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Waverley Council

Application No: DA-533/2017/1/D

Date Received: 13/01/2022

ANGEL PLACE
LEVEL 8, 123 PITT STREET
SYDNEY NSW 2000

22 December 2021

URBIS.COM.AU
Urbis Pty Ltd
ABN 50 105 256 228

The General Manager
Waverley Council
55 Spring St, Bondi Junction
NSW 2022

Dear Sir/Madam,

SECTION 4.56 MODIFICATION – DETAILED DESIGN UPDATES FOR BONDI JUNCTION RSL REDEVELOPMENT

1. INTRODUCTION

This Section 4.56 modification application has been prepared by Urbis Pty Ltd on behalf of Capital Corporation and the Bondi Junction RSL to amend Development Application (DA) DA-533/2017/1 for the construction of a 10-storey mixed use building containing a registered club, retail and (now) 80 residential units at 28-42 Bronte Road and 84 Ebley Street, Bondi Junction.

The updates proposed at this time are summarised as follows:

- **Ground level** – a new commercial entry from the Bronte Road frontage, with an additional commercial lift
- **Ground level** – a updated configuration of retail tenancies to accommodate the new commercial entry.
- **Level 1** – updated to accommodate the additional commercial level
- **Western elevation** – updated windows and doors to the street frontage at ground level.

While a number of these design changes may have been historically advanced as design development for construction purposes, there is a need for absolute consistency between DA drawings/construction drawings – consistent with the recent gazettal of the *Design and Building Practitioners Regulation 2021*. Accordingly, the design updates are set out and included in this S4.56 modification for the abundance of caution.

This letter includes a description of the site, a description of the approved development, details of the proposed modification, consideration of the proposed modification against Section 4.56 of the *Environmental Planning and Assessment Act 1979 (EP&A Act)*; and an assessment of the proposed modifications against Section 4.15 of the EP&A Act.

This Section 4.56 modification request is supported by the following documents:

- Landowner's consent (**Appendix A**)
- Architectural Plans prepared by Group GSA (**Appendix B**)
- Proposed modification schedule prepared by Group GSA (**Appendix C**)
- BCA statement prepared by BCA Logic (**Appendix D**)
- Cost summary advice prepared by Newton Fisher (**Appendix E**)

2. THE SITE AND SURROUNDING CONTEXT

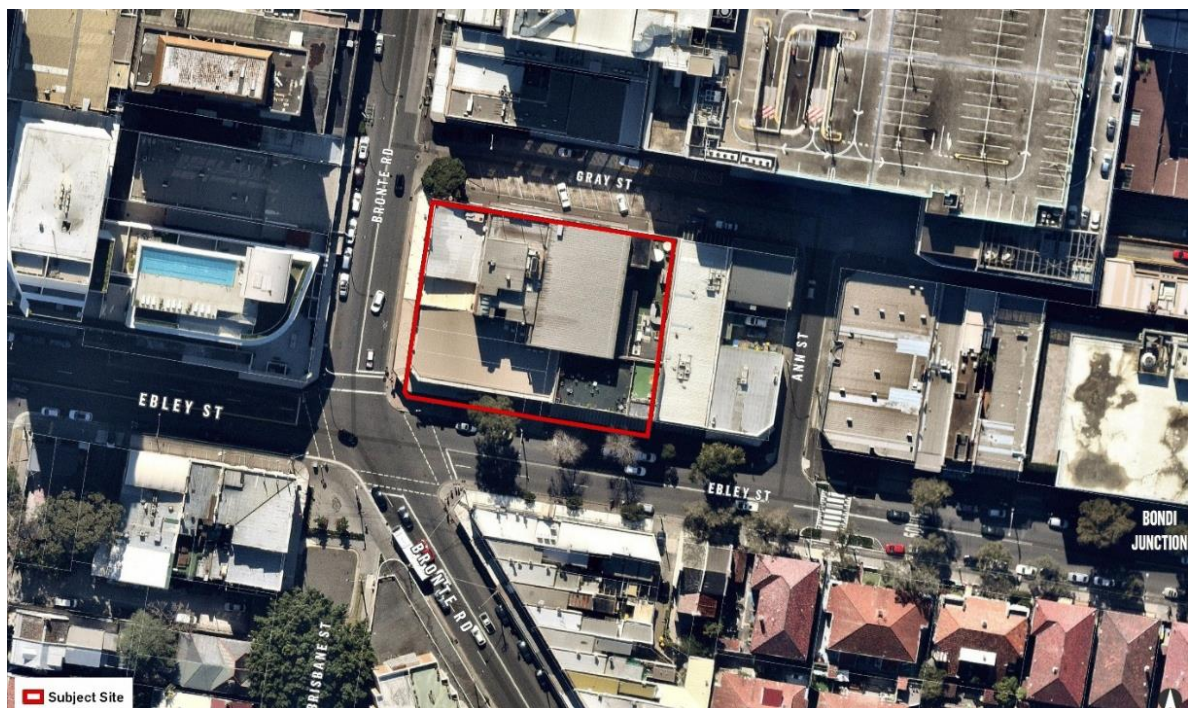
The subject site is known as 28-42 Bronte Road and 84 Ebley Street, Bondi Junction and is located within the Waverley Local Government Area (LGA). The site comprises 5 land parcels owned by Bondi Junction RSL and is legally described by a series of Lot and Deposited Plan numbers outlined below.

The site has a total area of 2,180sqm, and has frontages to Bronte Road, Gray Street and Ebley Street. Vehicular access to the site is available from Gray Street.

Street Address	Lot and DP
84 Ebley Street	Lot 1 in Deposited Plan 735713
1-9 Gray Street, also known as 28-34 Bronte Road	Lot 1 in Deposited Plan 621398
36 Bronte Road	Lot A in Deposited Plan 161158
38 Bronte Road	Lot 1 in Deposited Plan 226425
40-42 Bronte Road	Lot 2 in Deposited Plan 226425 Lot 3 in Deposited Plan 226425

Existing development on the site has consistent of Club Bondi Junction RSL, a 2-3 storey art-deco building accessed via Gray Street. Along Bronte Road have been a series of shop-top houses with small scale retail premises on the ground floor. In accordance with the issued consent for the development of the site, the construction phase of the project is now underway.

Figure 1 – Aerial Photograph



Source: Urbis

3. PROJECT BACKGROUND

The relevant approval history for the site is summarised in **Table 1** below.

Development Application	Summary	Status
DA-533/2017/1	Construction of a 10-storey mixed use development.	Approved through a Section 34 agreement in November 2019
DA-533/2017/1/A	Modification to approved layout and facade, increase number of apartments from 78 to 81, divide retail tenancies, delete rooftop pool and alter roof plant area, reconfigure carparking arrangement and various other modifications	Approved through a Section 4.56 modification in April 2021
DA-533/2017/1/B	A reduction in the number of apartments from 81 to 80, an updated bulky waste location, other corresponding other internal design updates and the inclusion of additional external louvres in order to maximise visual privacy.	Approved through a Section 4.56 modification in October 2021

Table 1 Approval History

4. PROPOSED DETAILED DESIGN UPDATES

The following detailed design updates are proposed with this Modification

- **Ground floor**– the addition of a new commercial entry from the Bronte Road street frontage, with an additional commercial lift
- **Ground floor** – a updated configuration of retail tenancies to accommodate the new commercial entry.
- **Level 1** – updated to accommodate the additional commercial level
- **Western elevation** – updated windows and doors to the street frontage at ground level.

The proposed changes are to enhance the accessibility and functionality of the club and commercial areas. The new commercial entry will ensure a dedicated entry to the commercial and back of house facilities, which is critical for club's serviceability. The updated access arrangements also reduce the need for members of the public to enter the building through the club space when accessing Level 1 spaces.

Overall the proposed changes functionally improve the approved development. These changes shall have no adverse visual impact for the approved development. There is increased retail presence and street activation along the Bronte Road street frontage, extending retail activities towards Gray street the corner. Copies of the amended drawings prepared by Group GSA are attached as **Appendix A** proposed modification schedule has prepared by Group GSA and is provided at **Appendix C**

The estimated cost of development, in accordance with 25J of the Planning Regulations, remains unchanged and consistent with previous advice, at a figure of \$31,820,000 (inc GST). A copy of the previous cost summary advice (July 2021) is provided at **Appendix E** for ease of reference.

GROUND FLOOR PLAN

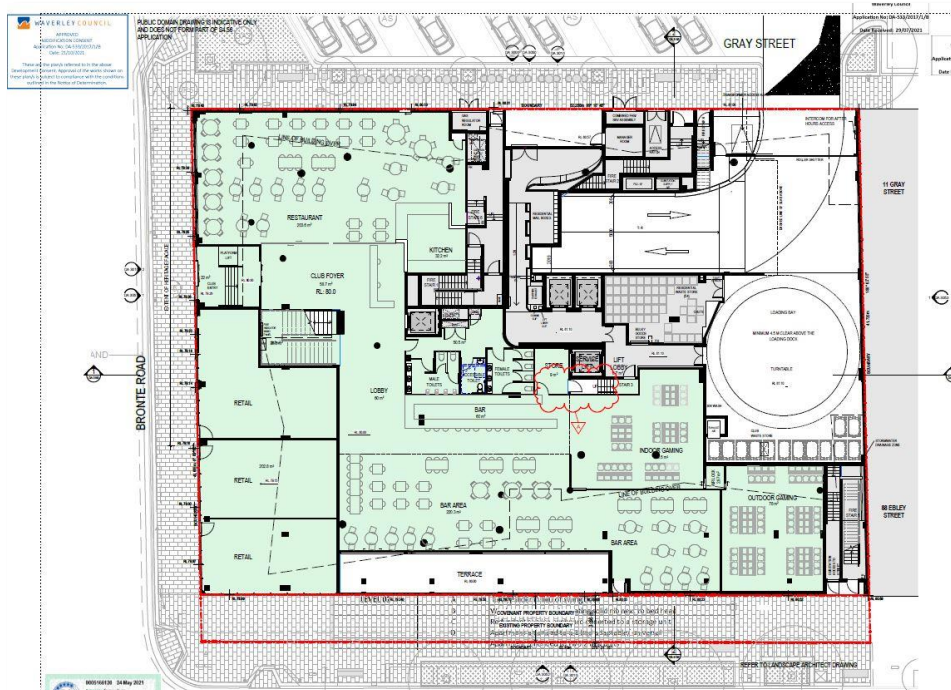


Figure 1 –Approved Plans (As at October 2021)

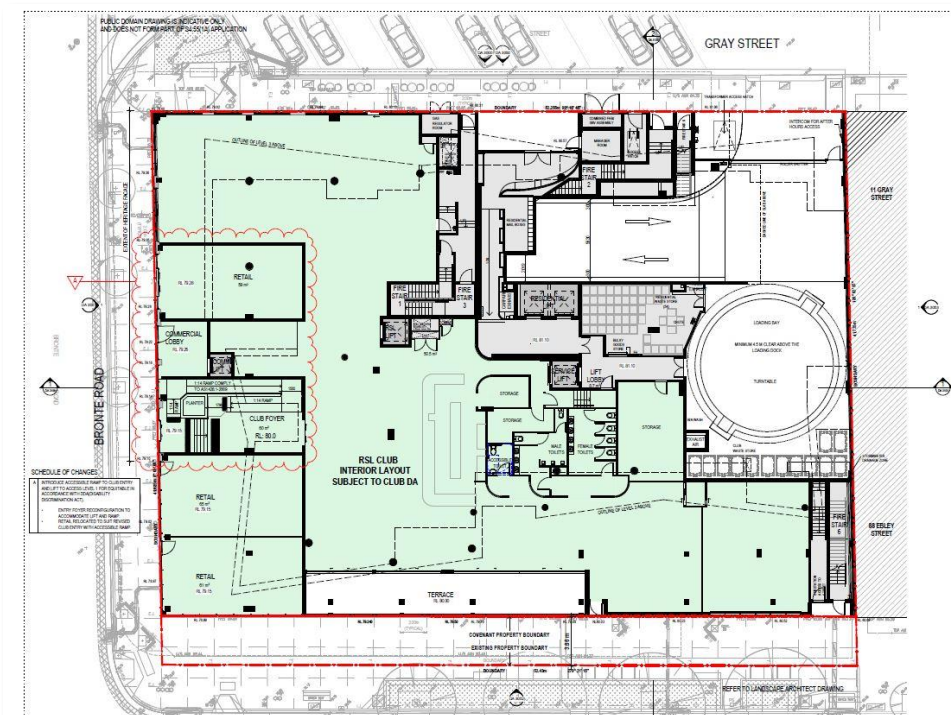


Figure 2 Proposed design update (December 2021)

LEVEL 1 PLAN

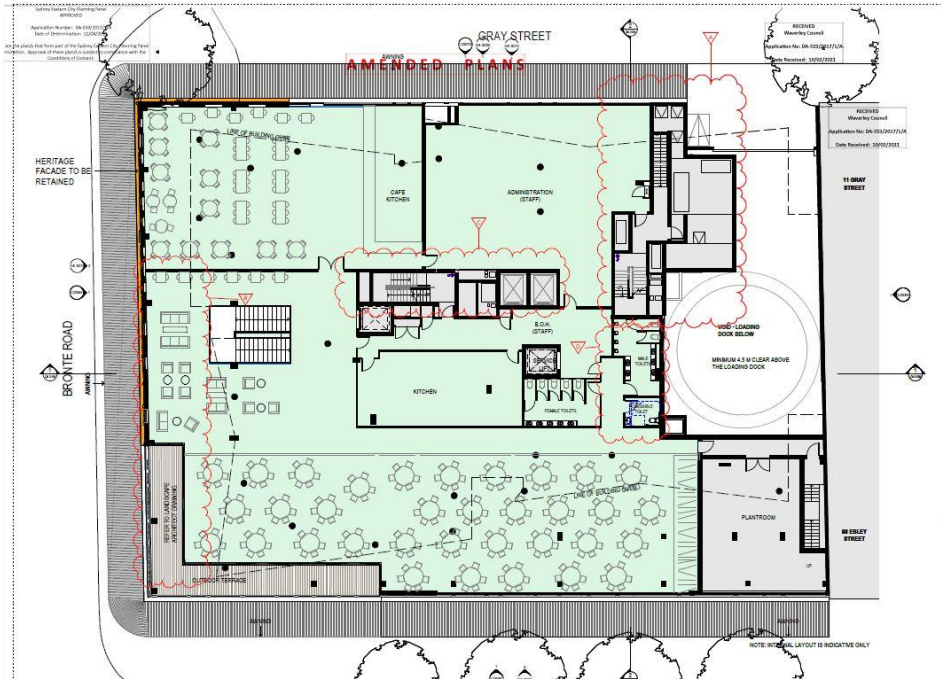


Figure 3 –Approved Plans (As at October 2021)

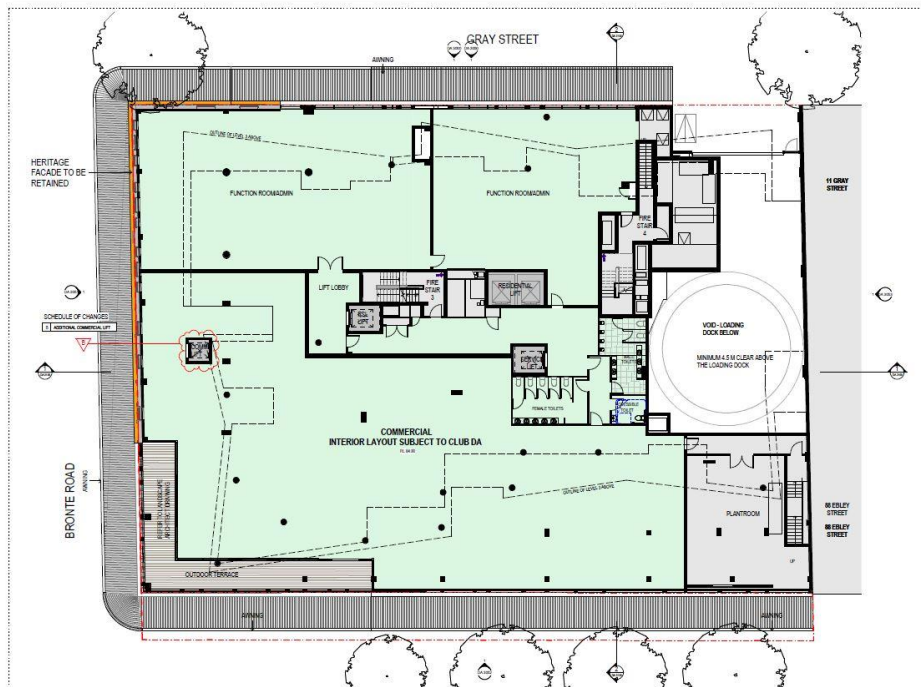


Figure 4 - Proposed design update (December 2021)

WESTERN ELEVATION

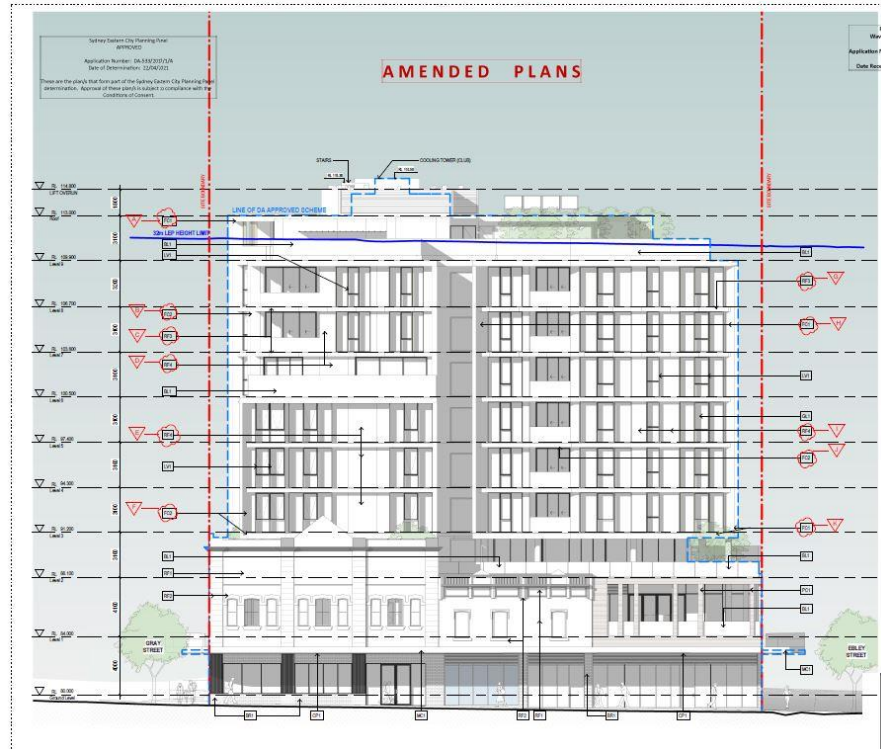


Figure 5 –Approved Plans (As at October 2021)

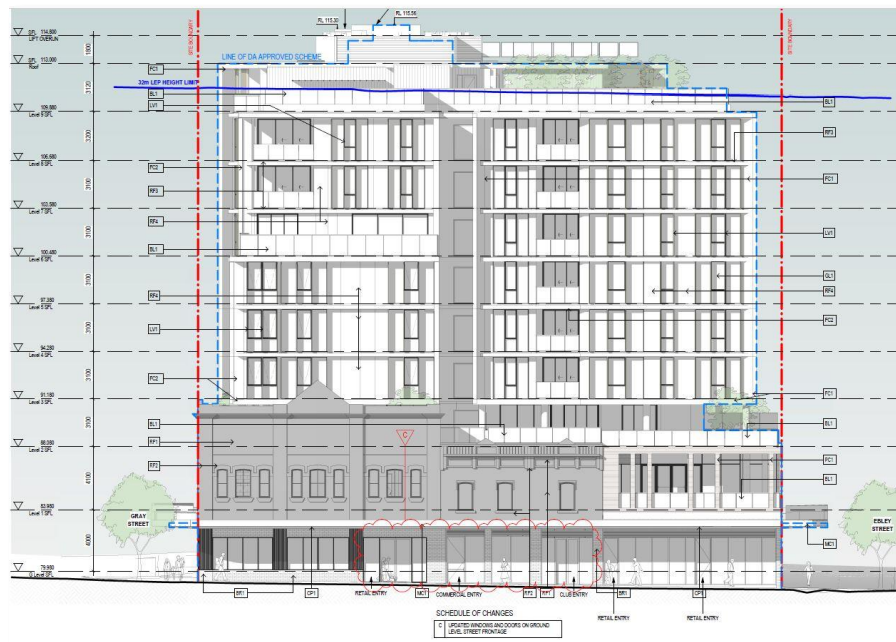


Figure 6 Proposed design update (December 2021)

5. MODIFICATIONS TO THE CONDITIONS OF CONSENT

To give effect the proposed changes, amendments to some of the conditions of consent are required. Pursuant to the provisions of Section 4.56 of the EP&A Act 1979, the proposed modification seeks to amend the approved conditions of DA-533/2017/1 as outlined below.

The proposed modifications to the approved conditions are described below. Text proposed to be deleted is indicated by ~~strike-through~~ and text proposed to be added is indicated by **red text**.

Drawing description and No.	Revision No. and Date
DA2010 Ground Level Plan	Issue C – 07/05/2021 Issue D – 15/12/2021
DA2011 Level 1 Plan	Issue B – 29/01/2021 Issue D – 15/12/2021
DA3001 Elevation West	Issue B – 29/01/2021 - Issue D – 15/12/2021

Note: With this modification an additional sheet is included, being 'DA3201 – GFA Diagrams'. This illustrates the updates in GFA calculations for the project. This sheet is provided for information purposes only and has not formed part of the consent drawing list to date.

6. SECTION 4.56 ASSESSMENT

This section of the report assesses the proposed modifications in accordance with the relevant section of the Environmental Planning and Assessment Act 1979 (the Act) including an assessment of whether the modified proposal is substantially the same as the original approval.

The application is lodged with Waverly Council in accordance with section 116 of the *Environmental Planning and Assessment Regulation 2000* (the **Regulation**).

6.1. SUBSTANTIALLY THE SAME DEVELOPMENT

The NSW Land and Environment Court has established several precedents on what may be considered as being “substantially the same development”, and what should be factored into the consideration of this threshold test.

The consideration of this test should not only include the physical characteristics of the approved and modified schemes, but also the nature and magnitude of the impacts of the developments. In these respects, the modified scheme should be “essentially or materially” the same as that originally approved.

In accordance with Section 4.56(1A) of the EP&A Act, the proposed modifications are substantially the same as approved for the following reasons:

- The modified development does not propose any changes to the approved land uses on site.
- The modified development does not represent a significant departure from the approved plans.
- All modifications maintain the overall building setbacks and predominant building envelopes and does not result in any additional apartments compared to the approved development.

The proposed development is therefore not only materially the same scale as that approved, but also essentially the same function and intensity of use as that approved within DA-533/2017/1. The proposed modifications will therefore not result in any environmental impacts above those already assessed.

6.2. PUBLIC NOTIFICATION AND SUBMISSIONS

In accordance with Section 4.56(1b) of the EP&A Act, the Council can undertake any relevant notification of the proposed modification in accordance with the regulations and any development control plan.

7. SECTION 4.15 ASSESSMENT

In accordance with Section 4.56(1A) of the EP&A Act, the consent authority must take into consideration the relevant matters outlined in Section 4.15 as outlined in the following sections.

7.1. ENVIRONMENTAL PLANNING INSTRUMENTS

7.1.1. State Environmental Planning Policies

State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development (SEPP 65)

SEPP 65 applies to development for the purpose of a building that comprises three or more storeys and for or more self-contained dwellings. **Table 2** below provides a high-level assessment against the key requirements in the ADG and is provided for completeness, without changes to the residences.

Table 2 High Level ADG Compliance Table

Design Criteria	Assessment	Comment for S4.56 mod.
Solar Access (<i>min. 70%</i>) apartments receive a min of 2 hours direct sunlight	72.5% of the apartments in the building receive a minimum of 2 hours direct sunlight during the required hours.	No change.
South Facing Apartments (<i>max 15%</i>)	20 of the 80 apartments (25%) do not receive direct sunlight due to their orientation towards the views to the South.	No change.
Natural Cross Ventilation (<i>min 60%</i>)	62.66% of all the apartments comply with cross ventilation.	No change.
Universal Design (<i>min 20%</i>)	20% of the total apartments incorporates the Liveable Housing Guidelines.	No change.
Deep Soil (<i>min 7%</i>)	No change to MOD DA approved Building Footprint. Deep soil zone as approved.	No change.
Communal Open Space (<i>min 25%</i>)	As per DA approved. Communal open space as approved	No change.
Floor to Floor Levels	A floor to floor height of 4m and 4.1m respectively had been provided to Ground and Level 1.	No change.
Storage	All storage provided complies with the relevant requirements. Extra storage is provide to all apartments on basement levels.	No change.
Minimum apartment sizes	1, 2 and 3 bedroom apartments are all larger than the minimum size required.	No change.
Minimum room sizes and dimensions	Master bedrooms and bedrooms provided are larger than minimum size required. All other rooms comply with the relevant requirements.	No change.

State Environmental Planning Policy No. 55 – Remediation of Land (SEPP 55)

In accordance with the requirements set out in SEPP 55, a preliminary site investigation report was provided with the approved DA. This Section 4.56 modification application does not propose any changes to excavation.

7.1.2. Waverly Local Environmental Plan 2012

Waverly Local Environmental Plan 2012 (Waverly LEP 2012) is the principal environmental planning instrument governing development at the site. An assessment against the relevant controls of the Waverly LEP 2012 has been undertaken in **Table 3** below.

Table 3 Waverly LEP 2012 Compliance Table

Clause	Comment	Compliance	Comment
Clause 2.3 Land Use Zoning	The proposed modification will not alter the use of the building that has been approved under DA-533/2017/1.	✓	No change.
Clause 4.3 Building Height	The proposed modification does not alter the existing maximum building height that has been approved under DA-533/2017/1.	✓	No change.
Clause 4.4 and Clause 4.4A Floor Space Ratio	Total approved for the GFA has been 9,756m ² , with a corresponding FSR of 4.47:1. The proposed update results in an increase in GFA by 19m ² , to a total of 9,775m ² with a more efficient club space on Level 1. The corresponding FSR remains at 4.47:1 – with the development standard remaining at a maximum of 6:1	✓	Negligible increase in GFA – 19m ²
Clause 5.10 Heritage Conservation	<p>Schedule 5 identifies the façade from 28-42 Bronte Road as an item of local significance (I171).</p> <p>The proposed changes visually and functionally improve the approved development and are considered to have no adverse visual impact on the approved development with associated heritage values.</p> <p>Established obligations under the approved Schedule of Heritage Conservation Works for the heritage listed facades, reflected in Condition 67</p>	✓	No change.

Clause	Comment	Compliance	Comment
	of the existing consent, remain unchanged.		

7.2. DRAFT ENVIRONMENTAL PLANNING INSTRUMENTS

No draft environmental planning instruments are relevant to this proposal.

7.3. WAVERLY DEVELOPMENT CONTROL PLAN 2012

Waverly Development Control Plan 2012 (Waverly DCP 2012) provides detailed controls for specific development types and localities. Most controls relate to character, streetscape and public domain works. An assessment against the relevant controls of the Waverly DCP 2012 has been undertaken in the table below.

Table 4 Waverly DCP 2012 Compliance Table

Clause	Comment	Compliance
Part B – General Provisions		
B1: Waste Sufficient space must be provided to accommodate the storage of waste and recycling.	An approved Waste Management Plan has been prepared and approved for the site. The design updates shall not have any impact on the approved waste arrangements for this site.	Yes, no change
B7: Accessibility and Adaptability The siting, design and construction of premises available to the public are to ensure an appropriate level of accessibility Accessible parking for people with a disability must be provided.	A BCA Compliance Statement has been prepared by BCA Logic and is provided at Appendix D . BCA Logic confirm the ability of the proposed development (including latest updates) to achieve relevant standards.	Yes, improved accessibility.
8.1.2 Bicycle parking rates A total of 82 bicycle spaces required.	82 bicycle spaces are proposed.	Yes, no change
Part C – Residential Development: C2		
2.2 Site, scale and frontage Maximum FSR: 6:1	The proposal has a total FSR of 4.47:1. This remains essentially unchanged, with an increase in GFA by 19m ² as a result of the more efficient configuration on Level 1.	Yes, negligible increase

Clause	Comment	Compliance
2.3 Height Maximum building height: 32m	No changes are proposed to the maximum building height.	Variation, no change.
2.16 Solar access and overshadowing Living rooms and private open spaces for at least 70% of apartments in a development should receive a minimum of three hours direct sunlight between 9:00am and 3:00pm on June 21.	The ADG Compliance tables previously submitted have confirmed compliance.	Yes, no change
2.18 Apartment size and layout Internal layout of apartment to be consistent with DCP requirements The following sizes are considered appropriate: Studio – 35sqm 1 bedroom – 50sqm 2 bedroom – 80sqm 3+ bedroom – 100sqm	The ADG Compliance tables previously submitted have confirmed compliance.	Yes, no change
2.21 Storage Storage facilities within the dwelling at the following rates: Studio and 1 bedroom - 6m3 2 bedroom – 8m3 3 bedroom - 10m3	The ADG Compliance tables previously submitted have confirmed compliance.	Yes, no change
2.23 Natural ventilation At least 60% of apartments in a development are to be naturally cross-ventilated.	The ADG Compliance tables previously submitted have confirmed compliance.	Yes, no change
Part E – Site Specific Development – E1: Bondi Junction		

Clause	Comment	Compliance
1.3 Building Use Primary shopping streets (Bronte Road): Ground floor designed for retail purposes	Activated street frontages continue to be proposed to both Bronte and Gray Streets. The design updates results in additional activation of the Bronte Road frontage, with the retail activities extending further along toward Gray Street.	Yes, improved outcome.
1.6 Heritage and Buildings of Heritage Character New development adjacent to heritage items should display proportions of historic character or heritage items should draw on the predominant pattern of the streetscape	The design updates are of the same general design, scale and material as that already proposed/approved for the overall development, it is not considered that there will be any impact on the heritage values of the site. Established obligations under the approved Schedule of Heritage Conservation Works for the heritage listed facades, reflected in Condition 67 of the existing consent, remain unchanged.	Yes
1.9 Separation Residential and commercial separation Levels 1- 5:9m Levels 5+: 18m	No changes to setbacks are proposed with the design updates.	Yes, no change

7.4. PLANNING AGREEMENT

The proposed modifications do not impact the terms of any Voluntary Planning Agreement applying to the site.

7.5. REGULATIONS

The application has been prepared in accordance with the relevant provisions of the *Environmental Planning and Assessment Regulations 2000*.

7.6. LIKELY IMPACT OF THE PROPOSED MODIFICATIONS

The potential environmental impacts of the proposed amendments are minimal and summarised below.

7.6.1. Traffic

The proposed amendment will not alter the number of spaces provided or the traffic generation of the overall development. As such, a Transport or Parking Impact Assessment has not been prepared.

7.6.2. Waste Management

An approved Waste Management Plan has been prepared and approved for the site. The design updates shall not have any impact on the approved waste arrangements (facilities or management procedures) for this site.

7.6.3. Building Code of Australia Compliance

BCA Logic have prepared a Building Code of Australia (BCA) Compliance Capability Statement (**Appendix D**). BCA Logic have confirmed that the modified design is capable of complying with the Building Code of Australia 2019, Volume One, including the relevant Access requirements, subject to ongoing design development to the Construction Certificate (CC) stage.

BCA Logic confirm that the proposed modifications are compliant with the Building Code of Australia.

7.6.4. Acoustic

There is an existing approved acoustic report for this project, prepared by Acoustic Logic dated 4 October 2018, which is reflected in Condition 73 of the existing consent. The acoustic assessment, recommendations and the requirement for compliance certificate that certifies that Council's noise criteria have been made, prior to the issue of an Occupation Certificate, all remain relevant and unchanged with this modification.

7.7. SUITABILITY OF THE SITE

The proposed modifications to the consent will not result in any changes that would affect the suitability of the site to accommodate the development approved under DA-533/2017/1. The site is in close proximity to Bondi Junction town centre and train station.

The proposed modifications are minor in scale, permissible with consent and will lead to the development of a building at the site which will provide greater amenity to future tenants and residents.

7.8. SUBMISSIONS

It is acknowledged that any submissions arising from the public notification of this application will need to be assessed by Council.

7.9. THE PUBLIC INTEREST

The modified proposal is considered in the public interest for the following reasons:

- The modified proposal is consistent with relevant State and local strategic plans and substantially complies with the relevant State and local planning controls.
- No significant adverse environmental, social or economic impacts will result from the proposal.
- The modified proposal will facilitate a development that positively contributes to the economic and strategic growth of the Bondi Junction centre

Without redevelopment of the site within five years, the Bondi Junction RSL would have been unable to continue operation and would have been forced to close. This follows an industry-wide trend of club closure due to ongoing challenges such as maintaining and growing membership, ensuring financial stability, navigating regulations and remaining relevant to the community. In the surrounding Eastern Suburbs community, five clubs have been forced to close in the last 10 years.

8. CONCLUSION

This Section 4.56 modification application has been prepared by Urbis Pty Ltd on behalf of Capital Corporation and the Bondi Junction RSL to amend DA-533/2017/1 for the construction of a construction of a 10-storey mixed use building containing a registered club, retail and 80 residential units.

The proposed modifications have been assessed in accordance with Section 4.56 and Section 4.15 of the Act and are considered appropriate as summarised below:

- The development remains permissible with the consent pursuant to the WLEP 2012;
- The proposed modifications remain consistent with the objectives of the development standards for both height and density, with a floorspace increase that is negligible at most.
- The proposal remains consistent with the design objectives and design controls for residential flat buildings contained in Waverly DCP 2012;
- The proposed development remains compatible in the site context and character of the locality with the height of the building comparable to the residential flat buildings in the immediate locality;
- The proposed buildings will not result in unreasonable amenity impacts on adjoining properties, dwellings and the streetscape; and
- The development remains substantially the same as that to which consent was originally granted.

Based on the content contained in this submission and accompanying appendices, it is considered that the proposed modifications to the conditions of DA-533/2017/1 will result in substantially the same development as well originally approved and therefore should be approved, subject to the implementation of appropriate conditions.

If you have any questions, please do not hesitate to contact the undersigned. Alternatively, Darren Beasley of Aoyuan may be contacted on 0448 981 457.

Kind regards,

A handwritten signature in blue ink, appearing to read "swilkes".

Simon Wilkes
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swilkes@urbis.com.au