection within the site in the lower ground floor of the building. A bin storage hardstand area is indicated on the footpath outside the site in front of the electrical substations which will be recommended to be deleted from the plans, as all waste collection is to be on site. A detailed waste management plan will be required as a condition of consent.   |
| <b>4X Building maintenance</b>              | Yes        | The guideline suggests that building design should provide protection from weathering, systems and access for maintenance and materials which reduce ongoing maintenance costs. There is no evidence to suggest that the proposed building would could not achieve this through the detailed construction certificate documentation process.  |

### ***Visual Privacy***

The objective of the visual privacy controls in the ADG is to ensure adequate building separation distances are shared equitably between neighbouring sites, to achieve reasonable levels of external and internal visual privacy. The second objective is to increase privacy without compromising access to light and air and balance outlook and views from habitable rooms and private open space.

For a building over 25m, the ADG requires a separation of 12m between habitable rooms and balconies and 6m between non habitable rooms. The design guidance also says that direct lines of sight should be avoided for windows and balconies across corners and no separation is required for blank walls. Gallery access circulation should be treated as habitable space when measuring privacy separation distances between neighbouring properties.

The building at the rear of the site across the lane at 332-342 Oxford Street is a commercial building and a compliant 12m distance separation is provided between the habitable rooms (for commercial buildings the ADG suggests using the habitable space separation for retail/office space or balconies).

The recently redeveloped site at 310-330 Oxford Street also overlaps with the rear boundary of the site and the proposal has been amended to provide a suitable distance separation between the residential units within that the building to the proposal, providing 13m at the lower podium levels and 18m at the upper tower levels.

The building to the east, 79 Grafton Street, a 10m distance separation is provided, 6m of which is created by the tower form of the proposed building (which is half of the distance required between sites). The adjoining building features windows to living areas and kitchen windows within 5m of the common boundary. The eastern elevation of the proposed building however does not provide any windows to habitable rooms, just 1 window to the common circulation area which is proposed with screening over to address visual privacy, but to achieve some natural light into the natural space. At the podium level 4, windows are proposed at 6m from the boundary, but landscaping is proposed to provide a visual buffer to the adjoining property. A condition is imposed to ensure the species selection achieves adequate privacy. Despite being 2m short of not achieving the 12m guideline, the proposal will remain to achieve the objective which is to achieve reasonable levels of visual privacy.

The existing building to the west of the site at 55 Grafton Street is currently a commercial building, but is proposed to be a similar scaled mixed use building. Based on the speculative drawings of that proposal, the development would achieve a distance separation of 16m, complying with the controls. Similarly, where windows are proposed on the western elevation, directional 'ear' windows, screening and translucent glass is proposed where windows are required to facilitate light. The existing commercial building is setback 12m from the existing common boundary, which would also comply with the distance separation guidelines in the ADG.

### **Communal and public open space**

Part 3D of has objectives and guidelines for the provision of common and public open space. The objectives are:

- to provide adequate areas of communal open space to enhance residential amenity and provide opportunities for landscaping
- to allow for a range of activities, respond to site conditions and be attractive and inviting
- be designed to maximise safety
- public open space is to be responsive to the existing pattern and uses of the neighbourhood.

The guidance requires that communal open space on the site has a minimum area equal to 25% of the site. This aligns with Council's DCP control also.

The proposal provides 16% of the site area as communal open space, half of what is required in the DCP. The applicant justifies the non-compliance with the following;

- *The proposed rooftop open space is covered with a vergola and can be open or closed depending on the weather. It is north facing, enjoys panoramic views and very good solar access.*
- *A vegetable patch is proposed on the rooftop, encouraging residents to grow their own produce*
- *The Level 1 communal open space is covered and readily accessed from the lobby. Direct and equitable access is provided to both communal areas, encouraging social interaction between residents.*
- *Additional opportunities for social interaction are provided by the ground floor retail tenancies (which are likely to include a café offering another meeting place on the site) and the through site link.*
- *The site has excellent access to a variety of public open spaces including Centennial Park, Cooper Park and Bondi Mall.*
- *All apartments have private open spaces that meet or exceed the ADG private open space design criteria.*

The common open space on the roof no longer provides a vergola, as the structure appeared as an additional level above the height control and was recommended to be deleted. Roof top common open spaces are a characteristic of the Bondi Junction roof scape, due to views to the harbour and city while providing an environmentally friendly alternative to bland un-useable roof tops. The design of the proposed rooftop communal open space has been amended to increase the terrace area with kitchen/BBQ, accessible toilet and outdoor seating.

Also, since the initial submission to Council the communal open space at Level 1 in the original DA scheme has been deleted and new publicly accessible open space adjoining the pedestrian through site link at Hegarty Lane on the upper ground floor has been provided. This space is not included in Council's common open space calculations but contributes to the objectives of the ADG. Should this through site link area be included in the calculations the proposal would comply with the 25% guideline.

A communal open space at Level 5 is proposed in the north-western corner of the building with a large open area with BBQ facilities, seating and accessible toilet, as well as covered area for weather protection should there be inclement weather preventing enjoyment of the roof space.

It is considered that the proposal meets the intent and objectives of the guide for common open space in section 3D of the ADG.

### 3.1.6 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   |
|---|------------|---|
| <b>Part 1 Preliminary</b>                         |            |   |
| 1.2 Aims of plan                                  | Yes        | The proposal does not contravene the aims of the LEP in Clause 1.2.     |
| <b>Part 2 Permitted or prohibited development</b> |            |   |
| 2.6 Subdivision – consent requirements            | N/A        | The application does not seek permission for Torrens Title subdivision. |

| Provision  | Compliance     | Comment   |
|--|----------------|---|
| Land Use Table<br>B4 Mixed Use Zone  | Yes            | The proposal is defined as shop top housing which is permitted with consent in the zone. As discussed in the consideration of Clause 4.6 below, the proposal will align with objectives of the zone.  |
| <b>Part 4 Principal development standards</b>  |                |   |
| 4.3 Height of buildings <ul style="list-style-type: none"> <li>• 60m</li> </ul>  | No             | The proposal has a building height which does exceed the height limit at the front of the site where the land slopes down, with the lift overrun the highest part of the site. The non-compliance is around 65.1m – 67m depending where it is measured (equivalent to 8.5%–13% departure from the height control). This matter is discussed below.  |
| 4.4 Floor space ratio <ul style="list-style-type: none"> <li>• 6:1</li> </ul> Site Area: 1281m <sup>2</sup>  | Yes            | The building has reduced the calculable gross floor area of the building to respond to design matters raised throughout the assessment of the application. <p>The proposed GFA is 7,683m<sup>2</sup>, equating to an FSR of 6:1.</p>  |
| 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 development standard. A detailed discussion of the variation to the development standard is presented below this table.  |
| <b>Part 5 Miscellaneous provisions</b>   |                |   |
| 5.10 Heritage conservation <p>Under subclause (4), the consent authority, must before granting consent under this clause consider the effect of the proposed development on the heritage significance of the item.</p> | Yes            | Across the lane from the site is the development at 310-330 Oxford Street which is listed as Heritage item under the Waverley LEP. The heritage significance of that building however is the heritage shops which are at the Oxford Street frontage of the site and were included in the redevelopment of that building. The proposal is visually removed from those heritage terraces, therefore it is concluded the proposal will not impact on the heritage significance of that adjoining building. |
| <b>Part 6 Additional local provisions</b>  |                |   |
| 6.2 Earthworks <p>(3) The consent authority must consider the matters listed in Clause 3(a) to (h).</p>  | Yes            | The application does not propose any further excavation below the current levels due to the location of the rail corridor underneath the site. <p>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. Given the rail</p>  |

| Provision  | Compliance | Comment   |
|--|------------|---|
|  |            | corridor is located beneath the site, the concurrence of the rail authority is required. This has been provided with Conditions of consent which requires final Geotechnical and Structural report/drawings that meet Sydney Trains requirements prior to the issue of any Construction Certificate. These are in the recommended conditions. |
| 6.5 Active street frontages in the Bondi Junction Centre | N/A        | Grafton Street is not identified on the Active frontage Map in the LEP, however activation has been provided on both Grafton Street and Hegarty Lane in response to Council's complete streets urban design policy and the DCP.   |
| 6.7 Solar access to public spaces in Bondi Junction      | Yes        | The site does not have any solar impacts on Clementson Park, Waverley Street Mall, Eora Park, Normal Lee Place or Oxford Street Mall.   |
| 6.9 Design Excellence                                    | Yes        | It is considered that the proposal meets a high standard of architecture and urban design. See discussion below.  |

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

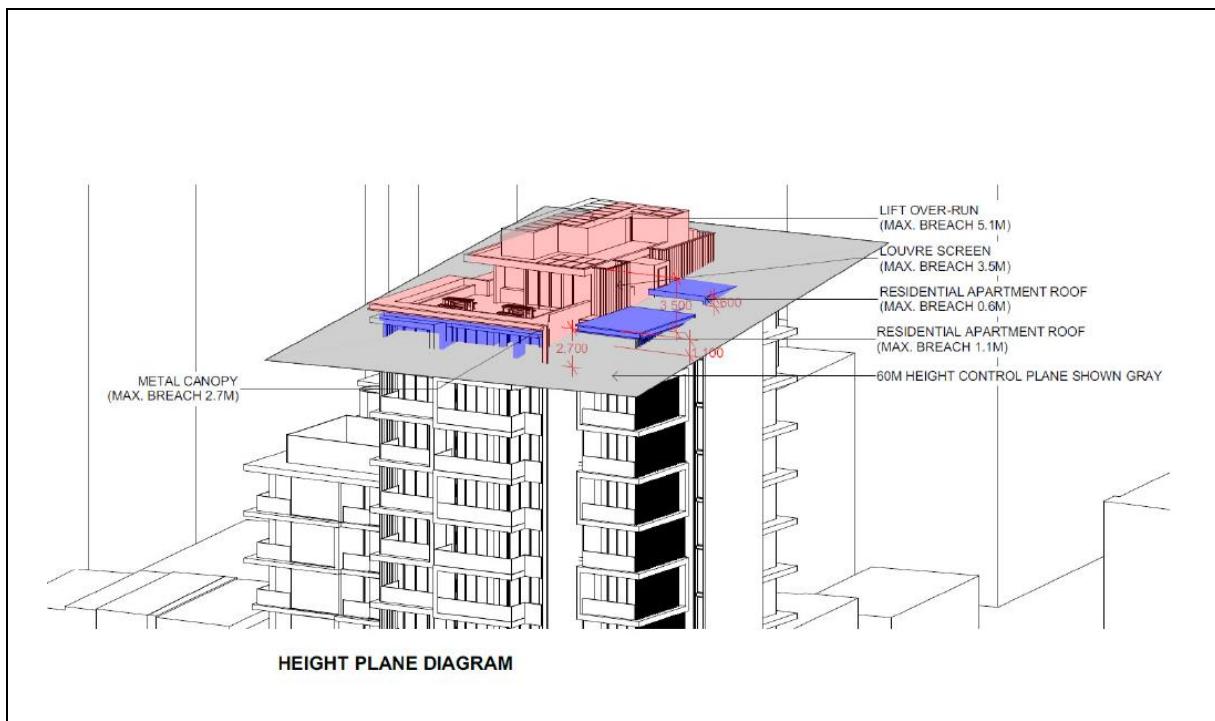
#### ***Clause 4.3 Height of buildings***

The consent authority 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.*

A written request pursuant to clause 4.6 of Waverley LEP 2012 has been made, and amended in response to the modified proposal, seeking to vary the height development standard. The extent of non-compliance is demonstrated in the figure below, extracted from the applicant's statement.



**Figure 5:** Height plane extracting the extent of non-compliance (Source: applicant).

The proposal, at 19 storeys and the applicant's Clause 4.6 statement declares the proposed height as the following.

- 58.45m to the parapet at Hegarty Lane
- 62.1m to the top of the highest residential level above Grafton Street
- 62.7m to the parapet above Grafton Street
- 65.1m measured from existing ground level to the top of the lift motor room which is the heights development standard breach, equivalent to 8.5% departure).

The LEP defines Ground level (existing) as the existing level of a site at any point. It is noted that the applicant has used an extrapolated existing ground level between Grafton St (RL 65) and Hegarty Lane (RL 68.9) and from that concludes that the development has a maximum breach of 8.5%. The applicant's consultant has stated that the methodology using the extrapolated ground level is consistent with that adopted by the Land and Environment Court in *Bettar v Council of the City of Sydney* [2014] NSWLEC 1070 and the later decision of *Stamford Property Services Pty Ltd v City of Sydney & Anor* [2015] NSWLEC 1189.

However, technically, using the existing ground level as it stands today at RL 65.00 and RL 68.9 at Hegarty Lane as shown in the survey and structural engineer's report, the maximum height breach to the top of the lift motor room is 13%. The difference in the figures is outlined below.

**Table 4: Building height analysis**

| Measurement point                              | Extrapolated ground level | Existing ground level |
|--|---------------------------|-----------------------|
| Parapet at Hegarty Lane                        | 58.45m                    | 58.7m (RL 68.9)       |
| Highest residential level above Grafton Street | 62.1m                     | 62.3m (RL 65)         |
| Grafton Street parapet                         | 62.7m                     | 63.3m (RL 65)         |
| Top of the lift motor room                     | 65.1m                     | 67.09m (RL 65)        |
|  | 8.5% breach               | 13% breach            |

The applicant uses the test summarised by Preston CJ in *Wehbe v Pittwater Council* (2007) 156 LGERA 446 to explore whether compliance with the height development standard is unreasonable or

unnecessary to respond to Clause 4.6(3) (a). The written request is available to the Panel to read to be convinced that that component of Clause 4.6 is adequately addressed.

Using those tests, the statement concludes that the proposal achieves the objectives of the development standard notwithstanding non-compliance with the standard, that the underlying objective or purpose of the development standard is achieved and that residential amenity would be diminished if compliance with the height control was mandated by resulting the removal of the proposed roof terrace which is accessible and offers a high standard of amenity to residents of the building.

In relation to Clause 4.6(3) (b), the applicant provides the following environmental planning grounds to justify contravening the height development standard.

- *The proposal complies with the 6:1 FSR standard therefore the height non-compliance is not proposed to yield additional GFA on the site.*
- *The non-complying elements largely comprise a roof terrace communal open space, plant, unisex disabled toilet and the lift structure which would provide equitable access to the roof terrace.*
- *Only a very small area of non-compliance relates to Level 17 apartment GFA and this is located at the less sensitive northern end of the site.*
- *The southern elevation of the proposal facing Hegarty Lane (which is most sensitive in terms of view and overshadowing impacts for existing apartments to the south) has a height of 58.45m and complies with the 60m height standard.*
- *The site slopes from Hegarty Lane to Grafton Street.*
- *Further excavation (to reduce height) is not possible on the site given the constraints imposed by the railway tunnel that traverses the site.*
- *Increasing the tower floor plate, to accommodate more volume within the 60m height standard, is not desirable as it would reduce side boundary setbacks (noting that the ADG does not require any setbacks/separation for blank walls), increase bulk, diminish the potential to provide a slender tower and increase impacts for neighbouring dwellings (particularly view loss for dwellings to the south).*
- *The GFA distribution between the podium (38% of GFA) and tower (62%) is appropriate noting that podium efficiency is maximised by the provision of a mechanical car parking system. The provision of more GFA in the podium, to reduce building height, is not practicable.*
- *The non-compliance with the development standard allows for an orderly use of the land and the proposal has been designed with consideration to the desired future character of the area.*
- *Additionally, the Objects of the Act are satisfied as:*
  - *The departure from the height standard in WLEP 2012 will have no negative consequences in terms of the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment; and*
  - *The departure from the height standard in WLEP 2012 allows for the orderly and economic use of the site in a manner which otherwise achieves the outcomes and objectives of the relevant planning controls.*

#### **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 Clause 4.6 statement is provided to the Panel for consideration as the consent authority, but Council concludes that the statement addresses the matters required to be addressed in subclause (3) of Clause 4.6. This satisfied Clause 4.6(3) (i). Whether the proposal satisfies Clause 4.6 (4) (ii) and is in the public interest is discussed below.

In accordance with the savings provision 1.8A of WLEP 2012, the LEP at the time that the DA was lodged is the relevant statutory document for assessment. At that time (10 November 2017) the objectives of the Height Development Standard in Clause 4.3 of Waverley LEP 2012 were:

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

Objective (a) (b) and (d) of the height development standard are applicable to this development. In consideration of objective (a) which is *to establish limits on the overall height of development to preserve the environmental amenity of neighbouring properties,*

The applicant has stated that the proposal would not give rise to any unreasonable or unexpected amenity impacts, noting that that view, privacy and shadow impacts do not arise from the height non-compliance.

As shown in Figure 5 above, the extent of non-compliance with the height limit occurs at the Grafton Street side of the site which is on the northern end of the site. The building at the southern end of the site is below the 60m height limit. This is best demonstrated by Section A below in Figure 6.

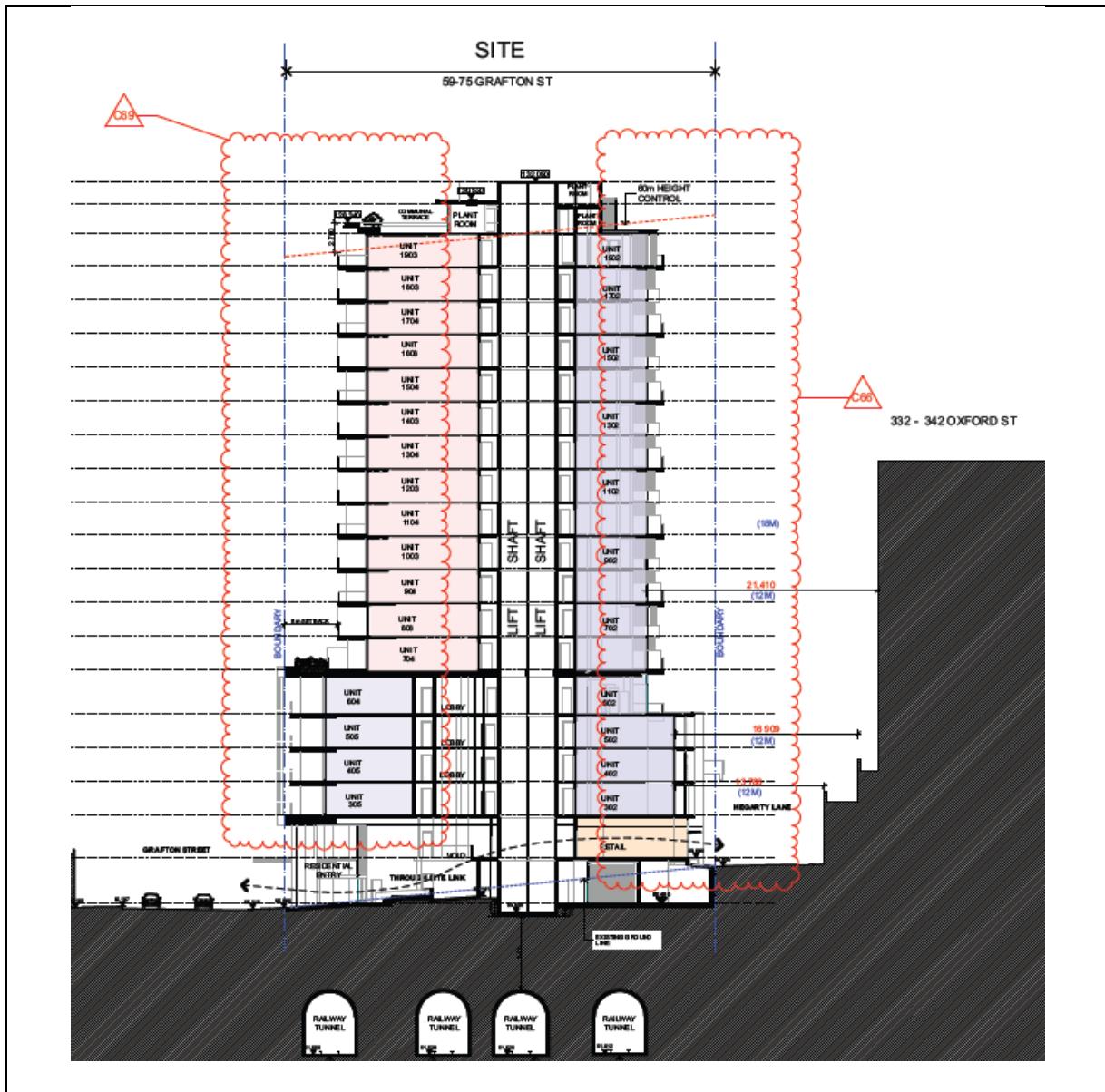


Figure 6: Section A, drawing 2200.

The height non-compliance occurs at the northern side of the site to Grafton Street. The more sensitive side of the building on the south predominantly complying with the height limits set by the LEP (apart from the plant). Analysis of the applicant's comparison of shadow diagrams indicates that the shadow caused by the non-compliance at the Grafton Street end of the building will have an additional impact on the uppermost level of the adjoining residential flat building at 79 Grafton Street (Unit 1503) as shown in solid red in the Figure 7 below. This area is private open space for the upper most residential unit of this building (Unit 1503) at 79 Grafton Street and currently enjoys sun from throughout the day.

The proposed development will be impact this private open space area between 2pm and 3pm. These are additional impacts as a result of the non-compliant height at this edge of the building and by virtue of that non-compliant element would not 'preserve' the amenity of that terrace. It is justified by the applicant that the terrace area does at least 4 hours of sunlight, before 2pm, complying with the ADG and is not unreasonable.

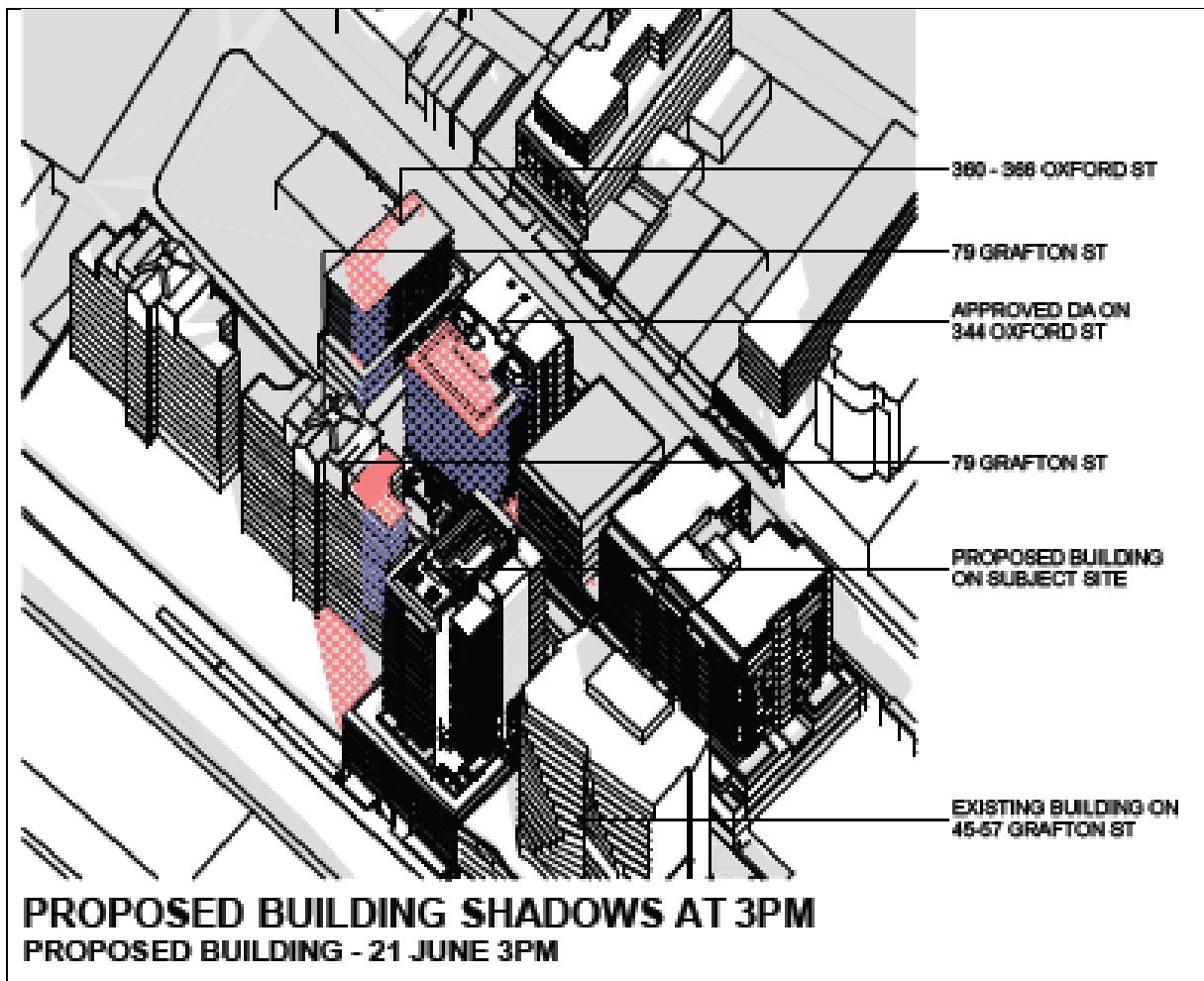


Figure 7: Extract from drawing DA9106 (red solid colour indicates additional shadow impact from the non-compliant building height element).

Should the Panel, as the consent authority seek to minimise this impact from the height non-compliance that causes an additional impact in order to '*preserve*' (as worded in the objective of the Clause) the environmental amenity of that neighbouring unit, the applicant has submitted an alternative sketch (attached for consideration). The sketch sets in the top level eastern side apartment by 2.5m and redesigns the top level including change in unit arrangement (units 1902 and 1903 on level 17) and adjustment to the roof terrace. The resultant effect reduces the shadow impact to the upper level private open space of unit 1503 of 79 Grafton Street to be no greater than the impact from a compliant building height form. This matter has been addressed as a condition of consent, should the Panel concur with reducing this impact.

Council has consistently accepted that the lift and plant rooms on top of a tower form in the Bondi Junction commercial core area, that exceeds the height limit and has limited impacts, provided they are located in the centre of the building, away from leading edges of the predominant tower form so they are not viewed from the public domain and particularly when they facilitate a commitment to a genuinely landscaped and well-appointed communal roof terrace with accessible facilities.

Acknowledging that these spaces will be visible from other buildings within the vicinity, being densely zoned, plant areas are acceptable provided they are suitably screened to improve the aesthetic from neighbouring tall buildings.

During the notification period, submissions regarding loss of views were received from the following properties;

- Forum building to the rear (south east) of the site at 310-330 Oxford Street;
- Commercial tenancies within 332-342 Oxford Street located at the rear (south) of the site;
- Mixed use building to the rear (south west) of the site at 350 Oxford Street;
- Residential properties within 79 Grafton Street located to the west of the site;

A snap shot of those views are below.



**Figure 8:** 332-342 Oxford Street – Level 7



**Figure 9:** 310-330 Oxford Street – level 9



**Figure 10:** 1502/79 Grafton Street view over side boundary



**Figure 11:** 1301/79 Grafton Street view over side boundary from kitchen window

The views to the harbour and city from 79 Grafton Street are across a side boundary and elements which exceed the height limit do not cause the loss of view, in that even if those protruding elements were reduced, the views would still be obscured with a compliant 60m building at the front of the site. Views to the harbour and bridge will be maintained from the front balconies of 79 Grafton Street over Grafton Street.

The views obtained from 332-342 (a commercial building) and 310-330 Oxford Street are from the north eastern facing windows of those buildings and are currently enjoyed over the subject site, which is presently underdeveloped. To retain such views given the zoning and development standards for the site is unreasonable.

The views from the rear of 350 Oxford Street would be diagonally across a side boundary and similar to the cases above, given that the height development standards for that particular site (38m) are lower than the building proposed (with a development standard of 60m). A fully compliant building on the subject site would also obscure those views having regard to an analysis utilising Council's 3D software imaging program.

In consideration of the principles of Tenacity vs Warringah Council, the view impacts are not caused by the non-compliance with the height standard and therefore are not unreasonable. Furthermore, the proposal meets the key development controls for urban form in the DCP relating to podium scale and tower setback. The following is outlined in order for the consent authority to consider whether objective (a) is met.

In consideration of objective (d) *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.*

This site was up-zoned in the now repealed Waverley LEP (Bondi Junction) 2010, and although not the same scale as the existing commercial building, has the characteristics of high density development commensurate with the 'character' determined by the development standards for the site. The minor non-compliance with the part of the roof of the building at the northern end of the site near Grafton Street and the plant equipment atop to the roof is not considered to be out of character with the locality, however the impact of shadowing on the upper level unit of 79 Grafton Street is an additional impact as a result of a non-compliance with a development standard. This is a matter for the Panel, as the consent authority to consider on whether this additional impact is acceptable on merit.

The proposed building is compatible with other new mixed use buildings within the area that have similar other breaches to the height limit for plant equipment, lift overruns and common open space areas and other minor deviations which result due to the slope of the land. The key built form controls in the DCP for this site including a 6 storey podium with 6m tower setback is also met and by virtue of following those controls is considered to complement the physical definition of the street to address objective (d).

Notwithstanding the above, it is noted that the objectives of the current LEP has recently been amended (December 2017) to replace Building Height objective 1(d) reference from 'existing' to 'desired future'. Having regard to the recent up zoning of the Bondi Junction area, the proposed development is considered to maintain these objectives.

With regards to the objectives of the B4 zone, the relevant objectives are to;

- *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.*

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. The building proposes to replace an existing commercial building with a shop top housing development, providing a mix of residential and commercial uses in line with the objectives of the mixed use zone.

Whilst Council would prefer that further additional commercial space is provided in the development to make up for the removal of the existing building, the proposal does not contravene any planning instruments to warrant refusal on that basis. Overall the proposal, despite the height non-compliance will meet the objectives of the B4 zone.

The breaches to the height plane for plant and lift overrun and minor deviations which respond to the slope of the land and the proposed building will be consistent with objectives of the development standard, if the Panel is satisfied with the additional overshadowing impacts to that upper level unit of 79 Grafton Street. If not satisfied, a condition is recommended to address that particular matter.

The matter is put to the Panel as the consent authority, to determine whether there are sufficient environmental planning grounds to justify contravening the development standard for the breach to the height limit and whether a variation to the development standard in this instance would be in the public interest considering the matters under Clause 4.6.

### ***Design Excellence***

Clause 6.9 of the LEP was in draft form and exhibited at the time that the application was lodged and therefore must be considered. The site is identified on the key sites map in the LEP and involves a building which has a height greater than 15m.

Clause (3) states that development consent must not be granted unless the consent authority considers that the development exhibits design excellence. Clause (4) outlines that the consent authority must have regard to the following matters:

- (a) *whether a high standard of architectural design, materials and detailing appropriate to the building type and location will be achieved,*
- (b) *whether the form and external appearance of the development will improve the quality and amenity of the public domain,*
- (c) *whether the development detrimentally impacts on view corridors,*
- (d) *how the development addresses the following matters:*
  - i. *the suitability of the land for development,*
  - ii. *existing and proposed uses and use mix,*
  - iii. *heritage issues and streetscape constraints,*
  - iv. *the relationship of the development with other development (existing or proposed) on the same site or on neighbouring sites in terms of separation, setbacks, amenity and urban form,*
  - v. *bulk, massing and modulation of buildings,*
  - vi. *street frontage heights,*
  - vii. *environmental impacts such as overshadowing, wind and reflectivity,*
  - viii. *the achievement of the principles of ecologically sustainable development,*
  - ix. *pedestrian, cycle, vehicular and service access, circulation and requirements,*

- x. the impact on, and any proposed improvements to, the public domain,
- xi. the quality and integration of landscape design

The applicant has provided the following response with regard to this clause.

*The proposal addresses this draft design excellence clause through the following measures:*

- *The tower incorporates a distinct profile that is designed to maximise internal amenity of the apartments through adequate access to sunlight and privacy. The presentation of the tower includes a strong, rectilinear form.*
- *Sustainable design measures are proposed, beyond BASIX minimums.*
- *Bulk and massing is appropriate and achieves a slim tower form.*
- *The public domain near the site will be improved by the provision of active retail uses at Grafton Street and Hegarty Lane, removal of two vehicular crossovers on Hegarty Lane, retention of existing street trees on Grafton Street and a new through site link.*
- *Street frontage heights and tower setbacks are consistent with WDCP 2012.*
- *The proposed through site link between Hegarty Lane and Grafton Street contributes towards the permeability of the locality and provision of direct access to key locations, particularly given that it links to the existing Hegarty Lane/Oxford Street through site link at 310-330 Oxford Street.*
- *Appropriate pedestrian, cyclist and vehicular access arrangements are proposed, and pedestrians and vehicle entry points are separated to avoid conflict.*
- *Passive surveillance is maximised on Hegarty Lane and Grafton Street by providing non-residential uses at the Lower Ground and Upper Ground Levels, facing the streets which will encourage pedestrian activity and active frontages.*
- *The view impacts of the development are reasonable and predictable given that the site is subject to a 60m height standard and 6:1 FSR standard.*
- *Solar access impacts of the development are reasonable and predictable given that the site is subject to a 60m height standard and 6:1 FSR standard.*
- *The proposal is generally consistent with the WDCP.*
- *Streetscape constraints (including the relationship to adjoining uses, podiums, street trees, slope on Hegarty Lane and street activation) have been appropriately addressed. There are no relevant heritage constraints.*
- *The relationship of the proposal to neighbouring sites has been considered appropriately (separation/setbacks, amenity and urban form).*
- *Landscaping is proposed at Hegarty Lane, the podium roof (Level 5) and the communal open spaces on Level 1 and the rooftop.*

#### **Councils' Response:**

The architect in their analysis of the design principles in the SEPP 65 (Design Quality of Residential Apartment Development) detailed that the building will use appropriate materials for the location including white rendered concrete, with stencilled patterns on the lower podium levels for visual interest. Stone clad entryways for articulation, zinc like awnings, frameless glass balustrading, and full height windows to living spaces. Landscaping is also used to enhance the building in the locality.

The public domain will be improved to Grafton Street and Hegarty Lane by providing active uses and interaction to the lane which is vastly different to the open car parking structure which currently dominates both facades of the building. A through site link and open space to the Hegarty Lane with tree will enhance the quality of the public space in the area.

The proposal will not impact view corridors from public spaces. The land is suitable for the development and provides a mix of commercial and residential uses as intended by the B4 mixed use

zone. The design responds to the constraints of the rail corridor beneath the site and provides a mechanical car stacker, rather than a podium dominated by car parking, as currently existing on site. This is an innovative solution to a site which is constrained by its locality, but finds the right balance between urban design outcomes (active street frontages and casual surveillance) and the desire for parking by future tenants.

A mix of commercial and residential uses are provided on the site, including a mix of studio, 1, 2 and 3 bedroom units. Although Council acknowledges the loss of commercial floor space due to the demolition of the 9 storey commercial building, the development will comply with the DCP guidelines for commercial floor space by providing ground and first floor commercial uses. There are no statutory requirements regarding commercial floor space for this site.

Bulk, scale and massing of the proposed building is appropriate given the zoning and development standards set for the site in terms of urban form. The siting of the tower is considered to be suitable responding to the relationship with existing residential flat building to the east, proposed building to the west, commercial building to the rear as well as the newly constructed building to the rear, known as the 'Forum'. Amenities are considered to be appropriately managed between the buildings through the internal layout, screening and modulation of the building.

The podium of the building follows the design guidance of the DCP which has site specific controls for the Bondi Junction centre, presenting an appropriate 6 storey podium to the street and a tower form setback a further 6m from the street.

Environmentally, the applicant has made a commitment to reducing the greenhouse gas emissions of the development to 30% less than a reference building only (i.e. BCA compliant) and conditions of consent are recommended to ensure that the detailed design of the building ratifies this commitment in the construction certificate details and drawings.

Council provided specific advice regarding vehicular and service access to the site and the applicant has followed this by utilising the existing vehicle crossing to the site and providing an on-site waste collection facility. The size of the loading area allows for Council's current garbage vehicle to enter the site and collect waste.

If the application is approved, conditions are recommended for the public domain to be upgraded in accordance with Council's Public Domain Guidelines, which as a result of the development will provide a wider footpath to Hegarty Lane and new tree and footpath to Grafton Street. Landscaping is incorporated into the design of the building, including a feature tree to the rear lane which will enhance this public/private space.

In conclusion, Council suggests to the consent authority that this Clause is met and design excellence is achieved based on the considerations of subclause (4).

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

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

**Table 5: Waverley DCP 2012 – Part B General Provisions Compliance Table**

| Development Control   | Compliance | Comment   |
|---|------------|---|
| 1. Waste  | Yes        | A waste management plan has been submitted with the application and conditions of consent recommended. Council's Manager Transport and Development has reviewed the plans and provided that 3.8m floor to ceiling height clearance is provided in the basement level, that the residential waste can be collected using Council's Residential Waste Vehicle. Commercial Waste using a private contractor will be able to be collected on site in the designated area.   |
| 2. Energy and water conservation <ul style="list-style-type: none"> <li>Energy assessment report required for mixed use development over \$3 million</li> </ul> | Yes        | In regards to the energy consumption and GHG emissions of the proposed building, two key documents have been provided and amended: <ul style="list-style-type: none"> <li>A BASIX certificate showing BASIX targets that exceeds minimum requirements</li> <li>An energy assessment report showing that the proposed developed is predicted to decrease GHG emissions by 32% compared to a reference building.</li> </ul> Further design and verification of energy and GHG emissions performance should be provided prior to construction to verify the performance of the building to be delivered. This matter can be addressed as a condition of consent. |
| 5. Tree preservation  | Yes        | Situated at the front of the building on the footpath on the eastern boundary on the footpath is a mature Plane tree ( <i>Platanus x acerifolia</i> ). The tree is in good condition and provides much needed shade and amenity for this section of Grafton Street. This tree is to be protected. In addition there are two smaller Koelreuteria paniculata trees located on the footpath in front of the building. Conditions of consent are recommended for their retention.  |

| Development Control  | Compliance | Comment   |
|--|------------|---|
| 6. Stormwater  | No         | <p>The stormwater plans submitted with the application do not comply with the Waverley Development Control Plan 2012 in reference to Waverley Council's Water Management Technical Manual. In this regard,</p> <ul style="list-style-type: none"> <li>• On-Site Stormwater Detention (OSD) tank and its details are required e.g. dimensions, cross &amp; long sections, top water level, details of orifice plate including orifice diameter &amp; depth of water above centreline of orifice etc.</li> <li>• A Stormwater Management Plan including On-site Stormwater Detention (OSD) and its details along with completed <u>mandatory checklist as set out in page 22</u> of Waverley Council's Water Management Technical Manual is required.</li> </ul> <p>This matter can be addressed by a condition of consent.</p> |
| <p>7. Accessibility and adaptability</p> <ul style="list-style-type: none"> <li>• Must comply with e DDA 1992, the relevant Australian Standards and the BCA.</li> <li>• 10% of the development to be adaptable and certified</li> </ul>                   | Yes        | <p>An access report was provided with the initial submission to Council, prepared by Access Australia, assessing Type G, H and U as adaptable units. That report has not been updated with the amended plans.</p> <p>The amended plans amend the adaptable units to Type G, F and U, which include 8 of the apartments within the development, equating to 10% of the development. Adaptable units must be certified as 'adaptable housing units' by an independent, suitably qualified person. This matter can be addressed as a condition of consent.</p>   |
| <p>8. Transport</p> <p><u>Car parking</u></p> <p>78 residential units including:</p> <ul style="list-style-type: none"> <li>- 10 studio apartments - Nil</li> <li>- 25 x 1 beds (0.6)</li> <li>- 30 x 2 beds (0.9)</li> <li>- 13 x 3 beds (1.4)</li> </ul> | Yes        | <p>The ADG requires the RMS rates to be used, as they are less than the DCP rates.</p> <p>79 car spaces are provided in the car stacker, and 1 car share space outside of the car stacker.</p> <p>Required spaces</p> <p>1 bed – 0.6 x 25 = 15<br/>2 bed- 0.9 x 30 =27<br/>3 bed – 1.4 x 13 = 18.2<br/>TOTAL = 60 spaces under RMS guidelines</p>   |

| Development Control  | Compliance | Comment  |
|--|------------|--|
| Visitor Spaces: 1 per 5 (DCP)<br>1 per 5-7 units (RMS)   | Yes        | Visitor spaces: 16 spaces required based on the RMS rate of 1 per 5 which aligns with the WDCP rate<br>76 car parking spaces total required for residents and visitors and 79 spaces are provided in the car stacker   |
| Commercial Space: 475m <sup>2</sup>  | Yes        | Min: Nil<br>Max: 9 spaces (based on retail premises rate given the uses are unknown)<br>3 excess spaces are available in the car stacker and can be provided for staff of the commercial/business premises which is acceptable given the minimum is nil.             |
| <u>Bicycle Parking</u><br>1 space per unit<br>1 visitor space per 10 units<br>1 per 150m <sup>2</sup> of commercial/retail GFA | Yes        | 84 bike spaces are proposed in the basement and 4 spaces at the Grafton Street frontage and 4 at the Hegarty Lane— Total 92<br>Required: 78 spaces for residents<br>8 spaces for visitors<br>3 spaces for commercial/retail<br>TOTAL : 89 spaces required - complies |
| <u>Motorcycle Parking</u><br>3 per every 15 car spaces   | No         | 15 motorcycle spaces are required, however only 6 are provided. A variation to this controls is considered acceptable by Council's Manager Transport and Development. This is noted in the referrals section of this report.   |
| <u>Loading Bay</u><br>Required for over 50 dwellings   | Yes        | A loading bay is provided in lower ground floor level.   |
| <u>Urban Design</u>  | Yes        | The proposal is acceptable with regards to the urban design guidance in the DCP using the existing vehicle crossing to Grafton Street and providing on site collection.  |
| <u>Care Share</u><br>1 for every 90 dwellings  | Yes        | A car share space has been provided in the lower ground level of the development.<br><br>Conditions reiterating the above allocations will be imposed.   |

| Development Control   | Compliance | Comment  |
|---|------------|--|
| 10. Safety<br><br>Design and management of the built environment to reduce the opportunity for crime. | Yes        | The ground floor and upper ground floor levels feature a through site link and active retail spaces to provide casual surveillance to the site. The arcade through the site is generously proportioned, and will be overlooked by neighbouring residential units. The residential lobby area is clear to delineate from the through site link for residents.<br><br>A condition is recommended to require a management plan for the through site link, including CCTV to address this part of the DCP. |
| 11. Public art<br><br>Public Art is encouraged to enhance the LGA.                                    | Yes        | Public Art is proposed at the rear of the site to Hegarty Lane. A report has been provided with a concept, however such details should be in accordance with Council's Public Art policy and this can be addressed as a condition of consent prior to the building being occupied.   |

**Table 6: Waverley DCP 2012 – Part C2 Multi Unit and Multi Dwelling Housing Compliance Table**

Only those controls from Part C2 which relate to the proposed development are assessed in the table below.

| Development Control   | Compliance                   | Comment  |
|---|------------------------------|--|
| <b>2.4 Excavation</b>   |                              |  |
| <ul style="list-style-type: none"> <li>• No fill to raise levels</li> <li>• Minimum setback of 1.5m from side boundaries</li> <li>• Under building footprint except main access ramp</li> <li>• Basements no more than 1.2m out of the ground</li> <li>• Geotechnical report required when &gt; 3m in depth or 25% slope</li> </ul> |                              |  |
| <b>2.5 Setbacks – Superseded by Urban Design Controls in the Part E1</b>  |                              |  |
| <b>2.6 Length and depth of buildings</b>  |                              |  |
| <ul style="list-style-type: none"> <li>• Maximum building length: 24m</li> <li>• Maximum unit depth: 18m</li> </ul>   | Yes<br><br>Yes<br>(on merit) | The lower levels of the building (the podium) are required to occupy the whole frontage of the site in accordance with the controls in Part E1 of the DCP.<br><br>The tower form is less than 24 in width. Unit Type on level 7-17 is a cross through apartment with a depth of more than 18m, but the amenity of that apartment is not compromised as a result, still meeting the objectives of the control which limits units to a depth of 18m. |

| Development Control  | Compliance        | Comment  |
|--|-------------------|--|
| <ul style="list-style-type: none"> <li>• Maximum depth of single aspect unit: 8m from a window</li> </ul>  | Yes<br>(on merit) | The single aspect units have a distance of around 8m from a window having acceptable amenity.  |
| <b>2.7 Building separation</b>   |                   |  |
| 9 storeys and above (over 25m) <ul style="list-style-type: none"> <li>• 24m between habitable rooms and balconies</li> <li>• 18m between habitable rooms/balconies and non</li> <li>• 12m between non habitable rooms</li> </ul>             | No                | <p>The Apartment Design Guide provides separation guidelines in relation to visual privacy in addition to Council's controls and this has been addressed in the consideration of SEPP 65 earlier in this report. The site specific controls for Bondi Junction also override this control.</p> <p>The proposed development has achieved compliance with the objectives of this control as it provides adequate visual and acoustic privacy for residents, incorporates appropriate massing and space between existing surrounding buildings and allows for the future development of surrounding sites without compromising separation requirements. Strict compliance with this control would be unachievable given the dimensions of the site and proximity to surrounding buildings. The proposed building is accepted on merit in this regard.</p> |
| <b>2.8 Building design and streetscape</b>   |                   |  |
| <ul style="list-style-type: none"> <li>• Respond to streetscape</li> <li>• Sympathetic external finishes</li> </ul>  | Yes               | The Bondi Junction area is undergoing change. The existing building has predominately glass façade, being a commercial building and the adjoining eastern building a mix of masonry and glazing. Unlike the existing flat glass building, the proposal incorporates an articulated façade with balconies and a mix of solid and non-reflective surfaces. Horizontal elements are proposed up the tower form to enhance the verticality of the building. Landscaping is proposed around the podium level and will contribute to the streetscape.  |
| <b>2.11 Vehicular access and parking</b>   |                   |  |
| <ul style="list-style-type: none"> <li>• Integrated into the design</li> <li>• Secondary to pedestrian entrance</li> <li>• Maximum of 1 x 2-way driveway</li> <li>• From rear of site where possible</li> <li>• Pedestrian safety</li> </ul> | Yes               | The vehicular entrance to the building is to Grafton Street, rather than the rear lane, due to the existence of the rail corridor beneath the site which prevents any further excavation. The Grafton Street vehicular access point is considered the most appropriate for the site given that it already exists and is the lower end of the site. The access point is separate to the pedestrian access to the building and is 2 way. A waiting bay is provided for cars waiting to use the mechanical stacker.   |

| Development Control   | Compliance | Comment   |
|---|------------|---|
| <b>2.12 Pedestrian access and entry</b>   |            |   |
| <ul style="list-style-type: none"> <li>• Entry at street level</li> <li>• Accessible entry</li> <li>• Legible, safe, well-lit</li> </ul>  | Yes        | The pedestrian entrance to the building is integrated into the through site link of the development. It is accessible and considered to be safe.  |
| <b>2.13 Landscaping</b>   |            |   |
| <ul style="list-style-type: none"> <li>• Minimum of 30% of site area landscaped.</li> <li>• 50% of the above is to be deep soil</li> </ul> <p>ADG control:</p> <ul style="list-style-type: none"> <li>• 7% of the site, deep soil zones should be provided</li> </ul> | No         | <p>The proposal cannot comply with the control set in part C2 of the DCP and the building footprint controls in part E1 of the DCP do not support the requirements for deep soil planting.</p> <p>Approximately 276m<sup>2</sup> of area is provided as soft landscaping at the upper ground level, level 1, level 4, 5 and roof top. A new street tree will also be provided to Grafton Street to enhance the setting of the site. This landscaping is considered to address the objectives of all the controls.</p> |
| <b>2.14 Communal open space</b>   |            |   |
| <ul style="list-style-type: none"> <li>• The ADG (section 3D) requires 25% of the site area to be nominated as communal open space</li> </ul>   | No         | This matter has been discussed earlier in the report in consideration of the ADG controls and is considered acceptable on merit.  |

|  |                              |  |
|--|------------------------------|--|
| <b>2.15 Private open space - Superseded by the ADG controls discussed above</b>  |                              |  |
| <b>2.16 Solar access and overshadowing</b>   |                              |  |
| <ul style="list-style-type: none"> <li>Controls for the solar access related to the proposed development are covered in the ADG.</li> <li>Adjoining properties to retain minimum of 2hrs of sunlight during winter solstice</li> </ul> | Yes<br><br>Yes<br>(on merit) | <p>The apartments within the proposed development receive adequate sunlight.</p> <p>The proposed building by virtue of the zoning and development standards permitted for the site will have an impact on the adjoining buildings to the rear of the site to the south. As noted in the DCP, at higher densities sunlight is harder to protect and the claim to retain it is not as strong. The proposed development reasonably complies with DCP built form controls envisaged for the site which seek facilitate sunlight between properties. Light will filtrate between the gaps between buildings to the directly adjoining properties between the hours of 9am and 3pm throughout the year, the worse being the 21 June.</p> |
| <b>2.17 Views and view sharing</b>   |                              |  |
| <ul style="list-style-type: none"> <li>Minimise view loss</li> </ul>   | Yes                          | Submissions were received from adjoining properties with regard to view loss. Those have been discussed elsewhere in this report.  |
| <b>2.18 Visual privacy and security</b>  |                              |  |
| <ul style="list-style-type: none"> <li>Prevent overlooking of more than 50% of private open space of lower level dwellings in same development</li> </ul>  | Yes                          | The apartments within the development have been designed to face away from the properties either side of the site. Privacy screening is proposed for those apartments which face the rear building. Screening is proposed between apartment balconies within the development which are in close proximity to avoid direct overlooking. Roof top terraces are a characteristic of the area.   |
| <b>2.19 Apartment size and layout - Superseded by the ADG controls discussed above</b>   |                              |  |
| <b>2.20 Ceiling heights - Superseded by the ADG controls discussed above</b>   |                              |  |
| <b>2.21 Storage - Superseded by the ADG controls discussed above</b>   |                              |  |
| <b>2.22 Acoustic privacy</b>   |                              |  |
| <ul style="list-style-type: none"> <li>Internal amenity by locating noisy areas away from quiet areas</li> </ul>   | Yes                          | Acoustic glazing is recommended for the apartments to ensure that noise from the road (specifically Syd Einfeld Drive) is within the acceptable limits. A detailed report is requested as a condition of consent requiring an acoustic report to be prepared to address road noise in accordance with the RMS. In general the building has been designed to limit the number of apartments per floor and shared walls to provide sufficient amenity to residents.  |
| <b>2.23 Natural ventilation - Superseded by the ADG</b>  |                              |  |
| <b>2.24 Building services</b>  |                              |  |
| <ul style="list-style-type: none"> <li>Must have a minimum of 2m setback from the building edge</li> </ul>   | Yes                          | The garbage rooms and utilities are integrated into the lower ground floor plan and do not dominate the frontage of the building. Mail boxes   |

|   |  |   |
|---|--|---|
| <ul style="list-style-type: none"> <li>Mail boxes to be provided near the main entrance.</li> </ul> |  | have not been shown on the plans but can be requested as a condition of consent. The building services are away from the edges of the building. |
|---|--|---|

**Table 7: Waverley DCP 2012 – Part D1 Commercial and Retail Development Compliance Table**

| Development Control  | Compliance | Comment   |
|--|------------|---|
| <b>1.1 Design</b>  |            |   |
| 1.1.1 Frontages  | Yes        | The retail frontages are of an open design to provide an active frontage and display function to both Grafton Street and Hegarty Lane. An awning is proposed to both frontages, details of which are to be provided as a condition of consent. Clear Street numbering is also to be provided as a condition of consent.   |
| 1.1.2 Lighting   | Yes        | A condition of consent is recommended to address lighting within the development. This is not a matter which requires detail at DA stage.   |
| 1.1.3 Amenity  | Yes        | The plant rooms and any associated facilities required for the future use of the premise (e.g. ducting, vents, air conditioners, refrigerator units, mechanical plant, etc.) are proposed within the building and conditions recommended to ensure that they are acoustically treated.  |
| <b>1.2 Noise</b>   |            |   |
|  | Yes        | A condition is recommended which requires that all plant, including air conditioning units be within the building to address noise impacts. A preliminary acoustic report was submitted with the application which was reviewed by Council's Environmental Health Officer and conditions of consent recommended, including the requirement for a detailed acoustic report once the mechanical plant once that further construction certificate design development has occurred. |
| <b>1.3 Hours of operation</b>  |            |   |
| General base trading hours:<br>Monday to Saturday: 7.00am to 11.00pm;<br>Sunday: 7.00am to 10.00pm.<br>Extended trading hours on a 1 hr trial basis can be considered to midnight. | N/A        | This application does not seek permission for the use of any of the commercial or retail premises. This matter would be assessed when that occurs.  |

**Table 8: Waverley DCP 2012 - Part E1 Bondi Junction Compliance Table**

| Development Control   | Compliance | Comment  |
|---|------------|--|
| <b>1.2 Urban form</b>   |            |  |
| <ul style="list-style-type: none"> <li>• 6 storey wall on other streets</li> <li>• Tower to be setback from street edge</li> <li>• Slender tower</li> </ul>                       | Yes        | A 6 storey street wall is proposed to Grafton Street as per the DCP controls. A tower form is proposed on top, setback 6m from the podium level.   |
| <b>1.3 Building use</b>   |            |  |
| <ul style="list-style-type: none"> <li>• Grafton Street is a secondary street</li> <li>• Retail and commercial frontages are encouraged along laneways where possible.</li> </ul> | Yes        | The Ground Floor to Grafton Street is proposed for retail purposes as are the 2 spaces at the rear of the site to Hegarty Lane. The First Floor area to Grafton Street are proposed to be for commercial purposes complying with the DCP controls.   |
| <b>1.4 Access and movement</b>  |            |  |
| 1.4.1 Arcades, through-site links and squares   | Yes        | The application proposes a through site link to improve pedestrian permeability through the area.  |
| 1.4.2 Vehicular and service access to lots  | Yes        | The DCP recommends that vehicular access be provided off the laneway, but as noted in other sections of this report, given the rail corridor beneath the site, existing crossing to Grafton Street and active uses to the Lane, the use of the existing vehicular crossing to Grafton Street is preferred in this case.  |
| 1.4.3 Pedestrian overpasses and underpasses   | Yes        | An overpass or underpass is not proposed in this application.  |
| 1.4.4 On-site parking   | Yes        | Parking for this application is proposed in a mechanical stacker due the constraints of the site. This replaces the 3 levels of above ground parking currently on site which is not a supported urban design outcome for the site.   |
| <b>1.7 Active street frontages</b>  |            |  |
| Secondary street  | Yes        | At least 50% of the frontage is to be associated with retail uses; access and display areas.   |
| <b>1.8 Street alignment and front setbacks</b>  |            |  |
| Buildings to be aligned to street boundary  | Yes        | The building, as modified predominantly aligns with the property boundaries. At the lower ground levels to both Grafton Street and Hegarty Lane the building does not strictly align to the boundary, and conditions are recommended which will require the applicant to liaise with Council to determine the appropriate treatment of these areas to delineate between the two. |
| <b>1.9 Separation</b>   |            |  |
| To residential buildings<br>Level 1-5 – 12m<br>Level 6 and above – 24m  | Yes        | The building is orientated to the front and side boundaries as per the DCP guidance. Separation distances are recommended in the DCP, however are superseded by the ADG controls which was addressed earlier in this report.   |

| Development Control  | Compliance | Comment   |
|--|------------|---|
| To commercial buildings<br>Level 1-5 – 9m<br>Level 6 and above – 18m   | Yes        | Based on Council's DCP controls, the proposal would comply with the distance separation controls to the adjoining western and southern commercial buildings.  |
| <b>1.10 Side and rear boundary setbacks</b>  |            |   |
| Side boundaries: Avoid orienting living areas to the side boundaries where possible.<br><br>The block edge building form is to be orientated generally to the front and the rear boundaries.<br><br>Rear boundary – distance separation controls to be met | Yes        | The proposed building does not have any windows which overlook the adjoining eastern building, apart from a screened window a circulation area. The western elevation has secondary windows which are appropriately screened from the existing commercial building and proposed residential tower.<br><br>The block edge form (the podium) has no windows to the side boundary and is orientated to the front and rear boundaries of the site.<br><br>The matter of separation between the buildings to the side and rear is discussed in the consideration of the Apartment Design Guide earlier in this report. |
| <b>1.11 Building footprint</b>   |            |   |
| Refer to controls and Figures 20, 21, 22   | Yes        | The proposal follows the guidance of the DCP having block edge form to the street with tower setback from the street wall above. The tower form has been designed to be slim enough for the residential units to be no greater than 8m from a source of sunlight and natural light into the common circulation areas.   |
| <b>1.12 Building orientation</b>   |            |   |
| <ul style="list-style-type: none"> <li>Block edge to address street</li> <li>No blank walls to public streets.</li> </ul>  | Yes        | Block edge building forms are to be oriented to and address the street and tower forms to the front and the rear of lots where possible. No blank walls front the public street.  |
| <b>1.13 Number of storeys</b>  |            |   |
| <ul style="list-style-type: none"> <li>Maximum of 16 Storeys with a 6 storey podium/street wall</li> </ul>   | No         | Given the minimum floor to ceiling heights required in the DCP, it is acknowledged that 19 storeys can be achieved predominantly within the height limit. This is not a matter which the Council would recommend refusal of the application, noting that this control is amended in the more recently adopted (and current) DCP, Amendment 6 to 19 storeys, by which the development would comply.  |
| <b>1.14 View, vista and tree preservation</b>  |            |   |
| <ul style="list-style-type: none"> <li>Retain vistas down Newland Street, Bronte Road and Grosvenor Street both to the south and the north.</li> </ul>   | Yes        | The proposal does not interrupt the view corridors from public spaces identified in Figure 27 of the DCP.   |

| Development Control  | Compliance | Comment   |
|--|------------|---|
| <b>1.15 Open spaces at the street front</b>  |            |   |
| <ul style="list-style-type: none"> <li>Not encouraged for private buildings</li> <li>Only for public buildings where appropriate</li> </ul>  | Yes        | The application proposes a through site link which has an open area at the front of the site to Hegarty Lane. Council's Urban Design Team have reviewed the proposal and raised no issues to this space with regards to the objectives of the controls.   |
| <b>1.16 Design excellence</b>  |            |   |
| Development consent must not be granted for development to which this Section applies unless the consent authority considers that the development exhibits design excellence.  | Yes        | The proposal has evolved to respond to the matters raised by Council during the Pre-DA process and the assessment process to respond to the DCP requirements and other issues. This matter has been discussed earlier in this report. Conditions are recommended to further refine the detail of the proposal to ensure that it meets the objective of this control.  |
| <b>1.17 Building elevations</b>  |            |   |
| <ul style="list-style-type: none"> <li>Architecturally designed and contribute to the street in which they are located.</li> <li>Incorporate principles of passive design</li> <li>Refer to figures 29 and 30</li> </ul> | Yes        | The facades of the building are articulated with openings and screening to respond to the context. Unlike other buildings in Bondi Junction, the site is exposed to road noise as well as the tunnel underneath. Recommendations are in the noise report to address these issues. A trickle ventilation system is proposed in those apartments within the building which will be affected by noise from the road and may require windows and doors to be shut during noisy periods. Specific testing is required to ensure that this will still provide adequate ventilation. Such testing is addressed as a condition of consent prior to the issue of ANY construction certificate. |
| <b>1.18 Awnings and colonnades</b>   |            |   |
| <ul style="list-style-type: none"> <li>Height range of 3.2m - 4.2m</li> <li>To step with topography</li> <li>Provide lighting</li> <li>Be consistent in appearance</li> </ul>  | Yes        | An awning is proposed to both Grafton Street and Hegarty Lane. The height above the footpath to Oxford Street is 4m to align with the level between lower ground and upper ground level. An awning to the lane is not required by the DCP. Details of the finishes, lighting and relationship to the adjoining buildings are to be provided a condition of consent.   |
| <b>1.19 Designing buildings for flexibility</b>  |            |   |
| <ul style="list-style-type: none"> <li>Design building to permit adaptation for other future uses, with minimal structural and service alteration</li> </ul>   | Yes        | The retail and commercial spaces as proposed appear to be flexible for a range of commercial activity within the building. Sanitary facilities are provided to account for a potential food business.   |
| <b>1.20 Ceiling heights</b>  |            |   |
| <i>Minimum floor to floor heights:</i> <ul style="list-style-type: none"> <li>Ground floor: 4m</li> <li>First floor: 3.5m</li> </ul>   | Yes        | The lower ground and upper ground levels have 4.2m and 4m floor to floor heights respectively.  |

| Development Control  | Compliance | Comment   |
|--|------------|---|
| <ul style="list-style-type: none"> <li>Above first floor, commercial uses: 3.5m</li> </ul>   |            | The residential floors have sufficient distance to accommodate compliant 2.7m floor to ceiling heights.   |
| <b>1.21 External living areas</b>  |            |   |
| <ul style="list-style-type: none"> <li>Accessed from living area</li> <li>12m<sup>2</sup> area and 2.5m depth</li> <li>Privacy screening and balustrade to be considered according to circumstances (considering climate, wind, privacy, casual surveillance)</li> </ul> | Yes        | The development provides sufficient external living areas to adequately address the Apartment Design Guide which supersedes this DCP. On merit the adequate space and screening is provided   |
| <b>1.22 Wind mitigation</b>  |            |   |
| <ul style="list-style-type: none"> <li>Buildings &gt; 9 storeys, wind tunnel study is required</li> </ul>  | 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. A trickle ventilation system is proposed in those apartments within the building which will be affected by windy conditions. Specific testing is required to ensure that this will still provide adequate ventilation. |
| <b>1.23 Reflectivity</b>   |            |   |
| <ul style="list-style-type: none"> <li>Mitigate reflective surfaces to a maximum of 60% of facade surface area above ground level</li> <li>Report required for buildings with high levels of glazing.</li> </ul>   | No         | The SEE submitted with this application notes that the proposal will be able to comply with the standards set in the DCP. A report was not provided to support this, therefore a condition is recommended to ensure that the building will minimise solar reflection from the glass facades of the building.  |
| <b>1.24 Roller shutters</b>  |            |   |
| <ul style="list-style-type: none"> <li>Prohibited on shopfronts</li> </ul>   | Yes        | This matter can be addressed as a condition of consent.   |

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

#### ***Car parking***

Initially, it was proposed by the applicant to replicate the 3 levels of parking provided in the podium as currently demonstrated on the site which is not permitted in the DCP or a supported urban design outcome in the DCP.

The site is constrained by the rail corridor beneath the site and therefore is limited with regard to excavating a basement car parking area. The mechanical stacker was put forward as an innovative solution to provide car parking, as the WDCP 2012, Amendment 5 which the DA was lodged under, had a requirement for car parking. Under the current DCP, Amendment 6, however, there is a nil

requirement for car parking. Such parking solutions whilst not common, are utilised on constrained sites and with good design, can work. Whilst this arrangement may not be desirable for all future residents, in a practical sense it addresses the parking constraints of the site, and may suit those who commute by public transport during the week and only use a personal vehicle on the week-end. Although out of the ordinary, there is no justified reason to not support this aspect of the application. A management plan is requested as a condition of consent to detail how the residential, commercial and visitor spaces within the stacker will be managed.

#### ***Waste collection and access***

On-site waste collection is important in the Bondi Junction area to ensure streets aren't cluttered with bins on collection day to hinder pedestrian movement and enhance the amenity of the area. Council had advised the applicant of this matter in the Pre-DA advice, noting that the building should be designed to accommodate a Medium Rigid Vehicle for on-site residential waste collection to accommodate Council's trucks. However the traffic report and SEE notes that the building has been designed to accommodate only a small rigid vehicle.

The justification provided by the applicant refers to the excavation constraints of the site, which precludes the building to be designed with enough clearance to allow a Medium Rigid Vehicle (MRV) to enter the site from the Grafton Street frontage.

Council's Traffic Engineer has reviewed the proposal and confirmed that Council's waste vehicles are 3.6m and the proposed head clearance of 3.8m would be acceptable leading to and from the loading dock area in the lower ground level of the building. It is considered from the architectural drawings that this 3.8m head clearance can be achieved including the building entry height on Grafton Street. A condition of consent is to be imposed to ensure that this clearance height is maintained in the construction certificate drawings so that waste can be collected on site by Council's Waste Collection Vehicle.

#### **3.2 Section 4.15(1) (b) – Other Impacts of the Development**

The proposed development is capable of complying with the BCA.

It is considered that the proposal will have no significant detrimental effect relating to environmental, social or economic impacts on the locality, subject to appropriate conditions being imposed.

#### **3.3 Section 4.15 (1) (c) – Suitability of the Site for the Development**

The proposal responds to the LEP development standards set for the site and is considered to be suitable for the site.

#### **3.4 Section 4.15 (1) (d) – Any Submissions**

The original 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*. Amended plans were also notified in October 2018. Refinements have been made to the plans since the second notification period, which reduce the bulk of the podium building to Hegarty Lane by increased setbacks, reduce the number of units to 78 and other minor matter which did not require further notification in accordance with the DCP.

Twenty one unique submissions were received during both notification periods, as well as a petition (containing 304 signatures). The issues raised in the submissions and petition during both notification periods are summarised and discussed below.

**Table 9: Summary of property addresses that lodged a unique submission**

| Property  |
|---|
| 43 Ruthven Street, Bondi Junction   |
| 47 Brisbane Street, Bondi Junction  |
| Level 7, 332-342 Oxford Street, Bondi Junction  |
| 1502/79 Grafton Street, Bondi Junction  |
| 25 Oatley Street, Bondi Junction  |
| 1301/79 Grafton Street, Bondi Junction  |
| Strata Plan 62842 - 332-342 Oxford Street, Bondi Junction (multiple units within this building) |
| 1301/79 Grafton Street, Bondi Junction  |
| PO Box 2112, Bondi Junction   |
| 302/79 Grafton Street, Bondi Junction   |
| 1204/79 Grafton Street, Bondi Junction  |
| 1101/79 Grafton Street, Bondi Junction  |
| 1301/79 Grafton Street, Bondi Junction  |
| 704/79 Grafton Street, Bondi Junction   |
| 310 -330 Oxford Street, Bondi Junction  |
| 905/350 Oxford Street, Bondi Junction   |
| 1302W/310-330 Oxford Street, Bondi Junction   |

***Issue: Unnecessary impacts from breach to 60m height limit***

**Response:** This matter has been discussed in the consideration of Clause 4.6 of the LEP earlier in this report.

***Issue: Non compliance with the 16 storey height control***

**Response:** Given the minimum floor to ceiling heights required in the DCP, it is acknowledged that 19 storeys can be achieved predominantly within the height limit. This is not a matter which the Council would recommend refusal of the application, noting that other buildings within this height limit recently approved and constructed are 19 storeys. Acknowledging the anomaly between the 60m height development standard and DCP controls, this has been amended in the current DCP, Amendment 6, to 19 storeys, by which the development would comply.

***Issue: Breach to 6m tower setback at the front of the site***

**Response:** The tower form predominantly complies with the 6m setback from the podium, apart from some points of articulation through blade walls and balconies. This meets the intention of the controls and is not a matter which warrants refusal of the application.

***Issue: Non compliance with ADG setback controls and the Waverley DCP***

**Response:** The proposal has been amended to provide greater separation to the adjoining buildings to achieve compliance with the guidance of the Apartment Design Guide and address the objectives. Where variations are proposed, they are justified by the lack of windows/privacy treatments, etc. to address the intent of the guideline. The non-compliances with the DCP have been discussed within this report.

***Issue: Overshadowing impacts from breach in height***

**Response:** This matter has been discussed earlier in this report.

**Issue: Loss of views to the sky and harbour**

**Response:** This matter has been discussed earlier in this report in the consideration of Clause 4.6 and it is not a matter which would warrant refusal of the application. Larger view corridors will be available down the sides of the building than the existing building which is located closer to the side boundaries than the proposed tower form of the building.

**Issue: Noise and dust from construction works**

**Response:** Should the application be approved, conditions of consent will be imposed regarding noise and dust 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. It should be noted that construction works are limited on the week-ends to offer respite to neighbouring properties. The recommended conditions outline the standard hours imposed for DA's within the LGA.

**Issue: Objection to activating uses to Hegarty Lane**

**Response:** Council's DCP encourages retail and commercial frontages along laneways where possible to make them active spaces. This laneway has active uses in the building across the lane and active uses approved in other not yet constructed buildings in the lane.

**Issue: Impacts on the *Forum* building (310-330 Oxford St) and 350 Oxford Street**

**Response:** Objectors from the recently constructed *Forum* building at the rear of the site across the lane at 310-330 Oxford Street have opposed the proposal noting that the building will overshadow their development taking views and northern sunlight and privacy currently afforded to the property.

Similar concerns have also been raised from residents in 350 Oxford Street, a site that has recently finished construction during the time that this DA has been under assessment.

At midwinter, the proposed building will overshadow the eastern half of the northern façade of units of the *Forum* (the part of the building closest to the proposed site) between 9am and 11am, for the eastern half of that building, moving to the commercial building at 332 Oxford Street after that.

The proposed building has been setback from the rear boundary to provide appropriate separation distances between buildings, as well as privacy screening to meet the guidance of the Apartment Design Guide to address privacy and overlooking. The living areas of the majority of the apartments within the tower are orientated to the north of the site. The building at 350 Oxford Street is located to the south east of the site and will be overshadowed by the proposed building from 1pm to 3pm.

As noted above, the views currently enjoyed from these buildings are due to the current site being undeveloped in relation to the development controls stipulated for the site which have been in the statutory framework since 2010, and the lower zoning of those sites opposite which has a height limitation of 38m. By virtue of the development standards for the site, those views currently gained by units within the subject views are unreasonable to be retained as they are not anticipated by the statutory controls.

Privacy is addressed by meeting the distance separation controls in the Apartment Design Guide and the use of privacy screening and louvres. Living areas are predominantly orientated to the front of the site for the majority of the tower form.

### ***Issue: Traffic and safety***

**Response:** The applicant's traffic report assesses the proposal against the existing building which is currently a commercial building which has 3 levels of car parking. The consultant concludes that based on the RMS traffic generation rates, the proposed building would have less vehicle trips during the peak periods compared to the existing commercial building. The traffic generation rates for commercial development are based on the floor space of the building. It should be noted that the proposed building and the existing building have similar number of car spaces providing 76 currently and 80 proposed for the proposed development. Objections were made to additional traffic to Hegarty Lane, however the application proposes vehicular access only through the existing cross over to Grafton Street.

### ***Issue: Too much development***

**Response:** The objectors have noted that Bondi Junction has too much development. The Waverley Local Environmental Plan sets the strategic framework for the Local Government Area and the site has been designated the highest FSR and Height development standards in the LEP. 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 this application.

### ***Issue: Concerns regarding wind***

**Response:** A wind report was submitted with the application, utilising wind tunnel testing. The report indicates that that wind conditions for the majority of trafficable outdoor locations within and around the development will be suitable for their intended uses, subject to wind mitigating treatments such screening, balustrading and plantings. A condition of consent is recommended to ensure that the recommendations of the report are implemented.

### ***Issue: Loss of views and value***

**Response:** This matter has been discussed in the issues section above. Property values are not a head of consideration under the EP&A Act.

### ***Issue: Loss of commercial space in Bondi Junction***

**Response:** The objector refers to 'Our Greater Sydney 2056 – Eastern City District Plan' in their submission noting that there are too many DA's approved for residential towers in Bondi Junction. The submission assumes that this site is located in the commercial core, however this site is zoned B4 for mixed use. The commercial core zoning is further west of the site as indicated in blue in the LEP map extract below.

It is acknowledged that the application proposes the demolition a 9 storey commercial building, replacing it with less commercial space. Given the zoning of the land is B4 Mixed Use, the proposal is not a prohibited use. The design of the building, whilst providing significantly less commercial space than the current building, does comply with the requirements of the DCP in terms of urban design and active uses at ground and first floor level and to the lane.

Recognizing that Council needs to meet employment targets set by the Central District Plan (CDP) and strategically, the Council is reviewing the commercial floor space policies, however in a statutory sense this is not a matter which can be considered in this development application without those specified in the controls.

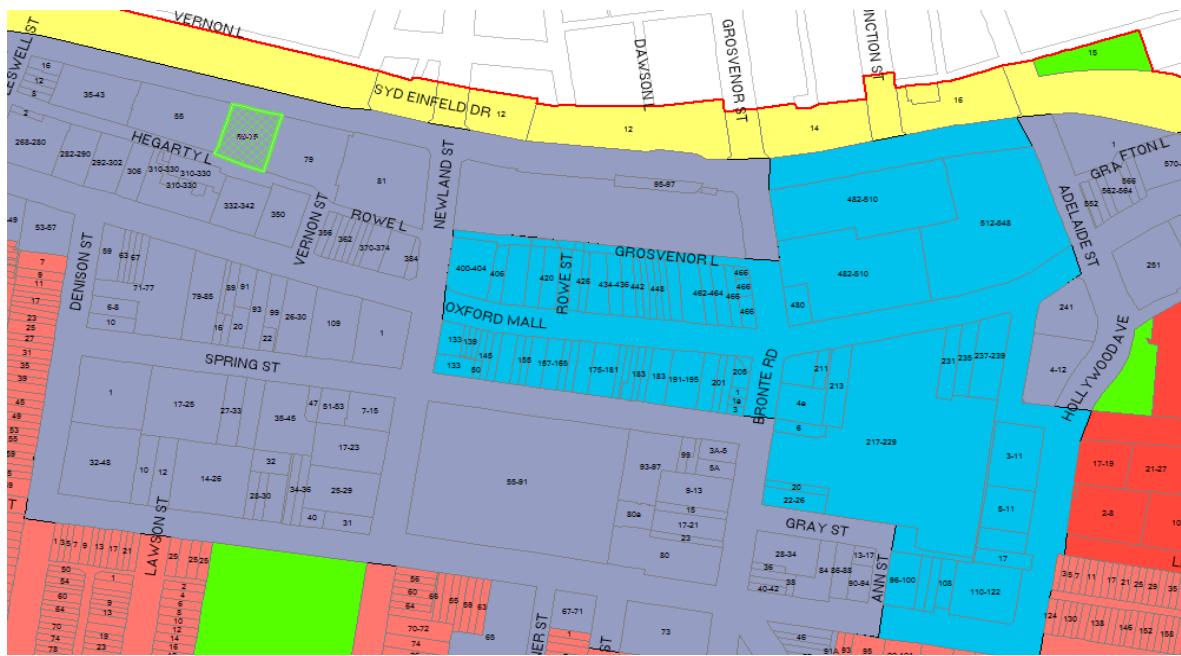


Figure 12: LEP zoning extract

#### **Issue: Sustainability and Pollution**

**Response:** The submission identifies that Waverley Council has nominated Bondi Junction as a low carbon precinct which is correct, and in this application, an Energy Assessment Report has been submitted which identifies a commitment to decrease GHG emissions by 32% compared to a reference building. This achieves Council's controls in the DCP. Conditions of consent are recommended in this regard to ensure that this commitment is carried through to the construction certificate drawings.

#### **Issue: Mechanical car stacker**

**Response:** Objections to the mechanical car stacker relate to noise from the system, delays for residents to drive in and out of the building and concerns regarding the failure of the mechanics of the lift. An acoustic report was submitted to address this matter, which was assessed by Council's Environmental Health Department and found satisfactory. It should be noted that the enclosed car stacker will replace 3 levels of open car parking area accommodating around the same number of vehicles. Conditions of consent are recommended to ensure that the recommendations of the report and imposed and testing is conducted to ensure that the system is within the acceptable limits.

#### **Issue: Objection to the bulk, scale and height of the podium**

**Response:** The objections state that the podium form should be lower to match the building at 79 Grafton Street, however the proposal follows the DCP controls specified for Bondi Junction which requires a 6 storey podium to Grafton Street. The scale of the podium to Hegarty Lane has been reduced in scale to 4 storeys to be more in keeping with the scale of the *Forum* building at the rear of the site at 310-330 Oxford Street to respond to advice from the Design Excellence Panel.

#### **Issue: Aesthetics**

**Response:** Objectors have suggested that the building design should incorporate more greenery, similar to the Central Park building in Chippendale to enhance the appearance. The building proposes

landscaping around the podium and roof levels, street planting and a tree in the open area to the rear lane.

### **3.5 Section 4.15 (1) (e) – Public Interest**

It is considered that the proposal will not be against the public interest, subject to appropriate conditions being imposed.

## **4 REFERRALS**

### **4.1 Traffic, Parking and Vehicular Access – Creating Waverley**

The following comments were received from Council's Manager of Traffic and Development.

*As this DA was lodged prior to 1 November 2018 it is to be assessed against the parking rates set in the WDCP Amendment 5. The basement plans do not distinguish between what is to be the residential, residential visitor and retail/commercial use parking spaces. The deficiency of 11 motorcycle parking spaces will be difficult to overcome due constraints within the site.*

*Regarding waste, household waste/recyclables are exclusively collected by Council. Commercial waste can be collected by a contractor. All waste should be collected from within the site with waste collection vehicles entering and exiting the site in a forward direction. The loading dock area and access to and from it should be designed to cater for the standing and operation of Council's own collection vehicle which is a medium rigid vehicle (MRV) in size. A 3m clear space at the rear of the vehicle will be required for operating the lifter and manoeuvring of the waste bins. The head clearance for a MRV in the Australian Standard for off street parking of commercial vehicles is 4.5m. In this instance however, where constraints are being placed on the lower ground floor level due to the railway tunnels below, a reduced head clearance would be acceptable.*

*The height of a Council waste collection vehicle is 3.6m. A head clearance of 3.8m plus would be acceptable leading to and from, and at the loading dock area. It is considered from the architectural drawings that this 3.8m plus head clearance can be achieved including the building entry height on Grafton Street.*

*All work within the Public Domain is to be upgraded in accordance with the Waverley Public Domain Technical Manual. Detailed civil engineering drawings will be required for the proposed upgrade on both frontages of the site. The Grafton St frontage will need to be upgraded with segmental paving, stone kerb, street trees and multi-function poles (lighting).*

*The kerb and gutter and the footpath in Hegarty Lane is to be reconstructed at the full extent of the property frontage. Details of such are to be included in the above civil engineering/public domain plans.*

No objections have been raised regarding on traffic grounds.

### **4.2 Stormwater – Creating Waverley**

The stormwater plans submitted with the application do not comply with the Waverley Development Control Plan 2012 in reference to Waverley Council's Water Management Technical Manual. An on-site

detention system is required, details of which as DA stage were insufficient. A condition of consent is recommended to address this matter.

#### **4.3 Urban Design – Shaping Waverley**

Council's Urban Design Officer has reviewed the various amendments to the plans and has provided the following feedback:

*The southern façade of the podium and tower has been refined and simplified to purely consist of a slender tower on top of a 4 storey podium.*

*The modification of the external façade of the car parking structure is supported because it increases the available footpath width along Hegarty Lane. This also decreases the bulk of the structure and integrates into the podium. This results in a cohesive and refined podium design that has a better relationship to Hegarty Lane.*

*The inclusion of communal space on level 5 is supported as it provides additional communal space that serves as an additional facility to the roof top communal area. The rearrangement of services at the Grafton Street ground floor entrance is supported. This increases the legibility of the ground floor retail to Grafton Street and the general amenity of the through site link. The shift of the bike storage to the lower ground floor is supported as it provides an easy and convenient place to access and store bicycles.*

*With the change in scale of the podium and the adjustments to the building layout, the proposed development is supported. The changes to the podium create a more human-scaled environment along Hegarty Lane whilst the modifications to the building layout result in more functional and communal facilities.*

#### **4.4 Waste Management – Sustainable Waverley**

Council's Sustainable Waste Co-ordinator has reviewed the proposal and noted the following;

- Ensure that Council's waste and recycling trucks can access the property for onsite collection.
- The chute system proposed meets the DCP requirements.
- The compaction systems for waste meets the DCP compaction rate of 2:1.
- The waste and recycling generation rates for any commercial/retail area is sufficient however any future tenants must abide by the existing generation rates, if their rates exceed these rates a new waste management plan is required.
- The proposed bulky waste storage room for the 80 residential units is 30 m<sup>2</sup> which is sufficient.
- Frequency of waste and recycling collections must be monitored to ensure that there are no overflowing bins or excess waste on the ground. Increased frequency of collection may apply.
- A post-construction Building Waste and Recycling Management Plan is required to outline roles and responsibilities for all parties regarding transport, cleaning, booking bulky waste collections with council, and contract information, etc.
- Request bin bay room signage from Council.

#### **4.5 Environmental Health – Safe Waverley**

A previous report dated 27 November 2017 was prepared which outlined some concerns regarding land contamination. A detailed site assessment has been prepared by CETEC Professional Scientific

Solutions concluding that the site is suitable for the proposed future land use. Therefore on this basis, the requirements of SEPP 55 – land contamination have been met. Conditions are recommended to address noise from construction and proposed plant within the building.

#### **4.6 Sustainability – Sustainable Waverley Council**

The applicant's report shows that the proposed development is compliant with the Waverley Development Control Plan 2012, Section 2.6 requirement for a 30% greenhouse gas (GHG) emissions reduction compared to a reference building.

Key considerations that need to be addressed prior to Construction Certificate stage include:

- Quoted GHG emissions improvement is 32%. Any deviation in assumed design principles may impact the final As-Built product achieving the required reductions.
- The report still appears to be very generic in nature, reference a lot of good practice principles, but project DA supporting documentation is too immature to demonstrate referenced principles are always included in the design.
- Further design and verification of energy and GHG emissions performance should be provided prior to construction to verify the performance of the building to be delivered. The construction certificate plans are to incorporate the recommendations of the approved Energy Assessment Report. A condition of consent is recommended in this regard.

#### **5. RECOMMENDATION TO SYDNEY EASTERN CITY PLANNING PANEL**

Based on the above assessment, the proposal is considered to be in accordance with Section 4.15(1) (a) (b) (c) (d) and (e) of the Environmental Planning and Assessment Act 1979 and it is recommended the Development Application be **APPROVED** by the Sydney Eastern City Planning Panel subject to the Conditions in Appendix A:

**Report prepared by:**

Beth Matlowski

**Date: 15 April 2019**

**Application reviewed and agreed on behalf of the Development and Building Unit by:**

Angela Rossi  
**Manager, Development Assessment (Central)**

**Date: 18 April 2019**