



25 February 2019

**Planning Proposal Review
194-214 Oxford Street and 2 Nelson Street, Bondi Junction
(PP_2016_WAVER_003_00)**

1. INTRODUCTION

1. On 24 October 2018, the Department of Planning and Environment (**Department**) requested that the Independent Planning Commission (**Commission**) review, and provide advice in relation to, a planning proposal for 194-214 Oxford Street and 2 Nelson Street, Bondi Junction (the **site**).
2. Westgate BJ Pty Ltd (**Proponent**) seeks to amend certain development standards and remove the local heritage listing of four residential terrace row houses to enable its proposed redevelopment of the site.
3. The Department, as delegate of the Greater Sydney Commission (**GSC**), requested that the Commission review the planning proposal and prepare advice concerning its merits, in accordance with section 3.34(5) of the *Environmental Planning and Assessment Act 1979 (EP&A Act)*.
4. Professor Mary O’Kane AC, Chair of the Commission, nominated Ms Dianne Leeson (Chair) and Mr Tony Pearson to constitute the Commission for the planning proposal review.

1.1 Subject site

5. The site is legally described as Lots 10, 11, 12 and 13 DP 260116, Lot 1 DP 79947, Lot 16 DP 68010, Lot 1 DP 708295 and SP 34942 and is located at 194-214 Oxford Street and 2 Nelson Street, Bondi Junction within the Bondi Junction Town Centre.
6. The site is bound by Oxford Street, Syd Einfield Drive, York Road and Nelson Street and is located to the north of the Waverly Bus Depot and diagonally opposite Centennial Park. The site has laneway access from Osmund Lane off Nelson Street.
7. The site is located approximately 650 metres (m) west of Bondi Junction railway station (see Figure 1). The site has an area of 24,814 square metres (m²) and comprises two sites (Site 1 and Site 2).
8. Site 1 (western site) has an area of 1,490m² and comprises:
 - 4 two storey residential terrace row houses (194, 196, 198 and 200 Oxford Street) fronting Oxford Street, which are locally listed heritage items under the *Waverley Local Environmental Plan 2012 (WLEP 2012)* Item I212
 - the central portion of the site fronting Oxford Street comprises a car and truck hire business (202-210 Oxford Street), and
 - the final portion of the site fronting Oxford Street comprises a shop top house style building that is occupied by commercial premises (214 Oxford Street).

9. Site 2 (eastern site) has an area of 9,914m² and comprises:
 - a two-storey residential flat building located to the north of Osmund Lane (2 Nelson Street), and
 - a Norfolk Island Palm tree along Nelson Street, which is a locally listed heritage item (WLEP 2012 Item I506).
10. Centennial Park, a state heritage-listed item under the *Heritage Act 1977*, is located approximately 30m to the south-west of Site 1.

*Figure 1: Site location – 194-214 Oxford Street and 2 Nelson Street, Bondi Junction
(Source: Department of Planning and Environment Planning Proposal Review Report)*



1.2 Summary of Proposal and Chronology

11. The planning proposal seeks to amend the maximum building height and floor space ratio (FSR) controls within the WLEP 2012 that apply to the site as follows:
 - increase the maximum building height in the Height of Buildings Map (Sheet HOB_001) from 15m to 36m across the site
 - increase the maximum FSR in the Floor Space Ratio Map (Sheet FSR_001) from 1.5:1 to 3.5:1 across the site
 - remove the local heritage listing of 4 residential terrace row houses at 194-200 Oxford Street, Bondi Junction (Item 1212)
 - correct a zoning anomaly in the Land Zoning Map (Sheet LZN_001) on the corner of Syd Einfield Drive and York Road by rezoning a portion of the Syd Einfield Drive road reserve from B4 Mixed Use to SP2 Infrastructure zone, and
 - include a site-specific local provision for an architectural design competition.
12. The concept development scheme supporting the proposal includes:
 - two mixed residential towers of 11 storeys each
 - 94 apartments
 - 830m² of retail space

- parking for 50 vehicles
 - demolition of the heritage-listed terraces
 - retention of the Norfolk Pine in a new public plazetta, and
 - a through site link between Oxford Street and Osmund Lane.
13. On 31 May 2016 the former Sydney East Joint Regional Planning Panel (JRPP) considered the planning proposal and recommended that it be submitted for Gateway Determination. The JRPP supported the proposed amendments to the overall site's building heights and FSRs. The JRPP considered, but saw no benefit in, a reduction in the building height of Site 2, which the JRPP considered would reduce the public benefit that could be negotiated.
14. On 22 December 2016, the Department determined that the planning proposal should proceed and accordingly issued a Gateway Determination, subject to conditions.
15. On 9 August 2017, Waverley Council (**Council**) submitted the planning proposal to the Department, recommending that it not proceed. Council's reasons for not supporting the planning proposal included:
- the planning proposal is an overdevelopment of the site and presents an unacceptable built form
 - the impact on heritage items
 - a public benefit has not been demonstrated, and
 - the majority of the community feedback objected to the planning proposal.
16. Council also considered a critical component of the planning proposal to be the public benefit offer relative to the potential uplift that could be achieved by the Proponent under the proposed amendments to development standards. The Commission notes that Council and the Proponent have not resolved the planning agreement negotiations.
17. On 24 October 2018, the Department referred the planning proposal to the Commission.

1.3 Department's Request for a Review of the planning proposal

18. The Department requested that the Commission review the planning proposal and prepare advice concerning its merits. The Department specified that the Commission's advice should include a recommendation to the GSC confirming whether (in the opinion of the Commission) the planning proposal should proceed to finalisation and if so, what, if any, changes should be made to the planning proposal.
19. To assist the Commission in its review, the Department's referral included:
- the Gateway Determination
 - Council's report in response to the Gateway Determination
 - Council's written request that the proposal not proceed
 - the planning proposal, and
 - the Department's Planning Proposal Review Assessment.

2. THE COMMISSION'S MEETINGS AND SITE INSPECTION

20. As part of the planning proposal review, the Commission met with the Department, Council and Proponent on 9 November and undertook a site inspection, also on 9

November. The site inspection provided the Commission with the opportunity to observe the physical attributes of the site, its surrounds and the existing built form within Bondi Junction. The Commission also observed the items identified by the Department, Council and Proponent in its meetings held on 9 November 2018.

21. All meeting transcripts and site inspection notes were made available on the Commission's website on 16 November 2018.

3. ADDITIONAL INFORMATION

22. On 9 November 2018, the Commission requested additional information from the Department including:
 - supporting reports to the JRPP, and
 - clarification of its role in the West Oxford Street Precinct study.
23. On 15 November 2018, this information was provided to the Commission.
24. On 16 November 2018, the Commission requested additional information from the Council including:
 - copies of Council's CAD drawings referred to at the meeting with the Commission on 9 November 2018, and
 - information regarding the spatial distribution of public submissions received by Council during its community consultation.
25. On 16 November 2018, this information was provided to the Commission.
26. All additional information provided to the Commission has been made available on the Commission's website.

4. THE DEPARTMENT'S PLANNING PROPOSAL REVIEW REPORT

27. The Department's Planning Proposal Review Report (the **Department's Report**):
 - notes Council's request that the planning proposal not proceed; and
 - seeks the advice of the Commission regarding the merits of the planning proposal and whether the Department should proceed to finalisation.
28. The Department's Report notes that the planning proposal was recommended by the JRPP to proceed to Gateway Determination. The JRPP supported the proposed building height of 36m and the FSR of 3.5:1 and expressed concern that a reduction in building height at Site 2 would reduce the public benefit that would be possible to negotiate. The JRPP included several requirements to be met prior to exhibition of the planning proposal including that:
 - the applicant enter into negotiations for a planning agreement with Council
 - the applicant prepare a site-specific Development Control Plan (DCP), to be exhibited with the planning proposal, and
 - a clause be included in the draft LEP, which accompanies the planning proposal, requiring a design competition be held before any development application is lodged.
29. The Department's Report notes that on 22 December 2016, the Department's Gateway Determination was issued, which permitted the planning proposal to proceed to exhibition subject to conditions including updating the planning proposal to:
 - demonstrate consistency with the then Draft Central District Plan (of the Greater

- Sydney Commission)
 - reflect an SP2 Infrastructure zoning on a portion of the site on the corner of Syd Einfeld Drive and York Road on the land zoning map
 - include a statement of intent regarding a local provision for an architectural design competition to apply to the site, and
 - prepare a site-specific DCP with the proposal.
30. The Department notes the Gateway Determination did not specify a Voluntary Planning Agreement (**VPA**) being entered into or exhibited with the proposal as VPAs are a matter for Council and the Department has no involvement.
31. The Department states that the planning proposal was amended prior to exhibition to address the conditions of the Gateway Determination.
32. In accordance with the Gateway Determination, community consultation was undertaken by Council from 8 February to 10 March 2017. The Department's Report notes that 412 submissions were received including 6 submissions from agencies and 396 public submissions opposing the proposal, and 10 public submissions in support of the proposal. A draft VPA was not exhibited with the planning proposal.
33. The Department's Report notes that, on 18 July 2017, following the public exhibition, Council resolved to not support the planning proposal based on:
- the planning proposal is an overdevelopment of the site and presents an unacceptable built form
 - the impact on heritage items
 - a public benefit has not been demonstrated, and
 - the majority of the community feedback objected to the planning proposal.
34. The Department notes that Council submitted its planning proposal assessment report to it on 9 August 2017 with a recommendation that it not proceed. Council's correspondence dated 9 August 2017 also sought *"the Department's advice regarding a process for securing an appropriate public benefit should the proposal proceed to finalisation."* The Department's Report notes that public benefits for public domain improvements, as originally offered in the VPA, could be delivered through an alternative mechanism such as an LEP clause requiring a site specific DCP incorporating those elements. The Department's Report further notes that Council officers did not object to the proposed clause.

5. THE COMMISSION'S CONSIDERATION

35. In undertaking its review of the planning proposal, the Commission has considered all relevant aspects, including the proposed project's strategic and site specific context.
36. The Commission has carefully considered the following material (the **Material**):
- Waverley Council's report recommending refusal of the planning proposal prepared by Council and dated 18 July 2017 (**Council's Report**)
 - Waverley Council's written request to the Department that the planning proposal should not proceed prepared by Council and dated 9 August 2017
 - the planning proposal, draft Public Benefit Offer and associated documentation
 - the Draft West Oxford Street Design Charette Summary Report and Recommendations prepared by the Government Architect's Office for Waverley

- Council and dated 19 August 2014
- Waverley Council's Planning Agreement Policy 2014 (Amendment 2) adopted 21 August 2018
- Pre-Gateway Review Report prepared by the Department and dated 22 April 2016;
- Gateway Determination endorsed by the Department (as delegate of the Greater Sydney Commission) and dated 22 December 2016
- planning proposal review report prepared by the Department and dated 24 October 2018
- the Department's *Guide to Preparing Planning Proposals* dated December 2018
- additional information received from the Department on 15 November 2018 (refer paragraphs 22 and 24)
- additional information received from Council on 16 November 2018 (refer paragraphs 23 and 24)
- information provided by the Department, Council and the Proponent in their respective meetings with the Commission on 9 November 2018, and
- the Commission's inspection of the site on 9 November 2018.

5.1 Strategic Context

Key Strategic Planning Documents

37. The Commission has identified the following key strategic planning documents relevant to its consideration of the planning proposal:

5.1.1 Greater Sydney Region Plan

38. The Greater Sydney Commission's Greater Sydney Regional Plan (**GSR Plan**) identifies Bondi Junction as a Strategic Centre that will contribute to employment growth. The GSR Plan also acknowledges that the Eastern Harbour City will provide a proportion of the anticipated 43.4% total dwelling growth of the Greater Sydney Region over the next 20 years. The GSR Plan identifies developing a more accessible and walkable city as one of its ten directions. A potential indicator of achieving this direction is the percentage of dwellings located within 30 minutes of a strategic centre (by public transport) (objective 14). The site is 650m (west) walking distance from the Bondi Junction Station.

5.1.2 Eastern City District Plan (previously draft Central District Plan)

39. The Eastern City District Plan (**District Plan**) is a 20-year plan to manage growth in the context of economic, social and environmental matters.

40. The District Plan identifies Bondi Junction as a Strategic Centre. Commercial and retail activities are concentrated around the bus/train station interchange, Oxford Street Mall and Westfield Bondi Junction. The District Plan highlights the need to adequately balance the pressure for residential uses against other desired uses, such as employment, to ensure new residential development can benefit from access and services in centres.

41. The relevant priorities in the District Plan include:

- Planning Priority E6 – Creating and renewing great places and local centres, and respecting the District's heritage, and
- Planning Priority E11 – Growing investment, business opportunities and jobs in strategic centres.

5.1.3 Waverley LEP 2012

42. The site is zoned B4 Mixed Use pursuant to the WLEP 2012.
43. The WLEP 2012 prescribes the land uses, maximum height and floor space ratio permitted within each zone. The WLEP 2012 also identifies items of local and state heritage significance.
44. The objectives of the B4 Mixed Use zone include:
 - *To provide a mixture of compatible land uses*
 - *To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling*
 - *To encourage commercial uses within existing heritage buildings and within other existing buildings surrounding the land zoned B3 Commercial Core*
45. The WLEP 2012 also makes provision for Design Excellence. Clause 6.9 of the WLEP 2012 requires that development consent for a key site must not be granted unless the consent authority considers that the development exhibits design excellence. Clause 6.9 applies to the site as it is identified within the key sites map.

Commission's Considerations

46. The Commission notes that the District Plan identifies Bondi Junction as a high amenity centre providing retail and local services to Greater Sydney's Eastern Suburbs. The District Plan also acknowledges that pressure for residential development is increasing across the centre.
47. The Commission considers that the strategic merit of the proposal lies primarily in the site's proximity to the Strategic Centre and the transport, retail and other services it provides. This view is supported by the retention of the B4 Mixed Use zone under the WLEP 2012, which includes employment generating opportunities.
48. The Commission also considers that the proposal will also contribute to achieving objective 14 of the GSR Plan by contributing to a walkable and 30-minute city.
49. The Commission finds that the planning proposal will make a modest contribution to achieving the housing targets for the Eastern Harbour City in the GSR Plan.
50. For the reasons set out in paragraphs 46 to 49, the Commission finds that the planning proposal has strategic merit.

5.2 Site-specific Context

5.2.1 Key Matters for Consideration

51. The Commission considers that the key site-specific matters for consideration in undertaking the planning proposal review relate to:
 - height, bulk and scale
 - overshadowing

- traffic and parking
- heritage
- visual impact
- design competition requirements, and
- public benefits.

5.2.2 Height, bulk and scale

52. WLEP 2012 prescribes the zone and building heights for sites within the Waverley Local Government Area (LGA). The building heights of surrounding sites zoned B4 Mixed Use, include:

- 15m for sites east and north of the site between Leswell and Nelson Streets and north of Grafton Street
- 38m for sites east of the site between Oxford Street, Newland Street and Camp Lane, and
- 60m for sites further east of the site between Leswell Street, Hegarty Lane, Newland Street and Oxford Street.

Council's Draft West Oxford Street Precinct Plan and Design Charette

53. In May 2014, the NSW Government Architect's Office undertook a study on behalf of Council (by way of a design charette) in consultation with State and Local Government agencies for the West Oxford Street Precinct, including the subject site.

54. The resulting *Draft West Oxford Street Design Charette: Summary Report and Recommendations* (the **Charette Report**), prepared by the NSW Government Architect's Office, made a number of recommendations relevant to the planning proposal, including:

- a continuous 6 storey (approximately 19.8m) edge along Oxford Street with small footprint development up to 9 storeys (approximately 29m) along Syd Einfeld Drive frontage to a maximum depth of 30m
- varied FSR controls to modulate built form along Oxford Street, and
- public domain improvements in and around the site.

55. The Charette Report was publicly exhibited from 24 August 2014 until 24 October 2014. On 31 March 2015 Council noted the Charette Report although recommendations relating to changes in height and floor space standards in the WLEP 2012 were deferred by Council's Operations Committee pending assessment of the subject planning proposal.

56. The Charette Report developed a series of principles to guide development in the West Oxford Street Precinct, which are:

- *an improved public domain: expansion, improved amenity, managed conflict uses, permeability and connectivity and opportunities for innovative uses*
- *simple and rational circulation: reduced road area, improved road character, improved operation and well managed interface arterial/local interface*
- *a memorable identity and image that amplifies a sense of place and community spirit, clear threshold to BJ and Waverley, historic character*
- *implementable: practical and feasible, immediate improvement, potential to leverage benefits for study area, minimal disruption*
- *an urban vision for the precinct*

- *the heart of the precinct is Oxford Street – transformed to a widened, tree-lined boulevard, and restored to its original length so that it connects directly to a new Centennial Parklands entry*
- *the boulevard will be characterised by active, mixed use frontages and continuous sheltered footpaths. It will be connected to surrounding neighbourhoods by an extended network of laneways and pedestrian links*
- *the edges of Oxford Street will be low to medium scale, with medium rise development setback from the street and concentrated along the Syd Einfeld frontage, which will be articulated to create a distinctive profile and approach to Bondi Junction*
- *Oxford Street will be distinguished by its iconic western threshold, framed by the Woollahra Reservoir in a newly landscaped setting and, on the former traffic island, a mixed use development that incorporates and showcases local art at an urban scale*

57. The Charette Report identified the site as being generally suitable for an adjustment to development controls including an uplift in building height and FSR. It recommended an appropriate height of 29m for the site. The report also recommended the site bound by Nelson Street, Oxford Street and Syd Einfeld Drive be designated as a key site, to which design excellence provisions would apply.

58. The Charette Report did not include a detailed assessment of likely environmental impacts, particularly with regards to overshadowing and traffic.

Overshadowing

59. Council's overshadowing analysis, as referred to in the Department's Report, shows a small number of residential properties on the opposite side of Oxford Street will be in shadow between 2.30pm and 3pm on 21 June (midwinter). The Department notes that, due to the orientation of the site and the small number of dwellings involved, overshadowing is a matter that could be dealt with at development application stage.

60. Council's overshadowing analysis shows a portion of the north east corner of Centennial Park will be in shadow between 9am and 10am on 21 June (midwinter). Council considers the extent of this impact to be generally acceptable given the shadow impacts are restricted to the morning of 21 June (midwinter), which is the worst-case scenario and negligible impacts occur outside of this time.

61. Council's consideration of the overshadowing analysis of the public domain (footpath dining associated with a café) on the southern side of Oxford Street shows a shadow will be cast at 3pm on 21 June as a result of the building on proposed Site 2. The Department's Report states that *"the shadows would be fast moving and impact the public domain for a short time period"*.

Commission's Considerations

62. The Commission notes the current poor presentation of the site and the opportunity presented by the planning proposal to enhance the local public domain.

63. The Commission also notes that development in the immediate surrounds is currently of predominantly low scale and acknowledges concerns expressed by Council, and in submissions regarding the retention of human scale and village character of the precinct.

64. The Commission considers the Charette Report to be a relevant consideration as it was undertaken on behalf of Council in consultation with State Government agencies, and was exhibited. The Commission understands the objective of the charette was to generate ideas for the longer-term redevelopment of Bondi Junction, with better connections to adjacent areas and a better place for community to live, work, shop and enjoy.
65. The Commission therefore considers that the recommendations of the Charette Report are relevant to the planning proposal as they address the issue of an adjustment to development controls to provide for an increase in building height and FSR for the site and improved public domain.
66. The Commission has reviewed Council's draft DCP and finds that it contains appropriate controls to ensure future development retains a human scale at street level and an improved public domain, as it:
- stipulates a 3-storey podium to Oxford Street and articulation of the podium to reflect a terrace-like subdivision pattern
 - requires for active frontages at street level
 - requires a public plazetta that incorporates the heritage listed Norfolk Island pine tree, and
 - has solar access requirements to the public domain.
67. The Commission has carefully considered the overshadowing analysis on nearby residential properties and finds the overshadowing impact to be acceptable as the extent of the relevant overshadowing impacts are limited to a 30-minute period between 2.30pm and 3pm in mid-winter.
68. The Commission also finds that the extent of the overshadowing to Centennial Park to be acceptable given the relatively small area involved and that the overshadowing occurs for only one hour between 9am and 10am in mid-winter.
69. The Commission accepts the conclusion in the Charette Report that an increase in height is acceptable, as the site is at the western threshold/gateway to Bondi Junction, and overshadowing impacts are minor.
70. The Commission acknowledges Council's concerns that the planning proposal, if approved, may set a precedent for adjoining sites seeking additional heights and floor space. The Commission notes, however, that any future proposal for adjoining sites would need to be assessed on their individual merits.
71. The Commission notes that further detailed consideration of overshadowing impacts on Centennial Park, residential properties and the public domain will be required during the development application stage.
72. Similarly, the Commission considers that detailed assessment of the visual impact of the proposed buildings will form part of the design excellence and design competition considerations at the development application stage.
73. For the reasons set out at paragraphs 62-72 above, the Commission finds that impacts related to the proposed development's height, bulk and scale are acceptable and can be

adequately addressed at the development application stage.

5.2.3 Traffic and Parking

Traffic

74. The Department's Report advised significant community concern was expressed in relation to the impact of the planning proposal on current traffic congestion.
75. The Department's Report notes that both the Proponent and Council commissioned traffic reports to evaluate the likely future impact on traffic. The Department's Report states, "...Council noted the likely traffic impact of the proposal to be marginal and suggested additional traffic investigation would need to be carried out as part of a future development application, should the planning proposal proceed". The reports concluded that the future development is likely to have a marginal effect on the performance of intersections within the local road network.
76. The Proponent, within its draft public benefit offer, proposes to dedicate a portion of the land fronting Oxford Street to enable road widening / future network improvements.

Parking

77. The Department notes in its Report that the Proponent's concept development scheme, which is not subject to approval, indicates 50 car spaces would be provided on-site.
78. Council's Report provides an assessment on parking for the planning proposal. The Department's Report notes that Council's Report does not consider the possibility of overspill of parking into Centennial Park, which was raised as a concern in the public submissions received by Council.

Commission's Considerations

79. The Commission notes the proposed concept development scheme has been provided to demonstrate that the site can accommodate additional height, bulk and scale and the resultant building envelope will not result in adverse environmental impacts, including impacts on the road network as a result of additional vehicular movements.
80. The Commission accepts the Proponent's and Council's traffic analysis which indicate that the traffic impacts likely to be generated by the future development can be accommodated within the existing road network.
81. The Commission notes that a detailed analysis of the provision of on-site parking will be required at the development application stage, taking into account Council's car parking requirements under the current DCP or the future site specific DCP, and including consideration of potential overspill of parking into Centennial Park.
82. The Commission notes that Road and Maritime Services (**RMS**) supports the road widening as it would permit the introduction of a right turn lane from Oxford Street to Syd Einfeld Drive.
83. For the reasons set out at paragraphs 79-82 above, the Commission finds that traffic and

parking impacts are acceptable and can be adequately addressed at the development application stage.

5.2.6 Heritage

84. The planning proposal involves the deletion of a local heritage listing under the WLEP 2012 for four terraces on the site. The Proponent states in its Planning Proposal, *“that a design scheme, which included the retention of the heritage items, was considered but it was concluded that it would hinder opportunities to improving the presentation and relationship of the site with the public domain especially considering the prominence of the location being such a gateway to Bondi Junction/Waverley LGA”*.
85. The site also includes a heritage listed Norfolk Island pine tree, which is to be retained. The Department and Council support the retention of the Norfolk Island pine tree. The site-specific DCP will further ensure that the tree is integrated into any future development.
86. The Proponent’s heritage impact study states that the immediate context of the terrace houses has changed significantly over time as a result of urbanisation and freeway development and retains little of its historical setting. Further, the heritage impact study finds that the terraces have no known associations with any person/s of particular significance and are not rare in the context of the eastern suburbs.
87. The Department’s Report states that Council is only supportive of the removal of the heritage dwellings *“if they are replaced by a building of a substantially higher quality and provides significant community benefit and streetscape value to the locality”*. During the Commission’s meeting with Council, councillors expressed concern with the loss of the heritage dwellings.
88. The Department notes that the WLEP 2012 incorporates a design excellence clause, which applies to the site.
89. The Heritage Council submission notes that, as the heritage item is locally listed, Council is the consent authority.
90. Centennial Parklands and the Heritage Council identified the need for detailed visual impact analysis of the proposed development to be undertaken to ascertain the impact of the proposed development on key views to and from the State heritage listed Centennial Park.
91. The Department states in its Report that *“the vegetation in Centennial Park largely dominates the skyline”* and that *“while the development would be visible from parts of the public domain, it represents a transition of Bondi Junction to an area of higher density”*.

Commission’s Considerations

92. Based on paragraphs 84-91, the Commission accepts that the inconsistency with Direction 2.3 (Local Planning Directions) is justified on the basis that it is of minor significance.

93. The Commission notes that the proposed development would be required to demonstrate design excellence and would be subject to a site specific DCP, which will also require the retention and integration of the Norfolk Island pine tree.
94. The Commission accepts the Department's finding that the vegetation in Centennial Park largely dominates the skyline, noting part of the future development is likely to be visible from parts of the public domain.
95. The Commission notes that a visual impact analysis on heritage items would form part of the development application stage and should form a key consideration under the design competition/design excellence process.
96. For the reasons set out at paragraphs 92-95 above, the Commission finds that the proposed development's heritage impacts are acceptable and can be adequately addressed at the development application stage.

5.2.5 Design Competition Requirements

97. The Commission notes that since the original planning proposal was submitted, Council has undertaken a review of the WLEP 2012. In December 2017 Council introduced Clause 6.9 Design Excellence into the WLEP 2012 (Amendment 10). Clause 6.9 requires consideration of design excellence criteria in the assessment of a development application. Clause 6.9 applies to development that has a height equal to or greater than 15m.
98. A site-specific design competition clause is proposed to be included in the WLEP 2012. This clause requires consideration of the proposed development's visual impact, overshadowing of the surrounding area including Centennial Park, and its impact on heritage items, as part of the development application.

Commission's Considerations

99. The Commission recommends further consideration of the quality and community benefit attributes of the public domain outcomes also be required through the design competition process. The Commission has also considered the draft public benefit offer in paragraphs 136 to 141.

5.2.6 Draft LEP

100. The planning proposal seeks to amend the site-specific Land Use Zoning Map, Maximum Height of Buildings Map, Floor Space Ratio Map and the Heritage Map. The following sheet maps will be updated:
 - HER_001A
 - FSR_001
 - HOB_001
 - LZN_001
101. The planning proposal will introduce a new height in the legend of the Maximum Height of Buildings Map, as 36m currently is not in the scale. The planning proposal will also rezone the corner of Syd Einfeld Drive (zoning anomaly) from B4 Mixed Use to SP2 Infrastructure in the zoning map. The maps associated with this amendment have been reviewed by the Department and Parliamentary Counsel.

102. The draft LEP includes a site-specific clause regarding design excellence and design competition.
103. Under Section 3.36(1) of the EP&A Act, Council was consulted on the terms of the initial draft instrument. The Department's Report states that Council officers did not object to the proposed draft instrument. The clause includes the requirement for a DCP to provide for:
- pedestrian and cycle connections between Oxford Street and Osmund Lane, including the layout of those connections
 - public open space, such as public plazettas at street level
 - improvements to the public domain, including street paving, street lighting, street furniture and public art
 - landscaping, and
 - stormwater drainage.
104. On 5 July 2018, Parliamentary Counsel provided its final Opinion that the draft LEP could legally be made inclusive of the additional DCP clause (proposed Clause 6.11).

Commission's Considerations

105. The Commission accepts the Opinion of Parliamentary Counsel that the proposed amendment to the WLEP 2012 can be legally made.
106. The Commission notes Council's concerns that the draft LEP does not require a design competition for modifications. The Commission finds that this matter is capable of being addressed by way of conditions at the development application stage.
107. Based on the Material, the Commission finds that the proposed amendments to the site's height and FSR are appropriate as:
- the site is the western gateway to Bondi Junction and within 650m of the Bondi Junction town centre
 - the identified environmental impacts associated with the planning proposal appear readily capable of being managed, including overshadowing, visual impact, traffic and parking
 - the Design Excellence Clause under the WLEP 2012 will require the consideration of overshadowing impacts on Centennial Park, residential properties and the public domain during the development application stage
 - podium height restrictions on Oxford Street and requirements for street frontage activation will contribute to a human scale built form and an improved public domain at ground level, and
 - the site is identified in the Draft West Oxford Street Precinct Plan (2014) prepared by the Government Architect's Office as a site on which increased height and FSR is appropriate and which informed preparation of the planning proposal.
108. The Commission is satisfied that the proposed site specific DCP is an appropriate mechanism to further address built form, public domain and transport related issues.
109. For the reasons set out in paragraphs 105 to 108, the Commission finds that the planning proposal has site specific merit.

5.3 Public Benefits

110. The planning proposal includes the following public benefit as part of the Proponent's VPA letter of offer:

1. *land for the purpose of road/footpath widening and /or traffic improvements, along the Oxford Street frontage of the site will be dedicated to Waverley Council. Approximately 60m in length by 3.5m in width (208sqm), (page35-ADR),*
2. *creation of a Pedestrian/Cycle thru-site link from Oxford Street to Osmund Lane for improved connectivity in and around the area. Approximately 136sqm, (page A35-ADR),*
3. *creation of a Public Plazetta at street level at No. 2 Nelson Street, Bondi Junction. Approximately 311sqm, (page A35-ADR),*
4. *public Domain works as set out in the public works plan (page A35-ADR) and landscape plan prepared by Tract (page A45-ADR), including but not limited to:*
 - *street paving*
 - *street lighting*
 - *street furniture*
 - *public art*
 - *landscaping*
 - *stormwater drainage*

5.3.1 What Constitutes a Public Benefit Associated with the Voluntary Planning Agreement

111. Clause 7.4 of the EP&A Act prescribes the requirements for planning agreements. A planning agreement is a voluntary agreement or other agreement under this Division between a planning authority and a person (**bold our emphasis**):

- (a) *who has sought a change to an environmental planning instrument, or*
- (b) *who has made, or proposes to make, a development application or application for a complying development certificate, or*
- (c) *who has entered into an agreement with, or is otherwise associated with, a person to whom paragraph (a) or (b) applies,*
*under which the developer is required to dedicate land free of cost, pay a monetary contribution, or provide any other material public benefit, or any combination of them, to be used for or applied towards a **public purpose**.*

112. The Commission notes, as per Clause 7.4(2) of the EP&A Act, a *public purpose* includes any of the following:

- (a) *the provision of (or the recoupment of the cost of providing) public amenities or public services,*
- (b) *the provision of (or the recoupment of the cost of providing) affordable housing,*
- (c) *the provision of (or the recoupment of the cost of providing) transport or other infrastructure relating to land,*
- (d) *the funding of recurrent expenditure relating to the provision of public amenities or public services, affordable housing or transport or other infrastructure,*
- (e) *the monitoring of the planning impacts of development,*
- (f) *the conservation or enhancement of the natural environment.*

113. The Commission notes Council's Planning Agreement Policy (Amendment 2) 2014 (**Policy**) is a relevant consideration in the assessment of the suitability of the proposed public benefits. The Policy replaces Draft Amendment 1, which was considered in both Council's Report and in the planning proposal. In this regard, the relevant objectives of the Policy are to:

- establish a fair, transparent and accountable framework for the use of planning agreements
 - outline Council's policies and procedures relating to the use of planning agreements, and
 - enhance the understanding for possibilities for development and associated public benefits and planning benefits facilitated by planning agreements in the Bondi Junction Precinct.
114. The Policy outlines Council's approach to planning agreements, which states that it is informed by the requirements of the EP&A Act, Waverley Strategic Plan and Council's housing strategies. The Policy recognises that the Bondi Junction Precinct is subject to a number of policies and plans aimed at upgrading public facilities and infrastructure, and improving and maintaining public areas including paths, footpaths and landscaping.
115. The Policy further identifies the infrastructure requirements of Council (Appendix 6). These requirements include the Bondi Junction Public Domain and Transport Infrastructure Improvements and contributions to the Waverley Affordable Housing Program. The Policy also allows for in-kind contributions to be made in lieu of monetary contributions provided that these are consistent with the calculation methods outlined in the Policy (Appendices 1 and 2).
116. Importantly, Clause 5.13 of the Policy states that Council and the Proponent must negotiate to determine the amount of monetary contribution that may be payable for an amendment to the WLEP 2012. The Policy notes that generally 50% of the net value from the planning proposal may be considered an appropriate contribution (**bold our emphasis**):
- ...50% of the profit from the bonus floor space is to be provided as a negotiated form of **public benefit** through a Planning Agreement*
117. The Policy requires that the net value be determined by an independent valuer who is experienced in valuing land in NSW. The Proponent stated at its meeting with the Commission that the value of its draft public benefit offer is approximately \$5.5 million and represents more than 50% of the value uplift of the proposed increase in FSR in the planning proposal. The Proponent states that the value of its draft public benefit offer is comprised as follows:
- the dedication of land for public domain improvements, at approximately \$2 million comprising:
 - the road widening along Oxford Street (60m x 3.5m = 208m²),
 - the pedestrian/cycle through site-link (136m²),
 - the plazetta including the heritage Norfolk Island Pine (311m²), and
 - the base value of the land, at approximately \$3.5 million.
118. Council's Report states,
"The public benefit offer is not consistent with the methodology as per Waverley Council's Planning Agreement Policy 2014 (Draft Amendment No. 1)."
119. In summary, Council objects to the draft public benefit offered as in its view:
- there is a significant difference between what Council and the Proponent consider to be a public benefit, and

- there is a significant difference between the value calculations of Council and the Proponent in relation to the public domain improvements offered.

5.3.2 PROPOSED PUBLIC BENEFITS

120. The Commission has considered the Proponent's proposed draft public benefit offered in relation to the planning proposal. In particular, the Commission has carefully reviewed the Material and issues raised in the meetings and submissions to Council relating to the draft public benefit offered by the Proponent, which constitute the road widening, site link, plazetta, retention of the Norfolk Heritage pine tree, public domain works and landscaping.

5.3.2.1 Land Dedication for Oxford Street Road/Footpath Improvements

121. The Commission notes the Proponent's offer to dedicate land on the Oxford Street frontage to enable future road and/or footpath improvements as part of its draft public benefit offer.

122. The Commission notes Council's independent traffic analysis, that the proposed development will have a marginal effect on the performance of the intersections within the local road network. The Commission also notes Council's and the Proponent's analysis that the Oxford Street / Nelson Street and Oxford Street / York Street intersections already experience considerable queuing of traffic.

123. The Commission finds that there is an opportunity to obtain a public benefit through the dedication of a portion of land to facilitate the widening of Oxford Street to enable a right turn lane, which has the support of RMS. The dedication would permit the development of an identified mitigation measure to attempt to alleviate existing traffic congestion. The Commission recommends that the draft LEP and draft DCP, or other appropriate mechanism, include further details for the dedication of land fronting Oxford Street including at what stage the land is to be dedicated to Council.

5.3.2.2 Through-site Link

124. The Commission notes that the Proponent also proposes to incorporate a public pedestrian/cycle through-site link and plazetta and offers to dedicate these to Council as part of its draft public benefit offer. Council considers the pedestrian/cycle through site-link may be required essentially for residential access to the future development and questions its merit as a desirable public through-site link, thereby questioning its public benefit and proposed dedication.

125. The Commission notes the Draft Practice Notes, Planning Agreements, prepared by the Department, dated November 2016, state that a broad objective of a planning agreement is to secure "...*off-site planning benefits for the wider community so that development delivers a net community benefit...*".

126. The Commission considers that the through-site link is most likely to predominantly benefit future residents of the proposed development. The Commission is not satisfied that the through site link represents a sufficient public benefit to the wider community to warrant full inclusion in the Proponent's calculation of its draft public benefit offer.

5.3.2.3 Plazetta

127. The Commission notes the Proponent's intention to provide a plazetta that incorporates the Norfolk Heritage pine tree as part of its draft public benefit offer. The Commission observed the site of the proposed plazetta and its immediate context and notes that the site is within close proximity to a pedestrian bridge connecting Waverley and Woollahra local government areas, which was observed to be readily used. The Commission considers that this plazetta is likely to provide a public benefit capable of inclusion in any public benefit value calculation.
128. The Commission notes that proper ongoing management of this space is an important consideration in any assessment of the offer of a plazetta as a public benefit. Accordingly, the Commission recommends that the Department and Council give consideration as to how this public benefit will be delivered on an ongoing basis.

5.3.2.4 Public domain works

129. The Commission also considered the proposed public domain works and landscape plan in the Proponent's draft public benefit offer, which includes street paving, street lighting, street furniture, public art, landscaping and stormwater drainage. The Commission is not satisfied that these works as currently described constitute a public benefit over and beyond what would ordinarily be expected to be delivered in relation to a proposal of this nature. In addition, it would be not unreasonable to expect that works of this nature could be proposed in any future development demonstrating design excellence. The Commission is not satisfied that these works are a sufficient public benefit to warrant full inclusion in the Proponent's calculation of its draft public benefit offer.

5.3.3 Public Benefit Value Calculations

130. Council's Report notes that the Proponent's draft public benefit offer is below the value uplift of the proposed increase in height and FSR as calculated by Council in accordance with the Council's Planning Agreement Policy (Amendment 1) 2014 (Policy Amendment 1). Council states that the public benefit offered is inconsistent with its Policy as "*it is inconsistent with the value sharing methodology*".
131. There are two components within the Policy that make up the independent valuation undertaken on Council's behalf:
- the base case, and
 - the residual land value.

The formula for calculating the net value from the planning proposal is: *residual land value minus the base case*.

132. Council stated at its meeting with the Commission on 9 November 2018 that the proposed draft public benefit offer is inconsistent with the Policy's 50% value sharing methodology.
133. At its meeting with the Commission on 9 November 2018, the Proponent expressed its alternative view that its draft public benefit offer is reasonable.

5.3.4 Mechanism for Delivery of the Public Benefit

134. The Commission notes that as a VPA has not been agreed, the Department has prepared an alternate mechanism to secure the delivery of a public benefit. The Commission also notes that the EP&A Act does not require a VPA to be entered into in conjunction with a planning proposal or development application.
135. The Department considered at its meeting with the Commission that the draft Schedule 1 amendment to the WLEP 2012 requiring the preparation of a site specific DCP to be appropriate as the DCP will require the agreed public works to be undertaken. The Commission notes that the Department considered a DCP to be less rigid than a VPA. The Commission notes that Council officers reviewed this clause and did not object to it.

Commission's Considerations

136. The Commission finds the Department's alternative mechanism, as outlined in paragraph 34, to be appropriate. However, the Commission recommends that the Proponent and consent authority work together to develop a more appropriate level of public benefit that can be captured in a DCP.
137. The Commission considers some elements of the Proponent's draft public benefit offer are not genuine off-site planning benefits for the wider community that will deliver a net community benefit. In this regard, some elements, such as the through-site link are items that would be otherwise provided as part of any development of this scale. However, the Commission considers that other items within the draft public benefit offer do have value and these include the plazetta and the road widening.
138. The Commission finds that the dedication of land adjacent to Oxford Street represents a public benefit as the dedication would assist in the mitigation of an existing environmental impact from road traffic. The Commission also finds that the proposed plazetta and retention of the heritage listed Norfolk Island pine tree represent a public benefit as these will retain the heritage tree, provide for a public gathering space and improve the public domain. However, the Commission is not satisfied that the remainder of the proposed works are sufficient to warrant inclusion in any public benefit offer to support the proposed amendments to the planning controls.
139. The Commission also notes that Council considers the draft public benefit offer to be inconsistent with its Policy.
140. For the reasons set out above in paragraphs 137, the Commission finds the resultant genuine public benefits inadequate to justify the proposed increase in building height and FSR.
141. The Commission finds that, in the absence of a VPA, the mechanism for the delivery of public benefits as recommended by the Department by way of a clause within the WLEP 2012 requiring a site-specific DCP, to be appropriate for the reasons set out in paragraphs 134 and 135.

6. THE COMMISSION'S ADVICE

142. The Commission has undertaken a review of the planning proposal, as requested by the Minister's delegate, as set out in paragraph 3, and provides the following advice to the GSC.
143. The Commission has reviewed and considered the Material before it, met with the Proponent, the Department and Council and carried out a site inspection.
144. For the reasons set out in paragraphs 46 to 49 inclusive, the Commission finds that the planning proposal has strategic merit.
145. For the reasons set out in paragraph 109, the Commission finds that the planning proposal has site specific merit.
146. The Commission further finds that the proposed LEP amendment and site-specific DCP are appropriate mechanisms to ensure design excellence and the delivery of defined public domain outcomes.
147. The Commission finds the planning proposal to be consistent with the Department's Guide to Preparing Planning Proposals dated December 2018.
148. For the reasons outlined in paragraphs 144 to 148, the Commission finds that the planning proposal should proceed to finalisation and offers the following recommendations:
- For the reason set out in paragraphs 136 to 140 inclusive the Commission finds that the Proponent has not demonstrated that the proposed works in its draft public benefit offer, with the exception of the Oxford Street dedication and the plazetta, are appropriate to fully consider as a public benefit. The Commission recommends that, based on those benefits that are considered suitable for inclusion, further consideration should be given to the inclusion of other public benefits to better justify the proposed amendments to planning controls (increase in floor space and height).
 - In the absence of a VPA, the Commission finds the Department's alternative mechanism, being the draft LEP amendment and draft DCP appropriate, although as stated above in paragraph 137, the Commission finds the value of the draft public benefit offer inadequate. The Commission notes that Council, having resolved to object to the planning proposal, has withdrawn from negotiations with the Proponent on the draft public benefit offer. The Commission recommends that prior to the planning proposal progressing to finalisation, the Proponent and consent authority work together to develop a more appropriate level of public benefit that can be captured in a DCP.



Dianne Leeson (Chair)
Member of the Commission



Tony Pearson
Member of the Commission