



Submission to Rezoning Review

122 Bronte Road, Bondi Junction

Report Information

Council versions:

No.	Author	Date	Version
1	Waverley Council	3 July 2019	Forward to Department of Planning, Industry and Environment for Rezoning Review

This document comprises Council’s response to the letter from the Department of Planning, Industry & Environment on 23 May 2019.

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PLANNING PROPOSAL SUMMARY

Council Reference	PP-1/2019	
LEP to be amended	Waverley Local Environmental Plan 2012	
LEP amended in the last five years?	No	
LEP	Current	Proposed
Zone	SP2 Telecommunications	B4 Mixed Use
Additional Permitted Use	Nil	Nil
FSR	2:1	4:1
Height	15m	18.5m
Heritage	Yes	Yes
Additional Site Specific Provision	Nil	Nil
Active Street Frontage	Nil	Nil
Minimum Non-Residential FSR	Nil	Nil
Aim of the proposal	To enable the redevelopment of the subject site.	
Council Recommendation	Strategic Planning and Development Committee Meeting - 7 August 2018	
Consideration	Comments	
Key Points	<p>In the assessment of Planning Proposal 1/2018 and Rezoning Review RR_Waver_001 for the same site, Council demonstrated that the current controls pertaining to the site are the most appropriate given the context of the area. The decision for the Rezoning Review was that the proposal should not be submitted for a Gateway determination because the proposal has demonstrated strategic merit but not site specific merit.</p> <p>Whilst the State Panel determined that the proposal did not have site specific merit, a comment was made in the determination notes that 'the Panel would recommend the adoption of a height limit that would be achieved by the continuation of the existing parapet line of the Telephone Exchange and a FSR which would be appropriate for a building that continues that line (and is probably five stories high).'</p> <p>This has left council in the situation where our controls are questioned in an area that has had a series of consistent determinations made by the Land and Environment Court to maintain the existing character and built form of the area reflected in Council's existing controls. Accordingly while five stories is considered a significant improvement to the previously proposed seven stories, Council continues to support the assessment of its officers that the existing controls are appropriate to maintain the character of the area, and to not impact upon the surrounding heritage conservation area.</p>	
Does the proposal have strategic merit?	Yes	Council supports the redevelopment of the site to increase the available floorspace in the centre to be used for jobs and services.
Consistent with the relevant regional plan outside of the Greater Sydney Region, the relevant district plan within the Greater Sydney Region, or corridor/precinct plans applying to the site, including any draft regional, district or corridor/precinct plans released for public comment; or	Partially	<p>The proposal is generally in line with the objectives and directions of the Region Plan and the Planning Priorities and Actions of the District Plan.</p> <p>Ideally a minimum non-residential mechanism would be applied to the site to ensure a minimum amount of the floorspace on site is not residential development, to contribute to Bondi Junction Strategic Centre's jobs and services.</p>
Consistent with a relevant local council strategy that has been endorsed by the Department; or	No	See discussion points below.

Responding to a change in circumstances, such as the investment in new infrastructure or changing demographic trends that have not been recognised by existing planning controls.	Partially	The Planning Proposal recognises that the site is no longer used for Telecommunications Infrastructure. However the redevelopment of the site is currently enabled through <i>Clause 5.10(10) Conservation Incentives</i> of the WLEP2012.
Does the proposal have site specific merit?	Yes	However Council maintains that the existing controls are more in keeping with the existing and desired future character.
With regards to the natural environment (including known significant environmental values, resources or hazards); and	NA	
With regards to the existing uses, approved uses, and likely future uses of land in the vicinity of the proposal; and	Yes	The proposed zoning is compatible with the surrounding area.
With regards to the services and infrastructure that are or will be available to meet the demands arising from the proposal; and	Yes	There will be minimal additional traffic generated as a result of this Planning Proposal.
Any proposed financial arrangements for infrastructure provision.	No	No VPA has been offered or entered into.
Has Council prepared the planning proposal?	No	The Planning Proposal was prepared by Urbis on behalf of Rimon Field Pty Ltd.
Has Council prepared a planning proposal relevant to the site?	Yes	Council lodged a Planning Proposal to the Department of Planning & Environment on 13 August 2018 which has not yet been considered.
Does Council support the planning proposal? What are the reasons?	This Planning Proposal has not been reported to Council.	
Waverley Local Planning Panel Recommendation		
Consideration	Comments	
Does the WLPP support the planning proposal? What are the reasons?	This Planning Proposal has not been reported to the Waverley Local Planning Panel. The WLPP previously supported Council in preparing a planning proposal for the site to maintain the existing FSR and Height, but to change the zoning, and to add the site to the Active Street Frontages map. The WLPP found the previous Planning Proposal submitted by the proponent (5:1, 28m) to have strategic merit, but not site specific merit.	
Does the proposal have strategic merit?	-	-
Does the proposal have site specific merit?	-	-
Strategic Framework		
Document	Relevant Directions, Planning Priorities, Actions, Goals, Strategies	Consistent
Region Plan	<ul style="list-style-type: none">- Eastern Harbour City Vision- 30 Minute City- A city of great places- Jobs and skills for the city	Yes Yes Yes Yes
District Plan	<p>PPE11: Growing investment, business opportunities and jobs in strategic centres</p> <ul style="list-style-type: none">- Action 38. Provide access to jobs, goods and services in centres by conserving and interpreting heritage significance- Action 45. Encourage opportunities for new smart work hubs.- Action 46. Strengthen Bondi Junction through approaches that:<ul style="list-style-type: none">o protect capacity for job targets and a diverse mix of uses to strengthen and reinforce the economic role of the centre	<p>Yes through reuse, no through overdevelopment</p> <p>No – serviced apartments do not provide jobs</p> <p>No – but a minimum non-residential FSR will be applied</p>

	<ul style="list-style-type: none"> o expand the centre's function and type of land uses, and knowledge-intensive jobs <p>PPE13: Supported growth of targeted industry sectors</p> <ul style="list-style-type: none"> - Action 55. Provide a regulatory environment that enables economic opportunities created by changing technologies - Action 57. Consider opportunities to enhance the tourist and visitor economy in the District, including a coordinated approach to tourism activities, events and accommodation 	<p>Yes</p> <p>Yes</p>
Local Strategic Planning Statement	<p>PP8: Connect people to inspiring and vibrant places, and provide easy access to shops, services and public transport</p> <ul style="list-style-type: none"> - Action 3. Prepare a Village Centres Strategy and amend Council's LEP and DCP where relevant 	<p>No – Council is currently preparing a Village Centres Strategy that includes this site. Council would prefer to undertake a holistic review of the area.</p>
	<p>PP9: Support and grow Waverley's local economy with a focus on wellbeing, knowledge and innovation.</p> <ul style="list-style-type: none"> - Action 1. Retain shops and services in Bondi Junction and Village Centres - Action 3. Review planning controls to encourage co-working and shared office style employment floorspace 	<p>Partially - the B4 Mixed Use zone could permit employment generating floorspace and services, however the zone could also permit residential development and serviced apartments (quasi-residential) and not employment generating land. Council is currently preparing the Minimum Non-Residential FSR Planning Proposal which will apply to the site, as well as the Village Centres Strategy. Both of these documents are taking a strategic and holistic view of the Bondi Junction Strategic Centre.</p>
	<p>PP10: Manage visitation sustainably to protect local amenity and enhance Waverley's natural and built environment</p> <ul style="list-style-type: none"> - Action 3. Review development controls to balance competing demands for boutique accommodation and employment generating floorspace 	<p>No – Council is currently preparing the Minimum Non-Residential FSR Planning Proposal which is holistically looking at these competing demands across the Bondi Junction Strategic Centre.</p>
	<p>PP11: Facilitate Bondi Junction as a lively and engaging strategic centre with a mix of employment, entertainment and housing options</p> <ul style="list-style-type: none"> - Map: The site is identified on the Bondi Junction Strategic Centre Map to require a minimum non-residential FSR applied - Action 5. Maintain the existing employment floorspace in Bondi Junction - Action 6. Grow employment floor space in Bondi Junction - Action 14. Review development controls for Bondi Junction with regards to streetscape amenity, built form, heritage significance and visual amenity 	<p>No – the Planning Proposal does not provide any certainty for shops, services, employment floorspace to be generated. Council recommends the inclusion of both a minimum non-residential FSR to apply to the site, as well as the site being added to the active street frontages map.</p> <p>No – the Planning Proposal offers no certainty towards the design of the built form and the impacts upon the heritage item.</p>

REZONING REVIEW - RESPONSE

This document provides Council's response to the Rezoning Review lodged 16 May 2019 for the site known as 122 Bronte Road, Bondi Junction (the Site).

The Rezoning Review seeks to amend the Waverley Local Environmental Plan 2012 (WLEP2012) as follows:

- Rezone the site from SP2 Infrastructure (Telecommunications) to B4 Mixed Use.
- Increase the permissible height from 15m to 18.5m
- Increase the FSR from 2:1 to 4:1.

Council Officers are supportive of the aim of the Planning Proposal, which is to encourage the redevelopment of the site. Council Officers also note that there are currently no controls on the site which impede the redevelopment of the site. As the site comprises heritage item no. I246, the site is subject to *Clause 5.10(10) Conservation Incentives* of the WLEP2012, which would permit development on the site for a use other than Telecommunications, provided that the development facilitates the conservation of the heritage item.

Council is currently undertaking a number of studies that specifically apply to the Site, including the preparation of the:

- **Minimum Non-Residential FSR Planning Proposal**, which will require any site within the B4 Mixed Use zone in Bondi Junction to provide a minimum FSR which is dedicated to employment generating floorspace (i.e. excluding serviced apartments and hotels)
- **Village Centres Strategy (VCS)**, which is reviewing all of the land zoned B4 Mixed Use and B1 Neighbourhood Centre throughout the LGA, excluding the section of Bondi Junction which was covered by the Bondi Junction Urban Design Review 2013 (BJUDR). The Site was not subject to the BJUDR and accordingly is included in the scope of the VCS. The VCS is reviewing current controls, and the desired future outcomes for built form, employment generating floorspace, amenity, character, sustainability measures, and accessibility in each centre. Council will be undertaking community engagement to inform the VCS in August – September 2019.

Accordingly it is Council's position as per the recent structural changes within the NSW Planning Framework that Strategic Planning that is holistic and investigates the cumulative impacts of development on character and loss of employment floorspace is a more comprehensive way to plan for change in the Waverley area, than ad hoc spot rezoning.

Accordingly until this evidence has been finalised, Council maintains that the existing controls for the site are adequate to achieve the aim of the planning proposal.

EXECUTIVE SUMMARY

In the assessment of Planning Proposal 1/2018 and Rezoning Review RR_Waver_001 for the same site, Council demonstrated that the current controls pertaining to the site are the most appropriate given the context of the area. The decision for the Rezoning Review was that the proposal should not be submitted for a Gateway determination because the proposal has demonstrated strategic merit but not site specific merit.

Whilst the State Panel determined that the proposal did not have site specific merit, a comment was made in the determination notes that ‘the Panel would recommend the adoption of a height limit that would be achieved by the continuation of the existing parapet line of the Telephone Exchange and a FSR which would be appropriate for a building that continues that line (and is probably five stories high).’

This has left council in the situation where our controls are questioned, in an area that has had a series of consistent determinations made by the Land and Environment Court to maintain the existing character and built form of the area reflected in Council’s existing controls. Accordingly while five stories is considered a significant improvement to the previously proposed seven stories, Council continues to support the assessment of its officers that the existing controls are appropriate to maintain the character of the area, and to not impact upon the surrounding heritage conservation area.

In addition to the above, supporting reasons for Council not supporting the Review are:

- The proposed permissible bulk and scale will change the character of the area.
- The proposed permissible bulk and scale would have a compromise the integrity of the heritage item. The diagrams and renderings provided indicate one potential design, however this is not a Development Application and does not ensure the certainty of the outcome of a design. The submitted design shows that the permissible bulk and scale will still overwhelm the character of the item.
- The proposed permissible bulk and scale is not in accordance with Council’s existing strategic documents and plans for the area.
- The Rezoning Review is in direct opposition to the Section 9.1 (previous 117) Ministerial Direction 6.3 Site Specific Provisions, which states that ‘a planning proposal must not contain or refer to drawings that show details of the development proposal.’ The proponent has submitted specific drawings and details of one potential development proposal.

This submission outlines the history of the proposal, and provides an assessment of the Rezoning Review against the criteria in *A Guide to preparing Planning Proposals* prepared by the DPE.

The Rezoning Review proposal aims to enable the redevelopment of part of the former Waverley Telephone Exchange at No. 122 Bronte Road. To achieve this, the following changes to the WLEP2012 were proposed by the proponent:

- Change the land use zone from SP2 Infrastructure to B4 Mixed Use;
- Increase the height of buildings standard from 15m to 18.5m; and
- Increase the floor space ratio standard from 2:1 to 4:1.

As outlined in this report, the adaptive reuse of the heritage item is supported, as well as the provision of an active street frontage or minimum non-residential FSR to ensure the delivery of employment floor space in accordance with the District Plan. It is noted the adaptive reuse of the item is achievable

through the existing standards for the site, and would result in a development that is more compatible with the surrounding context.

The concept design submitted by the proponent illustrates that the increased Height and FSR development standards would permit a development that is out of character with the desired future character due to the height, bulk and scale of the development. Given the size and location of the site, there is no opportunity for transition to the adjacent heritage conservation areas. The bulk and scale also imposes on the curtilage of the adjacent War Memorial Hospital Group Heritage Item which has state significance.

The scale of the development overshadows a number of current and proposed nearby residential buildings and significantly overshadows the public domain at the intersection. Furthermore, the scale of the proposed height is inconsistent with the predominant current and desired future character of Bronte Road.

Furthermore the proposed amendments to the WLEP2012 Height and FSR standards are in direct contradiction to a fundamental aim of the WLEP2012 – Cl 1.2(2)(d) ‘to provide an appropriate transition in building scale around the edge of the commercial centres to protect the amenity of surrounding residential areas,’ and is inconsistent with the outcomes of a strategic study commissioned and endorsed by Council (*Bondi Junction Urban Design Review 2013*).

History of the Proposal

Table 1 - Timeline of the proposal	
Date	Occurrence
11 April 2017	The proponents met with Council officers. During this meeting the benefits of the adaptive re-use of the heritage item, and the provision of an activated street frontage were discussed and encouraged. Accordingly the rezoning to a B4 Mixed Use zone was considered appropriate to achieve these outcomes. Council officers however expressed concerns relating to the proposed increase in building height and FSR tabled at that meeting given the context of the area and the potential for significant impacts upon the character of the streetscape.
5 June 2017	The proponents met with Department of Planning & Environment officers.
2 August 2017	The proponent (Urbis on behalf of Rimon Field Pty Ltd) submitted a planning proposal to Council to amend the WLEP2012 in relation to 122 Bronte Road, Bondi Junction. The proposal aimed to enable the redevelopment of the subject site for the purposes of a mixed use development comprising ground level retail and serviced accommodation on the upper floors. To achieve this outcome, the following changes to the WLEP2012 were proposed: <ul style="list-style-type: none"> • Change the land use zone from SP2 Infrastructure to B4 Mixed Use; • Increase the height of buildings standard from 15m to 43m; and • Increase the floor space ratio standard from 2:1 to 7.1:1. The planning proposal included the adaptive reuse of heritage item I246.
4 September 2017	Council officers sent a preliminary request for additional information to the proponent regarding minor missing information (site area) and incorrect photomontage images used in the submitted planning report.
11 October 2017	Council officers met with the proponent to discuss the preliminary assessment of the proposal with advice that the proposal would not be supported at an officer level.
8 November 2017	Council officers met with the proponent to discuss a revised proposal with advice that a reduced height and floor space ratio may be a more appropriate proposal, however any proposal would continue to be subject to a complete assessment process.
22 December 2017	The application was withdrawn by the proponents.
12 January 2018	The proponent (Urbis on behalf of Rimon Field Pty Ltd) submitted a new planning proposal (the same proposal as submitted to the Rezoning Review) with reduced development standards to amend the WLEP2012 in relation to 122 Bronte Road, Bondi Junction. The following changes to the WLEP2012 were proposed: <ul style="list-style-type: none"> • Change the land use zone from SP2 Infrastructure to B4 Mixed Use; • Increase the height of buildings standard from 15m to 28m; and • Increase the floor space ratio standard from 2:1 to 4:1. The planning proposal included the adaptive reuse of heritage item I246.

25 July 2018	The proponent's Planning Proposal was not supported by Council officers or the Waverley Local Planning Panel (the Panel). The Panel supported the position of Council officers to not support the proponent's proposal, and to proceed with a modified planning proposal. The Panel's full advice is provided in Attachment 1.
7 August 2018	The proposal was reported to Council. Council adopted the recommendations of staff and the Panel to not support the proponent's proposal, and to proceed with a modified planning proposal. The minutes from the Strategic Planning and Development Committee are included in Attachment 2.
13 December 2018	The Rezoning Review was seen by the Sydney Eastern Planning Panel, with the determination that the proposed instrument should not be submitted for a Gateway determination because the proposal has demonstrated strategic merit but not site specific merit.
15 February 2019	A new Planning Proposal (1/2019) was submitted to Waverley Council with the following changes proposed to the WLEP2012: <ul style="list-style-type: none"> • Change the land use zone from SP2 Infrastructure to B4 Mixed Use; • Increase the height of buildings standard from 15m to 18.5m; and • Increase the floor space ratio standard from 2:1 to 4:1. The planning proposal included the adaptive reuse of heritage item I246.
16 May 2019	A new Rezoning Review was submitted to the Department of Planning, Industry and Environment.

a. Land Use Zoning Map

Council is supportive of the proposed B4 Mixed Use zone, provided mechanisms are added to the controls to ensure that:

- An active street frontage is provided at ground floor (by applying the Active Street Frontages Map to the site)
- A minimum non-residential FSR is applied to the site to encourage a minimum amount of employment generating floorspace (i.e. excluding serviced apartments and hotels).

b. Height

Council is not supportive of the proposed 18.5m height, as the current strategies that are undertaking a holistic and cumulative review of changes are not yet complete. Two recent Land and Environment Court decisions have supported Council's existing controls, and upheld that these controls are the desired future character of the area.

A number of sites in the surrounding area have recently been developed or have approvals for development as outlined in Table 2.

Table 2 – Recently Approved Development					
Site	Status	FSR	Height	Streetwall (storeys)	DA Number
125 Bronte Road	DA Approved	1.58:1	12.5m	4 to Birrell St Cnr Bronte Road 3 to Birrell Street	DA-621/2014
110-116 Bronte Road	DA Approved	2.44:1	20.5m	4 (part 5) Bronte Road	DA-419/2015 DA-512/2016

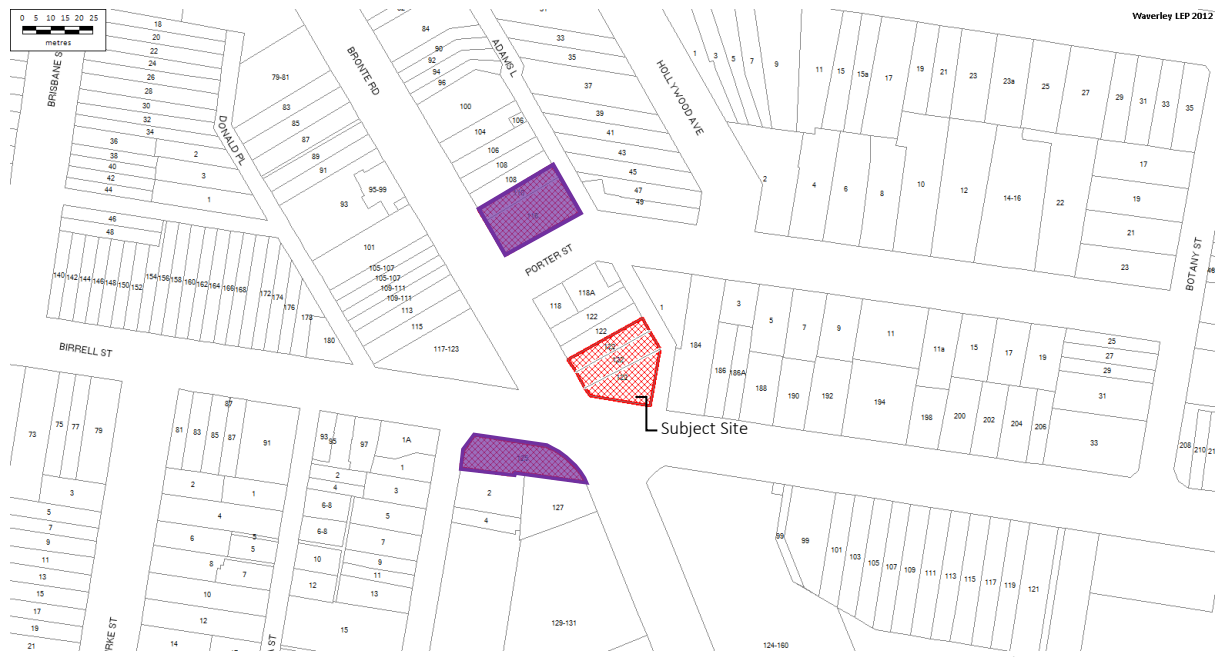


Figure 18 – Nearby Recently Approved Development subject of LEC Appeals (DA-512/2016 and DA-621/2014)

As documented in Table 2, recently approved developments in the area have not significantly varied the existing LEP controls, and have provided a relatively consistent 4 storey street wall to Bronte Road. The development applications for 125 Bronte Road, and 110-116 Bronte Road were both the subject of Land & Environment Court (LEC) appeals. The determinations for both appeals saw the LEC ensure compatibility with the current street character as well as the desired future street character as set by the WLEP2012 and the WDCP 2012.

The outcome of the appeal for 125 Bronte Road was to permit a four-storey street wall to the corner of Birrell Street and Bronte Road to mark the corner, and a three-storey street wall to Birrell Street. The original Development Application was for a part 4 part 5 storey development, which was contested by the Council as being too tall and creating amenity impacts via overshadowing to the residences to the south. Amended plans were submitted with a part 3 part 4 storey development. The appeal 'Dryve Clean Pty Ltd v Waverley Council - [2016] NSWLEC 1013' determined by Acting Commissioner Maston found that:

The agreed position paper provides in part 4 responses to all of the prior contentions raised by the council including the height issue. In particular it concludes that the amended proposal is compatible with the character of the local area and complies with clause 30 A of SEPP (ARH) and that the clause 4.6 request was well founded. The council's manager, development assessment, considered that the amended plans responded to all the council's contentions including ... the WLEP height control. I am satisfied, in accordance with clause 29 (4) of SEPP (ARH), that notwithstanding the non-compliance with the WLEP height of buildings standard, the proposed development is acceptable in this case.

The appeal for 110-116 Bronte Road was to permit a four-storey street wall to Bronte Road, with a fifth storey set back. The appeal for this site, 'Bureau SRH Pty Ltd v Waverley Council (No.2) - [2017] NSWLEC 1383' was determined on 16 June 2017 by Commissioner O'Neill. The reasons provided by C. O'Neill are outlined below:

- *An exceedance of the height of buildings development standard is not justifiable on the basis of the form and height of the nearby Waverley telephone exchange building; as a gradation in the scale of development along Bronte Road would be an inappropriate response to the distinct and unique form of this public building. If the Council considers such an approach is warranted, it would be appropriately addressed as part of a strategic planning exercise and reflected in development standards for the properties on the north-eastern side of Bronte Road.*
- *The proposal is not consistent with the desired future urban form of Bronte Road, which is for 4 storeys. The 2.5m setback of the uppermost fifth level of the proposal does not achieve the desired four storeys along Bronte Road.*
- *I do not accept the applicant's experts' evidence that this is a prominent corner site that warrants a non-compliance with the height of buildings development standard. This is not a significant corner site on Bronte Road. A desire for more prominent, higher buildings on corner sites is not reflected in the development standards in LEP 2012.*

The determination crucially does not support the notion that the existing Telstra Exchange building can be used as a precedent to inform the built form of surrounding development.

The two LEC cases provide evidence that the current controls are appropriate for the area, and are delivering the desired character for the area that is being upheld in LEC determinations, with relatively minor Clause 4.6 justifications.

c. Floor Space Ratio

If the Panel sees fit to increase the height beyond the existing controls, then it would follow that the FSR for the site should also increase.

Council recommends that a minimum non-residential FSR be applied to the site to give effect to the Directions and Objectives of the Region Plan, and the Planning Priorities and Actions of the District Plan and the Draft Waverley Local Strategic Planning Statement.

d. Heritage

As discussed previously, the site is subject to Clause 5.10(10) Conservation Incentives of the WLEP2012, which would permit a development of any use, to 2:1 and 15m under the existing controls, provided the development facilitates the conservation of the heritage item.

Given that this existing framework would result in a more scrupulous process for the retention of the Heritage item, in terms of heritage conservation the existing controls should be maintained. However Council has submitted its own Planning Proposal for the site to rezone the site to B4 Mixed Use to encourage the sensitive redevelopment of the site, and to apply the Active Street Frontage to the site to ensure a retail or commercial use on the ground floor at minimum.

e. Public Benefit Offer

There has been no public benefit offer made by the Proponent to the Council for hard or social infrastructure improvements. An intensification of this site and the resultant impacts on the area should be offset by the provision of public infrastructure.

Council currently has a Planning Agreement Policy which guides the negotiation of Voluntary Planning Agreements (VPA) in the LGA. Any increase above the controls set in the WLEP2012 would attract a VPA as part of a Development Application. These funds in Bondi Junction go directly towards affordable housing and upgrading the

f. Design Excellence, Active Street Frontage and Urban Outcomes

To ensure that design excellence is achieved on the site Council Officers recommend that the site be added to the WLEP2012 Key Sites Map, and clause 6.9 applied.

Council Officers also recommend that the WLEP2012 Active Street Frontages Map be amended to ensure that the use at ground floor is an active use.