

26 April 2021

Sydney Eastern City Planning Panel
Attention: The Panel Secretariat

Dear Panel Members

Modification to development application (PPSEC – 83)

Section 4.55 modification application to construct two additional residential levels, including 5 additional apartments, internal alterations and changes to bicycle parking spaces, roof design and facade
Property: 57-75 Grafton Street Bondi Junction NSW 2022

This letter has been prepared by Robinson Urban Planning Pty Ltd (**RUP**) on behalf of Clygen Pty Limited (the applicant and landowner). It responds to the planning assessment report (the **Council Report**) by the Waverley Council's planning staff on the above modification application.

The Council Report recommends refusal of the modification application. The reasons for refusal can be broadly grouped into the following key issues:

1. Whether or not a clause 4.6 written request is required
2. Relevance of Council's Planning Agreement Policy 2014 (**VPA Policy**)
3. Substantially the same development
4. Environmental effects of the modification (height/bulk/scale, views and overshadowing).

Each of these broad issues is considered below, noting that the Council Report has not provided a fair or thorough assessment of the modification application.

1. Whether or not a clause 4.6 written request is required

The attached legal advice by Mills Oakley (**Attachment 1**) considers this and other legal issues and concludes that a clause 4.6 written request is not required, at law, for a modification application and that the Council Report should not consider clause 4.6.

2. Relevance of Council's Planning Agreement Policy 2014 (VPA Policy)

The attached advice by Mills Oakley confirms that:

- (a) The creation (and subsequent consistent application) of the VPA Policy has, in effect, abandoned the strict application of the height and floor space ratio (FSR) development standards, at least insofar as those standards intersect with and are subject to departures envisaged and authorised by the VPA Policy. It would therefore be legally unreasonable to require compliance with the standards in the present circumstances; and
- (b) The Panel cannot ignore, and must take into account, the VPA Policy as part of its consideration of the Modification Application.

A formal letter of offer for a VPA was submitted to Council on 21 October 2020 and the quantum of monetary contributions under Council's VPA Policy was negotiated and agreed by Council staff.

3. Substantially the same development

The Council Report relies on the addition of two storeys and changes to the podium as the basis for arguing that the modified development would not be ‘substantially the same development’ as that originally approved development.

Prior to lodging the modification application and during the assessment process, the applicant’s advisors shared regular and numerous communications with the Council planners as set out in the attached chronology of events relevant to the application (**Attachment 2**). All requests for amendments and additional information were accepted by the applicant. The issue of substantially the same development was never raised by Council’s planners over the nine month pre-lodgement and assessment period.

Additionally, Council (or the relevant consent authority) has approved many modification applications prepared in accordance with the VPA Policy that increase the height of buildings by up to two storeys (a copy of Council’s Planning Agreement register is appended to the Mills Oakley advice (**Attachment 1**)).

Furthermore, the modified development retains the essence of the original consent as summarised below:

- (a) **Content/land use** - Both the Original Consent and the modification application comprise demolition of the existing commercial building and construction of a new mixed use building comprising:
 - Non-residential uses at the lower ground and ground floors
 - A through site link connecting Hegarty Lane and Grafton Street
 - A publicly accessible open space at Hegarty Lane
 - An above ground, vertical mechanical car parking system on Hegarty Lane, accessed from Grafton Street
 - A podium and residential tower noting that the the modification application adds five dwellings or +6% (78 approved with 83 proposed)
 - Communal recreation areas on the roof of the podium (Level 5) and roof of the tower;
- (a) **Vehicular access points** – no change;
- (b) **Car parking arrangements** – no change;
- (c) **Traffic impacts** – no change;
- (d) **Environmental effects of the modification** – see below; and
- (e) **Built form, external appearance and bulk/scale of the building:** The photomontage comparison in the Council Report (see below) demonstrates that the original and modified developments have a very similar built form, external appearance and bulk/scale. Only a very keen observer would observe the differences.



Figure 3: Photomontage comparison of the proposal from Grafton Street

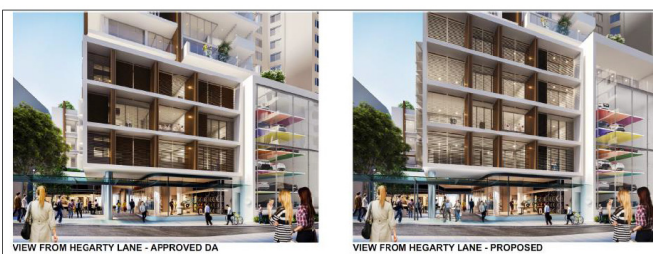


Figure 4: Photomontage comparison of the proposal from Hegarty Lane (Source: Applicant’s SEE)

4. Environmental effects of the modification

(a) **Height, bulk and scale:** The Council Report provides an inadequate and unfair assessment of the proposed height, bulk and scale noting that:

- Council's Design Excellence Panel (**DEAP**) comprising three eminent architects (Brendan Randles, Nick Tyrrell and Jonathan Knapp) supported the modification application including the proposed height, bulk and scale. Given this support from Council's independent expert panel of architects, the Urban Design comments in the Council Report are not supported by a considered assessment and are totally inadequate (page 31); and
- The site does not adjoin any low density zones/development, therefore there is no basis to the statements in the Council Report in relation to the need to provide a transition in height/scale from the established built forms of the commercial core of Bondi Junction, to the lower built form to the west. Additionally, this need to provide a transition has not impeded the approval modification applications that proposed additional height on nearby sites that are much closer to residential areas to the west of Bondi Junction, most notably the modification applications approved for the following properties:
 - 310-330 Oxford Street (+2 storeys)
 - 344-354 Oxford Street (1 storey)
 - 304-308 Oxford Street (+2 storeys)
 - 109 Oxford Street (+2 storeys)
 - 59-69 Oxford Street (+2 storeys);

(b) **Overshadowing:** The Council Report provides an inadequate and unfair assessment of the overshadowing impacts of the proposed modification noting that:

- The Council Report explains that the modification will reduce solar access to two units at 350 Oxford Street (by 15% and 14% which is consistent with the Apartment Design Guide (**ADG**) Objective 3B-2 which refers to a maximum reduction of 20%) and increases sunlight to third unit in the same building;
- The impact of the modification on a theoretical residential redevelopment at 282 Oxford Street (now an eight storey commercial building) is not a valid consideration under any relevant environmental planning instrument and there is no pending DA under consideration. Additionally, the potential for this property to be developed for residential development will be constrained by the cl. 6.12 of Waverley LEP 2012 which requires retention of the existing non-residential GFA on the land which is in Zone B4 (this is a very recent change to the LEP, published on 19 February 2021); and
- Approved modification applications envisaged and authorised by the VPA Policy have resulted in similar minimal and reasonable shadow impacts, supported on the basis that Bondi Junction Centre is characterised as a high-density locality where the it is harder to protect solar access and the claim to retain it is not as strong (consistent with the Land Environment Court Planning Principle on access to sunlight in the case of the *Benevolent Society v Waverley Council* [2010] in NSWLEC 1082);

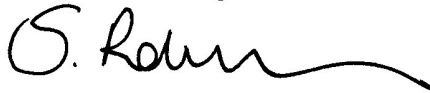
(c) **Views:** The Council Report provides an inadequate and unfair assessment of the view impacts of the proposed modification on apartments at 71-73 Spring Street noting that:

- 71-73 Spring Street is some 200m to the south-east of the site. The severity of the view impact is exaggerated in the Council Report noting that the apartments purported to be adversely affected will retain expansive City views to the north-west and expansive harbour views to the north; and
- The Council view impact figures do not show the approved development at 59 Grafton Street, thereby overstating the view impact of the modification application (see attached JPRA Cottee Parker view assessment).

Conclusion

The public interest is served by the consistent application of Council's planning policies. Given the legal and planning errors and its inconsistent application of Council's VPA Policy, the Council Report should not be relied upon and the Panel should instead resolve to approve the modification application subject to the draft conditions prepared by the Council planners.

Yours sincerely



Sandra Robinson BTP (Hons) MPIA
Director

Enc:

Attachment 1 – Legal advice, by Mills Oakley (23 April 2021)

Attachment 2 – 59-75 Grafton Street BONDI JUNCTION: S. 4.55(2) Application for Modification: Chronology of events, by RUP

Attachment 3 - JPRA Cottee Parker view assessment

Attachment 1 – Legal advice, by Mills Oakley (23 April 2021)

23 April 2021

Your ref:
Our ref: AJWS/3511287**Attention: The Panel Secretariat**

Sydney Eastern City Planning Panel

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Dear Panel Members

Modification to development application (PPSEC – 83)
Section 4.55 modification application to construct two additional residential levels,
including 5 additional apartments, internal alterations and changes to bicycle parking
spaces, roof design and facade
Property: 57-75 Grafton Street Bondi Junction NSW 2022

We refer to the above modification application (**the Modification Application**) and confirm that we act for Clygen Pty Ltd, the Applicant, in relation to that application.

We are instructed to write to the Panel in relation to a number of critical legal issues that are central to the Panel's assessment and determination of that Modification Application. These issues have arisen, somewhat urgently, as a result of various comments made in the planning assessment report recently prepared and released on 14 April 2021 by Waverley Council's planning staff (**the Council Report**).

Subject Application

The Modification Application is proposing to modify DA-482/2017 for the demolition of an existing commercial building and construction of a 19 storey mixed use building, comprising ground floor retail with residential apartments above at 57-75 Grafton Street Bondi Junction (**Site and Approved Development**, respectively), approved by the Sydney Eastern City Planning Panel (**Panel**) on 2 May 2019.

The Modification Application broadly proposes to amend the Approved Development to include two additional levels of residential apartments (to provide for 5 additional residential apartments), increasing the building from 19 to 21 storeys (**Modification Application**).

Summary of this legal submission

In summary it is our submission that despite the position put forward by the assessing officer in the Council Report, the Panel can readily approve the Modification Application due to the following:

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1. A clause 4.6 variation request is not required, at law, for a s4.55 modification application. This should be uncontroversial;
2. Notwithstanding the above, and even if the Modification Application had (hypothetically) required a clause 4.6 variation request, the Modification Application has been made pursuant to and in conformity with the Council's *Planning Agreement Policy 2014 (VPA Policy)*. We wish to ensure that the Panel recognises that the creation (and subsequent consistent application) of an endorsed Policy establishes that the Council has, in effect, **abandoned** the strict application of the height and floor space ratio development standards, at least insofar as those standards intersect with and are **subject to departures envisaged and authorised by VPA Policy**. It would therefore be legally unreasonable to require compliance with the controls in the present circumstances: fourth test in *Wehbe v Pittwater Council* [2007] NSWLEC 827; and
3. The Panel cannot ignore, and **must** take into account, the VPA Policy as part of its consideration of the Modification Application. This is clear from the long-standing Land and Environment Court decision of the former Chief Justice of the Court (and now an endorsed Land and Environment Court 'Planning Principle') in the matter of *Stockland Development Pty Ltd v Manly Council* [2004] NSWLEC 472. That decision established that endorsed Council policies do have statutory weight and **must** be considered in the assessment process.

We address each of these points below.

Submission

Clause 4.6 Variation

The Council Report indicates that whilst a clause 4.6 variation request is not required for the Modification Application, the matters required to be considered under clause 4.6 are relevant to the merit assessment of the Modification Application. With all due respect, this is plainly incorrect. While the provisions of the LEP relating for example to height and floor space are obviously relevant, the much more onerous and legalistic requirements of clause 4.6 are **entirely irrelevant**, as the Courts have made clear on countless occasions.

Clause 4.6(3) of the *Waverley Local Environmental Plan 2012 (LEP)* provides that '**development consent** must not be granted to development that contravenes a development standard ...'. As a modification application is considered a stand-alone provision (i.e.. It results in a modification approval, not a 'development consent') **clause, 4.6 does simply not apply to a modification application**. This has been confirmed by the Land and Environment Court ad nauseum, which we would expect the Council staff to be quite aware of.

The seminal decision of *North Sydney Council v Michael Standley & Associates Pty Ltd* (1998) 43 NSWLR 468 provides that a consent authority is not precluded from granting approval to a modification application in circumstances where the modified development would result in an exceedance of a development standard. More recently, Pepper J in *n SDHA Pty Ltd v Waverley Council* [2015] NSWLEC 65 at [31] to [36], found:

31. *The first is, as the council correctly submitted in my opinion, that the application before the Commissioner was a modification application pursuant to s 96 of the EPAA, and that, as a matter of law, s 96 constituted a complete source of power to modify a consent, and therefore, cl 4.6 did not apply and was not relevant for the purposes of s 96(3) of that Act. [our emphasis]*

.....

33. *Accordingly, there was nothing in the LEP that obliged, in mandatory terms, the taking into account of the objectives of the height or FSR controls because the cl 4.6 objection was otiose.*

34. Just as, by analogy, an objection under the State Environmental Planning Policy No 1 does not apply to s 96 applications, neither did cl 4.6 of the LEP and the objection based upon it before the Commissioner (*Lido Real Estate Pty Ltd v Woollahra Council* (1997) 98 LGERA 1 at 4 per Talbot J, *North Sydney Council v Michael Standley & Associates Pty Ltd* (1998) 43 NSWLR 468 at 480–481 per Mason P - cited in 1643 Pittwater Road at [52] and *Gann v Sutherland Shire Council* [2008] NSWLEC 157 at [8]–[18] per Lloyd J).

35. Although both *Lido Real Estate* and *Michael Standley* concerned an earlier version of the power to modify development applications as contained in s 102 of the EPAA (the precursor to s 96), given the almost identical language contained in s 102(3A) and (4) to the present text of s 96(3) and (4), the same result must follow. No error, therefore, was committed by the Commissioner in not considering cl 4.6 or the objection based upon it as asserted by SDHA.

Based on the above we consider that the Panel would fall into **legal error** if it were to consider the requirements of clause 4.6 of the LEP as part of its assessment of the Modification Application. Unfortunately, this is precisely the approach that the Council Report has taken (it goes so far as to reject the application **largely based upon** this unlawful assessment under clause 4.6 of the LEP) and which it appears intent on inviting the Panel to do, erroneously.

Abandonment of the Height and FSR Controls

Although a clause 4.6 assessment is not required to be undertaken, the relevant LEP planning controls (in particular the height and FSR controls) still form part of the merit assessment of the Modification Application, in their own right (and divorced from clause 4.6 as detailed above). This is mandated by s4.55(3) of the *Environmental Planning and Assessment Act 1979 (Act)*. However, even if a clause 4.6 variation request were required, the panel will be aware of the concept of ‘abandonment’ of controls, which a consent authority may lawfully have regard to and rely upon in approving development which does not comply with the applicable controls. We discuss the legal principle of ‘abandonment’ in greater detail below. In this instance, It is our submission that the Council has effectively abandoned the requirement for strict adherence to these controls following the introduction and consistent application of the Council’s VPA Policy – which **expressly envisages and authorises** departures from those controls of up to 15% in FSR.

In that regard, in 2014 the Council introduced its VPA Policy for all forms of development within the Council’s local government area. The VPA Policy at Part 2.1(a) expressly says that Council may consider and approve applications for development “up to an additional area of 15% of maximum gross floor area” otherwise permitted under clause 4.4 of the LEP. Appendix 1 of the VPA Policy sets out the residential benchmark rates for the respective areas of the Council’s LGA”



Figure 1: Extracted from Appendix 1 of the VPA Policy

The Site in this instance is expressly assigned has a benchmark rate of \$2600 per square metre (see above), along with a residential benchmark rate of \$3700 per square metre, albeit these amounts are subject of course to negotiation. In any case, it is clear that the site has been identified as one in which the FSR control that is stated in clause 4.4 of the LEP can be departed from, by up to a maximum 15%, pursuant to Council's VPA Policy.

In *Wehbe v Pittwater Council* [2007] NSWLEC 827 the Chief Judge (Preston J) established a five-part test to determine whether compliance with a development standard is unreasonable or unnecessary. Of relevance is the fourth test which arises where a development standard "has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard [by others] is unnecessary and unreasonable" (at [47] and [81]).

We note that we have acted for applicants in several Land and Environment Court matters where the Court has agreed that development standards had been abandoned, at least in a localised area, by other approvals which departed from those development standards. See for example the Court's recent approval in the Double Bay town centre in *SJD DB2 Pty Ltd v Woollahra Municipal Council* [2020] NSWLEC 1112. In that matter, the Court held at [95] that:

"The Council deliberately and knowingly decided that larger buildings were appropriate in the block of which the Site forms part. That, in my view, amounts to an abandonment of the controls for this part of Double Bay."

Similarly, we also acted for the applicant in *Gejo Pty Ltd v Canterbury-Bankstown Council* [2017] NSWLEC 1712 where the Court held at [4]:

"I consider that the Council has abandoned the 18m height development standard in the immediate locality and that it is appropriate to grant the variation to the development standard for height on the proposal. Considered in that context, the merit issues concerning separation, side setbacks, solar access and deep soil landscaping do not warrant refusal of the application."

In light of these examples, the Panel should therefore not resile from its obligation to recognise an obvious instance of legal abandonment where that has plainly occurred.

In this instance, it is our submission that the adoption of the VPA Policy, which expressly applies to a certain and defined geographical area, **and the continued consistent application of the VPA Policy over approximately half a decade**, is a clear indication that the Council does not seek to strictly apply the gross floor area controls and has in fact, with respect, abandoned the controls (at least subject to the VPA Policy – we do not suggest that the controls are abandoned in the absence of the VPA Policy).

In support of this submission we attach the following:

- a. table setting out the Council's planning agreement register, including and identifying the extent of variation to the FSR control permitted as part of a voluntary planning agreement; and
- b. table prepared by Urbis setting out planning agreements entered into by Council for sites (which are comparable to the Site) and therefore evidencing that Council has applied and adhered to its VPA Policy.

The attached information, in addition to confirming that the Council has effectively abandoned strict application of the controls, also refutes the Council's argument that the approval of the Modification would set a precedent for the two existing commercial buildings to the west. Rather, the approval of the subject application would simply reflect the implementation of Council's own adopted and well established VPA Policy, whereas any other applications for other development sites would of course be subject to their own assessments, and they too would need to be measured against the VPA Policy, in their own rights.

Panel must take into consideration Council's Voluntary Planning Agreement Policy 2014

The Applicant has invested considerable time and money (approximately one year) into negotiating the planning agreement in conjunction with preparing the Modification Application. Shortly after lodgement of the Modification Application, the Applicant commenced negotiations with Council, in accordance with the VPA Policy. A formal letter of offer for a voluntary planning agreement was submitted to Council on 21 October 2020. Up until two weeks ago, the Council was supportive of the Modification Application and the supporting voluntary planning agreement. Indeed, the quantum of monetary contributions under the proposed Planning Agreement had already been negotiated and agreed upon with Council. We understand that the applicant and its consultants will address the Panel separately on those historical and factual matters.

Despite the Council's most recent, and surprising, reversal on its position on the draft planning agreement, the Panel is legally obliged to take into consideration the Council's VPA Policy as part of its assessment of the Modification Application. It is now a well-established planning principle (first set out in *Stockland Development Pty Ltd v Manly Council* [2004] NSWLEC 472) that the matters which are relevant to determining the weight to be given to policies adopted by Council includes (as relevant):

- a. the time during which the policy has been in force; and
- b. the extent to which the policy has been departed from in prior decisions.

The VPA Policy has been in existence since 2014 and the attached information attests to the Council's consistent, frequent and long-term application of the VPA Policy to development within its local government area. Based on this, the Panel cannot ignore the existence of the VPA Policy and should appropriately give significant weight to the VPA Policy as part of its assessment of the Modification Application.

The amenity impacts arising from the Modification Application (dealt with by Robinson Planning Pty Ltd) are minimal and on balance we consider that the Panel should conclude that they are reasonable impacts, and in line with what the VPA Policy contemplates (i.e. an additional 15% of GFA in a high density location will of course be visible, but its impacts are on balance very modest and acceptable).

Based on the above matters and in conjunction with the planning advice prepared on behalf of the Applicant, it is submitted that the Panel may comfortably approve the Modification Application.

Yours sincerely



Anthony Whealy
Partner

Accredited Specialist — Local Government and Planning

Waverley Council Planning Agreement Register

Updated February 2021

DA	Address	Details of proposal	Name of those party to the agreement	Additional FSR sought	Exceedance (sqm)	DA Approval Date	Status	Contribution	Contribution details
DA-419/2015	110 -116 Bronte Road, Bondi Junction	Demolition of existing building and construction of shop top housing	Bureau SRH Pty Ltd	3%	35	Approved through s34 agreement	Planning agreement executed. Awaiting payment.	\$69,538	Towards Complete Streets Program project in Bondi Junction and Waverley's Affordable
DA-600/2015/B	292-302 Oxford Street, Bondi Junction	Modification of the approved 12 storey mixed use building to add an additional two stories and other modifications	Janco Developments Pty Ltd	14%	588	29 March 2019	Planning agreement executed. Bank guarantee received.	\$1,687,239.08	Towards Complete Streets Program project in Bondi Junction and Waverley's Affordable
DA-435/2016/B	80 Bronte Road, Bondi Junction	Significant alterations and additions to existing building (retaining side party walls and front façade) to create a mixed use building	Patchy Custody Pty Ltd	11%	38	14-Oct-20	Planning agreement on exhibition.	\$149,682	Program.
DA-89/2016	362 - 374 Oxford Street, Bondi Junction	Demolition of existing building and construction of mixed used building inc resi, serviced apartments & ground floor retail	Cassa Nova Pty Ltd	15%	670	24 August 2017	Council endorsed. Planning agreement to be executed.	\$2,026,313	Program.
DA-82/2016	629-631 Old South Head Road, Rose Bay	Demolition of existing buildings , amalgamation of 2 torrens title lots , construction of a 4 storey residential flat building	Bureau SRH Pty Ltd	11%	74	26th April 2017	Planning agreement executed. Awaiting bank guarantee, caveat	\$439,356	Towards public works for the improvement and regeneration of parks and reserves in the Rose
DA-82/2016/C	629-631 Old South Head Road, Rose Bay	Section 4.56 modification to approved residential flat building, including external and internal unit reconfiguration, lift access	MH Development One Pty Ltd	15%	98	27-Mar-17	Planning agreement being drafted.	\$287,635	TBD
DA-482/2016/B	701-707 Old South Head Road, Vaucluse	Modification of approved residential flat building to include additional units and car parking.	Lamar 18 Pty Limited	17%	280	20 December 2018	Planning agreement endorsed by Council. Awaiting execution	\$766,360	Public works for the improvement and regeneration of the Diamond Bay/Vaucluse area and
DA-498/2017	87-99 Oxford Street and 16-22 Spring Street, Bondi Junction	Demolition of existing structures; construction of a new 14 storey mixed use building comprising residential apartments, retail and	Lindsay Bennelong Developments Pty Ltd	15%	1721	13 December 2018	Planning agreement executed. In-kind contribution to be delivered	In-kind contribution	In part, a multi-purpose community hub and in part for the funding of recurrent expenditure
DA-68/2017	16 Llandaff Street, Bondi Junction	Demolition of existing buildings and construction of a 9 storey residential flat building with basement parking and offer to enter a	Philip Brenner	16%	281	13-Jun-18	Planning agreement being drafted.	\$1,035,538	TBD
DA-101/2017	20 Llandaff Street, Bondi Junction	Demolition of existing buildings and construction of new RFB with 32 units, basement parking and offer to enter into a planning	Rose Bay Waterfront Pty Ltd	15%	104	28 March 2018	Planning agreement paid. Planning agreement to be executed.	\$311,758	Program.
DA-193/2017	60 Lamrock Avenue, Bondi Beach	Alterations and additions to a dual occupancy to create a residential flat building containing four units, front hardstand parking.	Jason Peters	14%	52	18-Apr-18	DA approved.	\$225,363.00	TBD
DA-187/2020/A	278-282 Birrell Street, Bondi Junction	Modification to basement level to accommodate additional storage to satisfy condition 21 and amendments to wording of	TC Three Pty Ltd	38%	469	TBA	DA under assessment.	\$1,735,300	TBD
DA-355/2018	671-679 Old South Head Road, Vaucluse	Demolition of existing structures; construction of a new residential flat building comprising 16 units and basement car park; and	TBD	14%	325	27 November 2019	Planning agreement being drafted.	\$976,290	TBD
DA-452/2018/B	657 Old South Head Road, Vaucluse	Demolition of commerical building and construction of a shop top housing development including basement parking, landscaping	TBD	15%	108.5	31 October 2019	Planning agreement being drafted.	\$425,640	TBD.
DA-187/2020	278-282 Birrell Street, Bondi Junction	Demolition of existing structures and construction of new part three, part four storey residential flat building with basement	TC Three Pty Ltd	38%	469	10-Dec-20	Cient to lodge a s4.56 to alter VPA condition. Awaiting s4.56 d	\$1,735,300	TBD
Completed Planning Agreements									
DA-598/2008/E	310-330 Oxford Street, Bondi Junction	Part demolition of existing buildings, construction of 12-13 storey mixed use building with basement car parking.	Tashken Pty Ltd A.C.N, Treesol Holding	~2% - Equivalent of 2	334	21 June 2012	Planning agreement executed and paid.	\$3,000,000	Towards Rowe Street Pedestrian Corridor (\$65,000), Bondi Junction Pedestrian Access Mobility
DA-294/2011/B	227-229 Old South Head Road, Bondi	Modification to apartment configuration and parking of approved residential flat building and inclusion of a Planning Agreement.	New East End Pty Ltd	8.20%	101	25 September 2014	Planning agreement executed and paid.	\$150,000	Towards upgrade of adjoining New Street Park and Thomas Hogan Reserve
DA-363/2011/B	50 Waverley Street, Bondi Junction	Additional 2 storeys and basement car parking level to approved 9 storey residential flat building.	Cello Bondi Junction Pty Ltd	~15%	63	29 May 2015	Planning agreement executed and paid.	\$130,033	Towards Complete Streets Program projects in Bondi Junction
DA-81/2013	241-247 Oxford Street, Bondi Junction	Demolition of existing building, construction of a 20 storey mixed use building with basement car park.	Hollywood Apartments Pty Ltd A.C.N	15%	2161	4 December 2013	Planning agreement executed and paid.	\$3,000,000	Public domain and path upgrade to Hollywood Avenue & Waverley Street. Minor land
DA-184/2013/C	33-37 Waverley Street, Bondi Junction	Conversion of two Lv. 8 apartments into one apartment.	WWPH Group Pty Ltd	2%	42	16 December 2016.	Planning agreement executed and paid.	\$200,000.33	Towards Complete Streets Program project in Bondi Junction and Waverley's Affordable
DA-184/2013	33-37 Waverley Street, Bondi Junction	Demolition of existing buildings, construction of 9 storey residential flat building with basement car parking.	Waverley Street Pty Ltd, Shebano Pty L	9.10%	42	12 February 2014	Planning agreement executed and paid.	\$337,092	Towards Complete Streets Program projects in Bondi Junction in the vicinity of Waverley Street
DA-520/2014	6 Edward Street, Bondi Junction	Demolition of existing building and construction of residential flat building with 4 apartments and basement car parking	Model Industries Pty Ltd	15%	47	28 October 2015	Planning agreement executed and paid.	\$137,500	Upgrade of Thomas Hogan Reserve
DA-547/2014	87-89 Glenayr Avenue, Bondi Beach.	Demolition of existing buildings and proposed 3-4 storey mixed use building	EG Property Group	59%	609	Approved through s34 agreement	Planning agreement paid.	\$751,925	Upgrade of park and public domain directly adjoining site to the northeast at intersection of
DA-503/2014/A	304-308 Oxford Street, Bondi Junction	Modification to approved mixed use building including two additional stories .	Threestyle Properties Pty Ltd	15%	420	16 December 2016.	Planning agreement executed and paid.	\$1,451,812	Towards Complete Streets Program project in Bondi Junction and Waverley's Affordable
DA-101/2014/B	344-354 Oxford Street, Bondi Junction	Modification to approved mixed use building including one additional storey .	Bondi Junction Prime Pty Ltd	5%	737	30th June 2017	Planning agreement executed and paid.	\$985,711.55	Towards Complete Streets Program project in Bondi Junction and Waverley's Affordable
DA-520/2014/A	6 Edward Street, Bondi Junction	Modification to internal layout & other alts	Model Industries Pty Ltd	11.59% (in addition to	41	4th July 2016	Planning agreement executed and paid.	\$106,882.00	Thomas Hogan Reserve
DA-531/2015/A	67-69 Penkivill Street, Bondi	Modification to approved RFB including internal reconfiguration, additional bay windows, enlarged basement and attice level with	K2 Property Development Group	15%	277	6 March 2018	Planning agreement executed and paid.	\$583,152	Towards the improvement and regeneration of Waverley Park and Waverley's Affordable
DA-490/2015	570 Oxford Street, Bondi Junction	Conversion of approved mezzanine into commercial floor space.	St Oxford BJV Pty Limited	1.8% (in addition to	193	2 March 2016	Planning agreement executed and paid.	\$338,440	Towards Complete Streets Program projects in Bondi Junction
DA-572/2015	89 Ebley Street Bondi Junction	Demolition of existing dwelling and construction of mixed use building (up to seven storeys) with ground floor retail, residential	Iris Capital	5%	93	30-Jun-17	Planning agreement executed and paid.	\$316 200	Council's Complete Streets Program in particular Bondi Junction projects and affordable housing
DA-578/2015/A	17 Isabel Avenue, Vaucluse	Demolition of existing building, construction of a three storey residential flat building with basement parking and strata sub-	Daniel Bloom, Andrea Bloom, Michael	9%	42	2-Jun-17	Planning agreement executed and paid.	\$125,249.00	To be applied towards the upgrade and improvement of Diamond Bay reserve and Waverley's
DA 585/2015/B	59-69 Oxford Street, Bondi Junction	Partial demolition of existing structures and construction of a new fourteen storey mixed use development with basement car	MHH Project Pty Ltd	19%	845	26th July 2017	Planning agreement executed and paid.	\$4,713,956	Towards Complete Streets Program project in Bondi Junction and Waverley's Affordable
DA-586/2015	2 Warners Avenue, North Bondi	Demolition of the existing dwelling & structures. Construction of 3 storey residential building comprising 5 x 2 bedroom units.	B & I Properties 2 PTY LTD	28%	83	28th March 2017	Planning agreement executed and paid.	\$441,867	To be applied towards the upgrade of Baracluff Park and playground and Waverley's Affordable
DA-206/2015	67A Roscoe Street, Bondi Beach	Construction of a 4 storey residential flat building with 10 units, basement car park and strata subdivision	STM 123 NO 6 Pty Ltd	66%	265	Approved through s34 agreement	Planning agreement executed and paid.	\$431,000	Towards the upgrade of the park/plaza on the corner of O'brien Street and Glenayr Avenue, or
DA-316/2015	157-159 Military Road, Dover Heights	Demolition of existing building and construction of mixed use building with basement car parking.	Kamal, Niraj and Sagar Verma	15%	74	24 March 2016 - deferred commence	Planning agreement executed and paid.	\$143,605.68	Towards the upgrade at the intersection of Military Road and Blake Street, Dover Heights and
DA-569/2015/A	109 Oxford Street, Bondi Junction	Demolition of the existing buildings and construction of a new 12 storey mixed use building with basement car parking as modified	Mercury 21 Pty Ltd	15%	989	28 August 2017	Planning agreement executed and paid.	\$2,844,438	Towards Complete Streets Program project in Bondi Junction and Waverley's Affordable
DA-571/2015	89 Bondi Road, Bondi	Alts & adds to existing commercial premises & construction of rear addition for use as a boarding house	Eli Rimmer & Daphna Rimmer	15%	46	6 June 2016 - deferred commencement	Planning agreement executed and paid.	\$25,808	Complete streets program and/or any other public purpose benefit for the improvement and
DA-169/2015	91-93 Glenayr Avenue, Bondi Beach	Demolition of existing building and construction of shop top housing	Jaya Kusuma Pty Ltd	32%	155	27 April 2016 - deferred commencement	Planning agreement executed and paid.	\$425,151	The upgrade of the public domain, intersection ("Seven Ways") and park in the immediate
DA-575/2015	637-639 Old South Head Road, Rose Bay	Demolition of existing buildings, construction of a residential flat building with basement parking.	637 OSH Pty Ltd	10%	64	20 April 2016 - deferred commencement	Planning agreement executed and paid.	\$195,403	Towards additional footpath, planter boxes and driveway improvements at Blake Street and
DA-482/2016	701-707 Old South Head Rd, Vaucluse	Demolition of the four dwellings and construction of a new three level residential flat building with 17 units, associated basement	Lamar 18 Pty Limited	13%	188	26th July 2017	Planning agreement executed and paid.	\$517,537	To be applied towards the upgrade and improvement of Diamond Bay reserve and Waverley's
DA-156/2016	695 Old South Head Road, Vaucluse	Demolition of current improvements and development of a three storey, five apartment development with basement parking.	Elaine Joan Newland	15%	74	3rd January 2017	Planning agreement executed and paid.	\$230,380.59	Towards the improvement of Kimberley Reserve and Waverley's Affordable Housing Fund.
DA-334/2016/A	82-84 Curlewis Street	Modification to boarding house including additional boarding room, alterations to building footprint and building height.	Global Medical Insurance Group Pty Ltd	10%	117	06 June 2018	Planning agreement executed and paid.	\$240,000	Waverley's Affordable Housing Program.
DA-541/2016/A	9 Penkivill Street Bondi	Modification to add an additional unit and alterations to car stacker/parking of approved residential flat building.	B & I Properties 2 PTY LTD	15%	61	28th June 2018	Planning agreement executed and paid.	\$191, 492	Towards the upgrade of parks, reserves and playgrounds in the Bondi area and Waverley's
DA-334/2016/D	82-84 Curlewis Street, Bondi Beach	Modifications including reconfigured walk ways, screen planting, balcony screening, relocated bike storage and a squaring-off of eastern wall at uppermost level to rooms 3.02 and 3.07	Global Medical Insurance Group Pty Limited		3	09-Jul-20	Planning agreement executed and paid.	\$6,135	Upgrade of parks, reserves and playgrounds in the Bondi Beach and/or North Bondi area and Waverley's Affordable Housing Program.
DA-26/2017	48-50 Penkivill Street, Bondi	Additional two levels to approved Residential Flat Building (DA753/2003)	Stargate Building and Constructions Pty Ltd			12 Nov 2018	No planning agreement required.	TBD	
DA-46/2018	625-627 Old South Head Road, Rose Bay	Demolition of existing dwellings , construction of new four storey residential flat building with one level of basement carparking	Jaya Kusama Pty Ltd	14%	116.5	19 February 2019	Planning agreement executed and paid.	\$349, 500	Towards improvement and regeneration of parks and reserves in the Rose Bay / Dover Heights area and Waverley's Affordable Housing Program
Refused									
DA-263/2014	570-588 Oxford Street, Bondi Junction	Amending development application proposing two additional levels (totalling 21 storeys) to the approved 19 storey building (DA-501/2012/A) and a Planning Agreement.		12%	1254	Refused	Refused	\$4,228,000	
DA-417/2014	10-14 Hall Street, Bondi Beach	6 storey mixed use building with 2 levels of basement car parking.		~15%	408	Refused	Refused		
DA-628/2014	253 Oxford Street, Bondi Junction	Amending DA for two additional levels for approved mixed use building.	LegPro 14 Pty Ltd	11% from previously approved 15% 4.4b	839	Refused	Refused	\$3,200,000	
DA-482/2016/A	701-707 Old South Head Rd, Vaucluse	Section 96 Modification including 3 additional units, extending, approved units and addition of 6 car parking spaces	Lamar 18 Pty Limited	22%	336	Refused	Refused	\$973,687	
Withdrawn									
DA-164/2015	41 O'Donnell Street, North Bondi	Demolition of existing buildings and proposed residential flat building of 5 units with basement car parking.	Martin Airth	13%	40	29 June 2016 - deferred commencement	Development consent surrendered.	\$168,086.72	Public works for the improvement and regeneration of the Bondi area and Waverley's Affordable Housing Fund.
DA-164/2015/B	41 O'Donnell Street, North Bondi (s96)	Modification of approved residential flat building, including extension of north-western corner of first floor level of the building to convert Unit G.03 into a 2 bedroom apartment; increase of roof parapet	Martin Airth	4%	9	27 September 2017	Development consent surrendered.	\$58,459.00	Public works for the improvement and regeneration of the Bondi area and Waverley's Affordable Housing Program.



COMPLETED PLANNING AGREEMENTS – BONDI JUNCTION

The following provides a summary of completed planning agreements within Bondi Junction, of which there are 13. The review has sought to identify those which are comparable examples to the proposal at 55 Grafton Street. The following is noted:

- 5 were development applications related to mixed use/residential development seeking additional FSR of between – 2% and 19% (highlighted in blue)
 - Modification – ~2% - equivalent to 2 storeys - 310-330 Oxford Street
 - Modification – 5% - 1 additional storey – 344-354 Oxford Street
 - Modification – 15% - 2 storeys – 304-308 Oxford Street
 - Modification – 15% - 2 additional storeys – 109 Oxford Street
 - Modification – 19% - 59-69 Oxford Street
- The applications which were not less comparable but have been included for completeness.

DA Reference and Site Address	VPA summary	Additional FSR Sought	Consent Authority and Recommendation	Impacts
DA-363/2011/B 50 Waverley Street, Bondi Junction	Additional 2 storeys and basement car parking level to approved 9 storey residential flat building.	~15%	Recommended for refusal. Approved by Waverley Development Assessment Panel on 29 May 2015	Summary – Page 49 <i>“The proposal seeks significant variations to the development standards set for the site. The two additional levels sought under this application result in additional overshadowing impacts and potential view impacts above that of the building approved which already has been afforded a 10% variation to the FSR control.</i> <i>The proposed 36% breach to the FSR control and 18-36% breach to the height control fails to maintain the integrity and credibility of the controls for Bondi Junction and removes the certainty for residents and developers.</i>

				<p><i>Significant variations (those beyond 15%) are more reasonably dealt with via a Planning Proposal process which allows for the appropriate level of scrutiny and public consultation. Varying the GFA development standard by more than 15% via Development Application is not appropriate and undermines the orderly use of land facilitated by the LEP. In this particular, case, the proposal seeks an FSR of 2.73:1, which is almost a 3:1, a significant variant of the maximum 2:1 stipulated in the LEP.</i></p> <p><i>In principle, a 15% additional floor space incentive should only be granted to those development proposal which can adequately satisfy clause 4.6, by having no additional adverse impacts, or where there are some impacts, demonstrate an appropriate public benefit, otherwise the purpose of the development standard is diminished.</i></p> <p><i>This is the same approach adopted for the amending DA-263/2014 for 570-588 Oxford Street, Bondi Junction which seeks a similar significant variation. The application is not considered to be in the public interest and is recommended for refusal.”</i></p> <p>Public Interest – Refer to pages 46 and 47</p> <ul style="list-style-type: none"> - <i>“The impacts identified above, are not considered to be properly dealt with by a Voluntary Planning Agreement, given that at a broader level, the proposal would have a more devastating impact on the integrity of the development standards set in the LEP and this would not pass the public interest test. For these reasons, the DBU considers that the significant variations proposed to the development standards should not be supported.”</i>
DA-490/2015 570 Oxford Street, Bondi Junction	Conversion of approved mezzanine into commercial floor space.	1.8% (in addition to approved 15%)		TBC if available – 19.01.2021

DA-520/2014 6 Edward Street, Bondi Junction	Demolition of existing building and construction of residential flat building with 4 apartments and basement car parking	15%	Recommended for approval by the Waverley Development Assessment Panel (pages 99 – 136)	<p>Public Interest (pages 109 – 110)</p> <ul style="list-style-type: none"> - “Having regard to this policy, the reasonableness of impacts associated with the additional floor space (46.57m2) have been weighted against the likely public interest (ie. public domain improvements in the area) and it has been concluded that the impacts in this case would be acceptable.” <p>Overshadowing (pages 120 – 121)</p> <ul style="list-style-type: none"> - “The proposed development will have an increased solar impact upon the sunlight access to the surrounding properties.” (page 120) <p>Views (pages 121 – 127)</p> <ul style="list-style-type: none"> - “On balance, the proposal is considered to result in a minor view loss impact. The proposal seeks a 3-4 storey (above basement) development that is consistent with the context of the surrounding development. On merit and having regard to the Tenacity Principles, this modified scheme presents less impacts and given that there will be public benefits proffered from the proposed planning agreement, on balance those impacts are considered to be acceptable.” – page 127
DA-184/2013 33-37 Waverley Street, Bondi Junction	Demolition of existing buildings, construction of 9 storey residential flat building with basement car parking	9.10%		TBC if available – 19.01.2021
DA-81/2013 241-247 Oxford Street, Bondi Junction	Demolition of existing building, construction of a 20 storey mixed use building with basement car park.	15%		TBC if available – 19.01.2021
DA-598/2008/E 310-330 Oxford Street, Bondi Junction	Part demolition of existing buildings, construction of 12-13 storey mixed use building with basement car parking.	~2% - Equivalent of 2 storeys	Recommended for refusal by Council officers, however approved by the then Development Control Committee (DCC)	<p>Determined 2/6/2012</p> <p>Commentary regarding consistency with LEP (page 9)</p> <p><i>“It is considered that the proposed development does not satisfy the particular Aims of Waverley Local Environmental Plan (Bondi Junction Centre) 2010 which relate to “improve built form and building design in</i></p>

				<p><i>Bondi Junction Centre, appropriate to a major centre”, as it result in an overdevelopment of the site. In addition, the proposed development does not satisfy the objectives of Waverley Local Environmental Plan (Bondi Junction Centre) 2010 which relate to “provide for commercial and residential uses within new mixed use developments that are compatible with the surrounding development and do not compromise the amenity of surrounding residential areas”. The proposed modification is considered incompatible with the surrounding development and would result in adverse amenity impacts on adjoining properties. The proposal does not improve the approved built form or design and would impact upon the environmental quality of the built and natural environment, as it will result in the overdevelopment of the site.”</i></p> <p>Height (page 11)</p> <ul style="list-style-type: none"> - <i>“In this instance, any non-compliance with the height control within the Bondi Junction Centre is not considered to be acceptable particularly taking into consideration the aesthetic of the proposed building when viewed from a variety of vantage points and the amenity impacts upon surrounding properties, particularly those located to the south. It would be incompatible with the surrounding development and does not improve the approved built form and design. Any unnecessary protrusion above and beyond the permissible height limit is unacceptable and should be refused. It is to be noted that the approved modified mixed commercial / residential development does comply with this core height control of the LEP, and the current scheme which seek to break both the floor space and height maximum standards is not supported.”</i>
DA-184/2013/C 33-37 Waverley Street, Bondi Junction	Conversion of two Lv. 8 apartments into one apartment.	2%	Recommended for approval by the Waverley Development Assessment Panel	<p>Height (pages 185 – 187)</p> <ul style="list-style-type: none"> - <i>“The proposal is considered to be consistent with the objectives of clause 4.3 Height of buildings as the overall height of the development preserves amenity and the buildings will continue</i>

			(pages 172 – 194)	<p><i>to have a compatible height, bulk and scale with the existing character of the locality.” – page 187</i></p> <p>Public Interest (page 187)</p> <ul style="list-style-type: none"> - <i>“Having regard to this policy, the reasonableness of impacts associated with the additional floor space (42m2) have been weighted against the likely public interest (ie. public domain improvements in the area) and it has been concluded that the impacts in this case would be acceptable. This relates to the merits of this case only - the reasonableness of these impacts (extra FSR) would have a lesser weight in the absence of a clear public benefit.” – page 187</i>
DA-520/2014/A 6 Edward Street, Bondi Junction	Modification to internal layout & other alts	11..59% (in addition to approved 15%)		TBC if available – 19.01.2021
DA-569/2015/A 109 Oxford Street, Bondi Junction	Demolition of the existing buildings and construction of a new 12 storey mixed use building with basement car parking as modified for approved mixed use development, including provision of two additional floor levels comprising 18 units and an additional basement level	15%	Recommended for approval by the Sydney Central Planning Panel	<p>Shadowing impact (pages 25-26) -</p> <ul style="list-style-type: none"> - <i>“Given the above analysis, the duration and extent of the additional impact are considered reasonable, particularly with regard to the context of Bondi Junction Centre being characterised as a high-density locality. The approved development, as proposed to be modified, will maintain a reasonable amount and duration of sunlight received by the majority of apartments in the affected development between 9am and 3pm on 21 June.” – page 26</i> <p>View impact (pages 26-27)</p> <ul style="list-style-type: none"> - <i>“The proposed additional floor levels are not expected to further affect iconic views and water views that are enjoyed from surrounding residential properties than the view impact caused by the approved development.” – page 26</i> <p>Streetscape and visual impact (pages 27-30)</p> <ul style="list-style-type: none"> - <i>“Figure 8 demonstrates that the difference of perceived building height between the approved and proposed modified forms of</i>

				<p><i>the development is not overly discernible when viewed from street level. Most pedestrians walking past the development would focus their sight directly forward of them at street level rather than directly upwards. In this regard, the proposal is not expected to significantly affect the human scale of the approved development, as proposed to be modified, and any additional visual impact upon the street network and public domain would be minimal.” – page 30</i></p> <p>The public interest (pages 30-32)</p> <ul style="list-style-type: none"> - <i>“It is considered that the proposal is not against the public interest as it complies with the limitations set in the Policy and offers a monetary contribution, the majority of which is expected to go towards funding public domain work within the Bondi Junction Centre, namely the Complete Streets Program. If approval is granted, it is recommended that the Draft Planning Agreement be accepted by the Sydney Central Planning Panel.” – page 31</i> - <i>“Having regard to the [VPA] Policy, the reasonableness of impacts associated with the additional floor space has been weighted against the likely public interest (i.e. public domain improvements in the area) and it has been concluded that the impacts in this case would be acceptable. This relates to the merits of this case only - the reasonableness of these impacts (extra FSR) would have a lesser weight in the absence of a clear public benefit.” – page 31</i>
DA-101/2014/B 344-354 Oxford Street, Bondi Junction	Modification to approved mixed use building including one additional storey.	5%	Recommended for approval by the Waverley Development Assessment Panel – pages 32-62	<p>Solar access and overshadowing (page 44-50)</p> <ul style="list-style-type: none"> - <i>“The net shadowing impact of the proposed additional floor level is minor and will not compromise the amenity of surrounding residential development. Therefore, the breach of the height of buildings development standard will not manifest in adverse</i>

				<p>overshadowing impacts and is accepted in this regard.” – page 50</p> <p>View impact (pages 50-52)</p> <ul style="list-style-type: none"> - “The view loss impact upon the development at 1 Newland Street is characterised as moderate given that the current extent and quality of views are mediocre and the development benefits from clearer views of the Sydney CBD skyline when viewed directly west over the road reserve of Oxford Street, which will not be impacted by the proposal.” – page 52 <p>Streetscape and visual impact (page 52)</p> <ul style="list-style-type: none"> - “Given the evidence shown in Table 5 above, the overall building height of the approved development, as proposed to be modified, will not appear out of character with the prevailing and emerging built form character of the western precinct of the Bondi Junction Centre in that it is lower than that of the examples given in Table 5. In this regard, the additional floor level will not result in discernible streetscape and visual impacts upon the immediate area.” – page 52 <p>The public interest (pages 52-54)</p> <ul style="list-style-type: none"> - “Having regard to the [VPA] Policy, the reasonableness of impacts associated with the additional floor space has been weighted against the likely public interest (i.e. public domain improvements in the area) and it has been concluded that the impacts in this case would be acceptable. This relates to the merits of this case only - the reasonableness of these impacts (extra FSR) would have a lesser weight in the absence of a clear public benefit.” – page 54 - “It is considered that the proposal is not against the public interest as it complies with the limitations set in the Policy and offers a monetary contribution for public domain work within the Bondi Junction Centre, namely the Complete Street Program. If
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				approval is granted, it is recommended that the Planning Agreement be accepted by the Waverley Development Assessment Panel.” – page 54
DA-503/2014/A 304-308 Oxford Street, Bondi Junction	Modification to approved mixed use building including two additional stories.	15%	Recommended for approval by the Waverley Development Assessment Panel	<p>Solar access and overshadowing – (page 68)</p> <ul style="list-style-type: none"> “The modifications will increase solar access impacts on the public domain including Oxford and Denison Street during the mid winter and summer. The additional shadows are not considered excessive or unreasonable given the shadows cast are similar to that of surrounding building forms.” <p>View loss – pages 68 -72</p> <ul style="list-style-type: none"> “As the proposed building satisfies the context criteria the view loss impacts are considered to be outweighed by contextual appropriateness of the building form in the Bondi Junction area.” – page 72 <p>The public interest – pages 73-74</p> <ul style="list-style-type: none"> “Having regard to this [VPA] policy, the reasonableness of impacts associated with the additional two storeys of residential accommodation (including additional height and FSR) have been weighted against the likely public interest (ie. public domain improvements in the area) and it has been concluded that the impacts in this case would be acceptable.” – page 73 “With regards to view loss, the impacted residential apartment is located on the levels of that building which breach both the height and FSR development standards in the Waverley LEP 2012 and exists only because they were approved subject to the same benefit and public interest test (with a Voluntary Planning Agreement) as is proposed here. <u>It would be an inherently unbalanced and inequitable planning outcome to allow the exceedance to that neighbouring building, only to reject a proposal adjacent to it that seeks the same outcome and impact.</u> As the proposed building satisfies the context criteria the view loss impacts are

				<i>considered to be outweighed by contextual appropriateness of the building form in the Bondi Junction area.” – page 74</i>
DA-585/2015/B 59-69 Oxford Street, Bondi Junction	Partial demolition of existing structures and construction of a new fourteen storey mixed use development with basement car park, pub at ground floor, commercial space and residential units at first floor and residential units on all levels above	19%	Recommended for approval by the Waverley Development Assessment Panel	Height (pages 15-18) - <i>“The building, although slightly higher due to structural requirements, remains to be commensurate with the height, bulk and scale of the mixed use buildings within the vicinity and with other emerging development in the area. Indeed, other new mixed use buildings within the area have allowed for breaches to the height limit for plant equipment, lift overruns and common open space areas. The breach to the height limit in this instance would not be against the public interest because it is consistent with objectives of the development standard and applicable zone.” – page 18</i>
DA-572/2015 89 Ebley Street, Bondi Junction	Demolition of existing dwelling and construction of mixed use building (up to seven storeys) with ground floor retail, residential above, basement car-park and associated landscaping.	5%		TBC if available – 19.01.2021

Attachment 2 – 59-75 Grafton Street BONDI JUNCTION: S. 4.55(2) Application for Modification:
Chronology of events, by RUP

59-75 Grafton Street BONDI JUNCTION: S. 4.55(2) Application for Modification: Chronology of events

DA-482/2017/A: Modification to construct two additional residential levels, provide seven additional apartments, internal alterations and changes to bicycle parking spaces, roof design and façade

Date	Event
20/7/2020	Pre-DA meeting with Waverley Council
27/7/2020	Pre-DA letter of advice from Waverley Council (requiring a reduction in height (two additional levels proposed instead of three)
18/08/2020	Lodgement of s. 4.55 application (DA-482/2017/A) via planning portal Council Fee \$15,176 (including Design Excellence Panel fee of \$3,000)
27/8/2020	Notification #1 commencement
14/9/2020	Email RUP to Waverley Council re notification period
17/09/2020	Notification #1 completed
21/9/2020	RUP request for copy of submissions Copy of submissions emailed from Waverley Council to RUP
30/9/2020	Email from RUP to Waverley Council re assessment of s. 4.55
13/10/2020	Email from RUP to Waverley Council re VPA
16/10/2020	Email from Waverley Council to RUP re VPA
21/10/2020	Waverley Design Excellence Panel review of s. 4.55 application. The panel (which comprised Brendan Randles, Nick Tyrrell and Jonathan Knapp) supported the modification application including the proposed height, bulk and scale. Recommended changes to the design included: <ul style="list-style-type: none">• Amendment of the northern elevation to increase solidity, privacy and relocation of condensers• Remove all reference to Alucobond• Amendment of the privacy louvres to the southern balconies• Provision of 20 additional solar panels and a 4000L water tank• Change Magnolia Little Gem tree in the Hegarty Lane courtyard with a larger tree (Weeping Lillypilly)• Increased planting to communal terraces
21/10/2020	Email RUP to Waverley Council re final VPA letter of offer
22/10/2020	Email from Waverley Council to RUP re VPA letter of offer
28/10/2020	Email from RUP to Waverley Council (planning) re VPA letter of offer Email from Waverley Council to RUP re assessment of s. 4.55 application
9/11/2020	Waverley Council Request for Information (deferral letter)
12/11/2020	Telephone discussion RUP and Waverley Council re view assessment and Notification #2
19/11/2020	Notification #2 commencement
23/11/2020	Applicant response to request for Information (amended plans and information) Additional Council fee of \$5,722.50 paid
1/12/2020	Waverley Council request for view assessment and 3D model
8/12/2020	Submission of view assessment and 3D model
10/12/2020	Notification #2 completed
1/2/2021	Email RUP to/from Waverley Council re. solar analysis

Date	Event
15/2/2021	RUP submission of amended plans and solar analysis (design amended to eliminate additional shadows on nearby dwellings)
25/2/2021	RUP submission of amended BASIX certificate and email RUP to/from Waverley Council requesting advice on assessment/determination
8/3/2021	Email RUP to/from Waverley Council requesting advice on assessment/determination
18/03/2021	Waverley Council DBU assessment
25/3/2021	Email RUP to Waverley Council requesting advice on assessment/determination Email Waverley Council to RUP that Council officers will be recommending refusal of s. 4.55 application (DA-482/2017/A)

Attachment 3 - JPRA Cottee Parker view assessment

Ref: 2015069
Date 4 December 2020

59 Grafton Street, Bondi Junction

VIEW STUDY

BACKGROUND

Clygen Pty Ltd, the owner of the site, has appointed Cottee Parker Architects to undertake a desktop view study to assist with understanding any potential impact on views from the properties at 71-85 Spring Street, Bondi Junction due to the proposed S4.55 modifications to the approved development at 59 Grafton Street.

The proposed Section 4.55 (S.455) modifications primarily relate to the opportunity for Clygen to enter into a planning agreement (VPA) with Council for the site for up to 15% additional gross floor area (GFA) as described by Council's Planning Agreement policy. The design remains fundamentally the same as that approved, with minor changes including an additional two storeys, following the precedent of other approved projects in the precinct which have entered into a similar planning agreement with Council.

This document describes the findings of the view study presented in drawing DA 2703, at Appendix A.

1. CONTEXT AND LOCAL VIEWS

Bondi Junction is located on a ridge in Sydney's eastern suburbs approximately 5km from the CBD (Figure 1). The urban environment is characterised by a mix of tall residential and commercial tower development, typically with retail ground floor uses, with some residual low-rise retail and commercial buildings.

The upper floors of the taller residential buildings in Bondi Junction enjoy high quality 360° views, with lower floors sharing views between buildings, unless located on the fringes of the precinct. Views include:

SYDNEY
T 61 2 9366 1133
Level 4, 50 Stanley St,
East Sydney, NSW 2010

BRISBANE
T 61 7 3846 7422
201 Montague Road,
West End, Brisbane, QLD 4101

MELBOURNE
T 61 3 9654 2264
L4, 400 Collins Street,
Melbourne, VIC 3000

PERTH
T 61 8 6311 2827
Level 25, 140 St Georges Terrace,
Perth, WA 6000

ABN 77 010 924 106

COTTEEPARKER.COM.AU

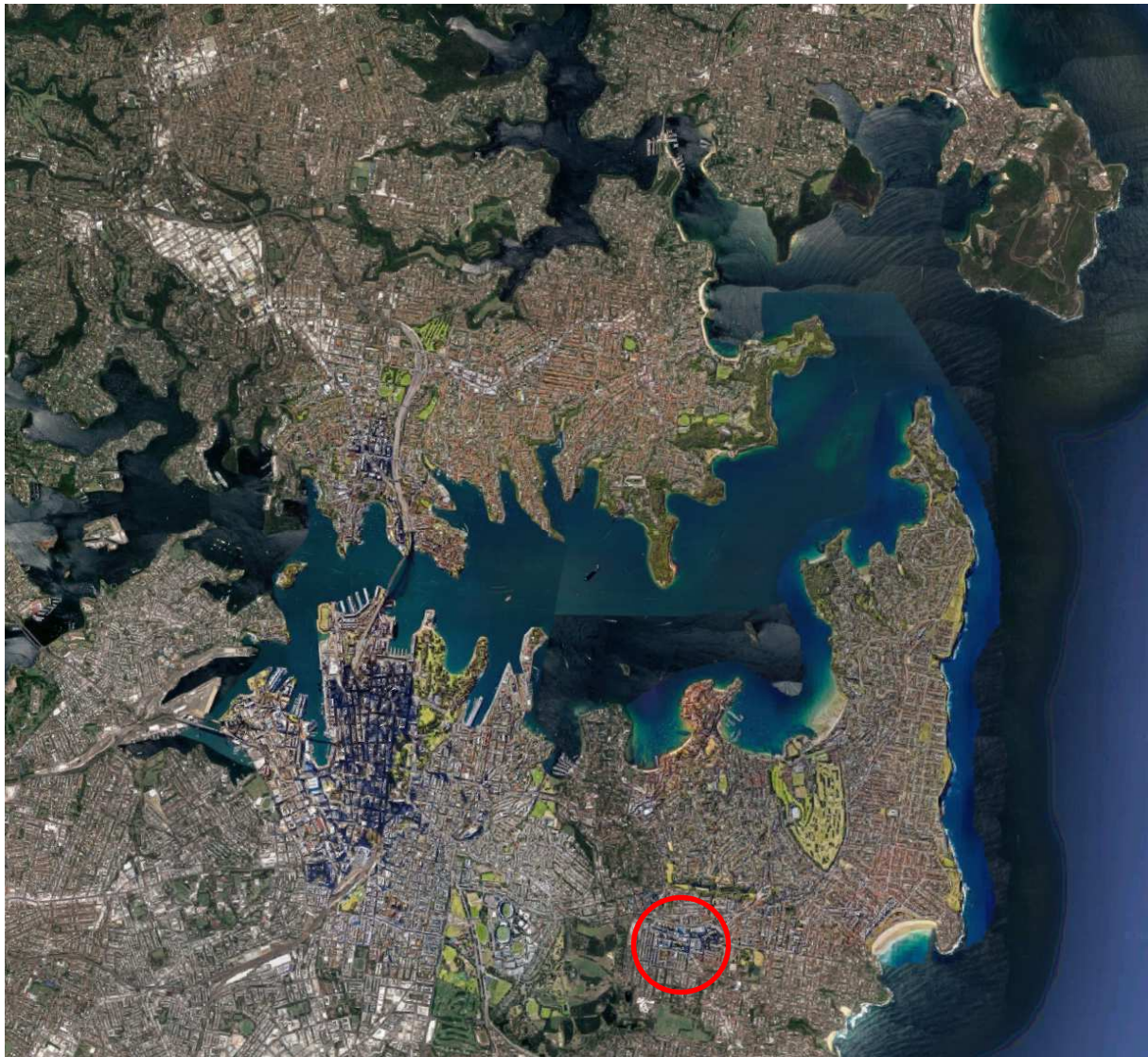


Figure 1 – Aerial map showing Bondi Junction (circled), Sydney Harbour and the CBD. Source: Google Maps

- North towards Sydney harbour and the north shore, including Manly.
- North West towards the Opera House and Harbour Bridge, with North Sydney beyond.
- West towards the CBD.
- West across the Sydney basin towards the Blue Mountains.
- East towards Bondi Beach, the coastline and the Pacific Ocean.
- South/South West over Centennial Parklands towards Botany Bay.

59 Grafton Street is located within the north-western precinct of Bondi Junction and has a Mixed-Use (B4) zoning. This area has undergone substantial redevelopment over the last 10 years or so which has seen the prevailing building height increase. 71- 73 Spring Street and 83-85 Spring Street are located to the south-east of the subject site (Figure 2). Constructed in the 1980's, these “twin” towers remain the tallest residential towers in Bondi Junction.

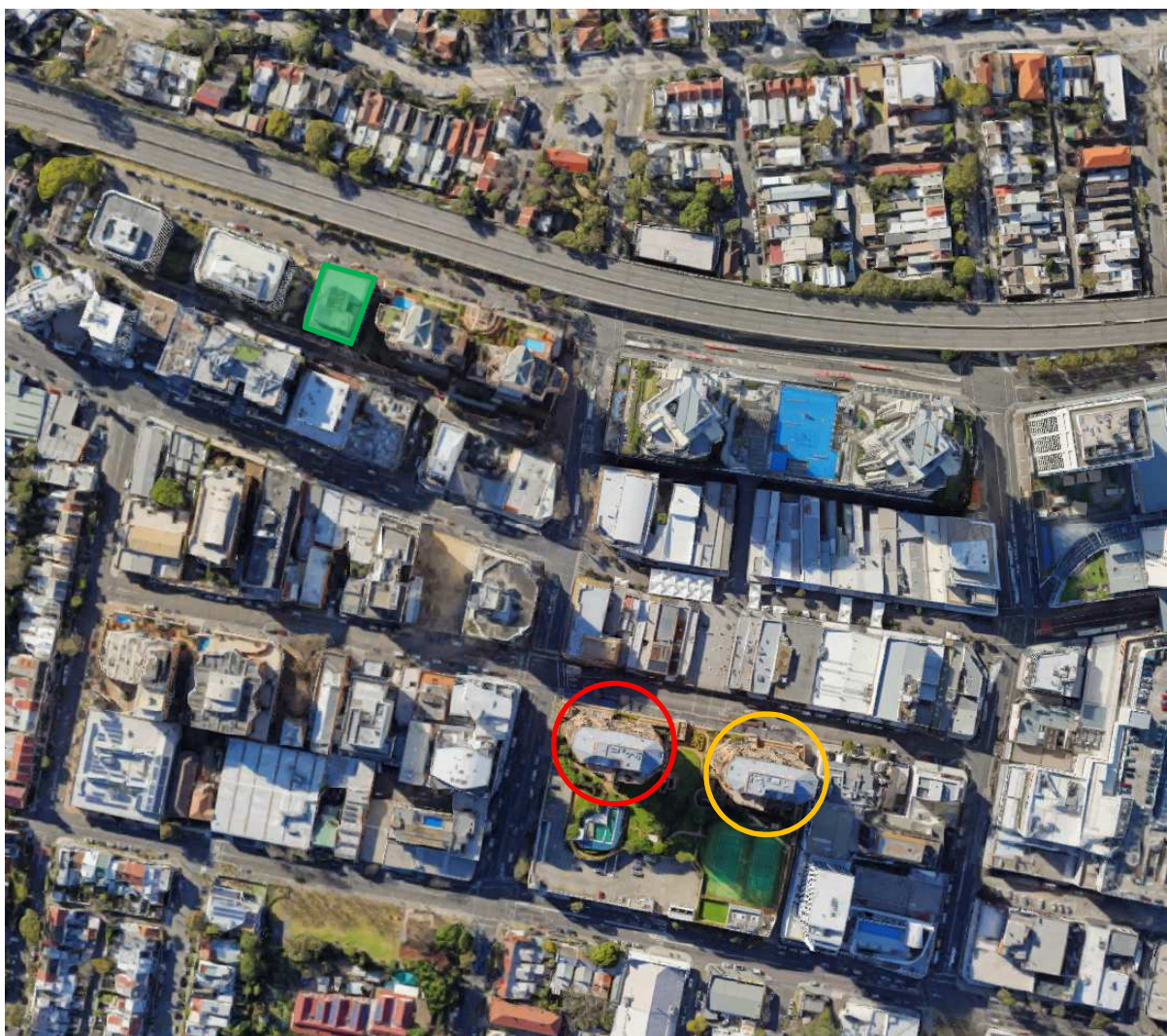


Figure 2 – Aerial map showing relationship of subject site to 71-73 Spring Street and 83-85 Spring Street. Source: Google Maps

KEY

- 59 GRAFTON STREET (SUBJECT SITE)
- 71-73 SPRING STREET (TOWER 1)
- 83-85 SPRING STREET (TOWER 2)

2. POTENTIAL VIEW IMPACT

The proposed 2 storey increase in height of the approved development at 59 Grafton Street as part of a VPA means that some of the upper floors of TOWER 1 and TOWER 2 are likely to have a portion of their existing views shortened. Given the proposed height increase of the subject site is small, the expansiveness of the existing views and the distance between the properties (approximately 200m at the closest point) the affected portion of the view will be minor.

As the site is located to the North West of TOWER 1 and TOWER 2 the affected portion will occur in the view towards the Opera House and Harbour Bridge. This means that the minor affected portion of

the view may include distant or partial views of iconic elements as part of the expansive view that is available.

3. 71-73 SPRING STREET TOWER 1

An example of the view from the upper levels of TOWER 1 is shown in Figure 3 below. It can be seen that there is an expansive view of Sydney Harbour to the north and that, whilst the Opera House and Harbour Bridge can be seen, they are at some distance and are partially obscured by the Piccadilly Gardens tower at 8-14 Fullerton Street, Woollahra.



Figure 3 – View from apartment 2606 (Level 26) 71-73 Spring Street TOWER 1. Source:

<https://wentworthpartners.com.au/419/2606-71-73-spring-street-bondi-junction>

For comparison purposes, the approved development has been photomontaged into this photo in the artist's impression in Figure 3a. The proposed modification to this development including the additional 2 storeys is shown in the artist's impression in Figure 3b. These images are also provided in drawing DA 2703, appended to this document.

It can be seen that the view towards the Opera House and Harbour Bridge from the apartment where the original image was taken remains uninterrupted by the approved development. The S.455 / VPA proposal also does not interrupt the view towards the Opera House and Harbour

Bridge, except for a small portion of the base of the north-eastern Harbour Bridge abutment. The view towards the harbour is not affected by the approved development or the proposal.



Figure 3a – Excerpt from Appendix A showing the view from apartment 2606 (Level 26) 71-73 Spring Street TOWER 1 including:

- The approved development at 59 Grafton Street
- The envelope of the approved development at 47-55 Grafton Street
- The recently constructed development at 113-119 Oxford Street



Figure 3b – Excerpt from Appendix A showing the view from apartment 2606 (Level 26) 71-73 Spring Street TOWER 1 including:

- The proposed development at 59 Grafton Street (S.455 / VPA scheme)
- The envelope of the approved development at 47-55 Grafton Street
- The recently constructed development at 113-119 Oxford Street

4. 83-85 SPRING STREET TOWER 2

TOWER 2 is located further to the east of TOWER 1 and its line of sight towards the Opera House is therefore unlikely to be affected by either the approved development of the S.455 / VPA proposal at 59 Grafton Street (Figure 4 & 5).

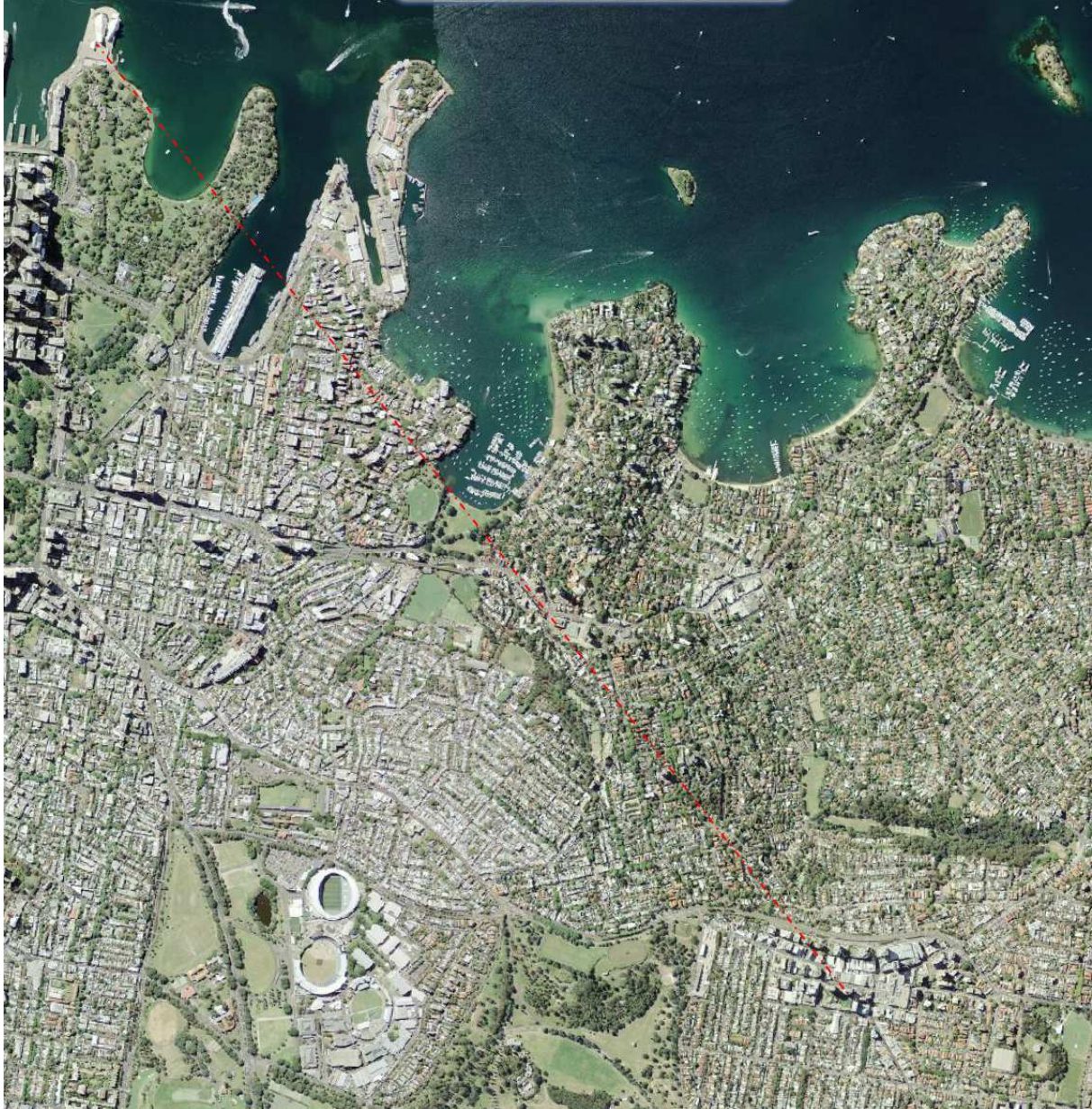


Figure 4 – The view of the Opera House from TOWER 2 is unlikely to be affected by the proposed tower. Source: Six Maps

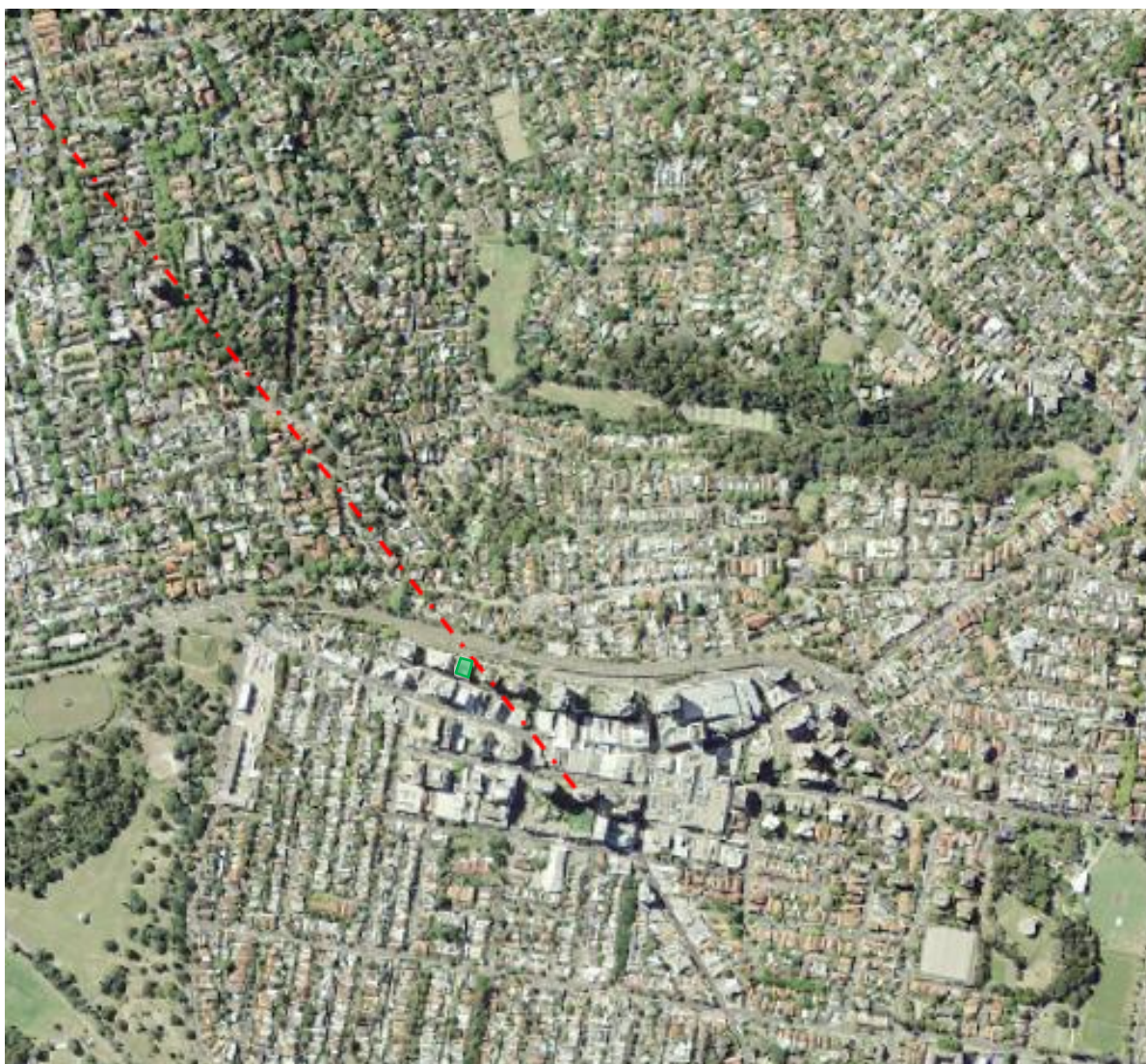


Figure 5 – Zoomed in view showing the view of Opera House from TOWER 2 is unlikely to be affected by the proposed tower.
Source: Six Maps

KEY

 59 GRAFTON STREET (SUBJECT SITE)

APPENDIX A

View Study

These artist's impressions are for illustrative purposes only. They are based on the information available at the time of production and may be subject to change should further photography, surveys and digital models become available in future.