

REPORT CM/7.3/24.08



Subject: Planning Proposal - 50 Botany Street, Bondi Junction - Exhibition

TRIM No: PP-2/2024

Manager: George Bramis, Executive Manager, Urban Planning

Director: Fletcher Rayner, Director, Planning, Sustainability and Compliance

RECOMMENDATION:

That Council:

1. Forwards the planning proposal attached to the report (Attachment 1) on 50 Botany Street, Bondi Junction, to the Department of Planning, Housing and Infrastructure (DPHI) for Gateway determination for the purposes of public exhibition, with the proposal seeking to:
 - (a) Rezone part of the site from SP2 Telecommunications to R3 Medium Density Residential.
 - (b) Provide a contribution towards affordable housing in line with Council's Affordable Housing Contribution Scheme.
 - (c) Introduce a minimum lot size to part of the site.
 - (d) Remove the heritage listing across the site.
2. Publicly exhibits the planning proposal in accordance with any conditions of the Gateway determination or amendments requested by the DPHI.
3. Requests and accepts, if offered, the role of the Local Plan Making Authority from the DPHI to exercise the delegations issued by the Minister under section 3.36 of the *Environmental Planning and Assessment Act 1979* to amend the *Waverley Local Environmental Plan 2012*.

1. Executive Summary

A planning proposal was prepared by Willowtree Planning Pty Ltd on behalf of Bondi Exchange Pty Ltd (the proponent) and submitted to Council as the Planning Proposal Authority in support of a site-specific planning proposal at 50 Botany Street, Bondi Junction (the subject site) in January 2024.

The planning proposal seeks to amend the following controls in the Waverley Local Environmental Plan 2012 (WLEP2012) as it applies to the subject site:

- Rezone part of the subject site to R3 Medium Density Residential.
- Introduce a minimum lot size of 232 m2.
- Remove the heritage listing.

The planning proposal also seeks to provide a contribution for affordable housing.

The planning proposal, subject to a number of key considerations discussed in this report (inclusive of an appropriate contribution towards affordable housing), is recommended to be submitted to the Department of Planning, Housing and Infrastructure (DPHI) for a Gateway determination.

Although the caretaker period commenced for NSW councils on 16 August 2024, Council is not prohibited from making a decision on the matter, as it does not fit within the relevant criteria that councils cannot consider during this period. Further discussion is provided in the report.

In addition, it is recommended that Council makes a decision on the planning proposal now as the assessment time frame has passed the relevant number of working days (80) set out in the NSW Government Local Plan Making Guidelines (2023) and expectations set by the Minister of Planning and Public Spaces.

2. Introduction/Background

The subject site is located in Bondi Junction, has a land area of approximately 1,132m² (residual lot post subdivision) with a 20m frontage to Botany Street and is zoned SP2 Infrastructure (Telecommunications) in accordance with the WLEP 2012.

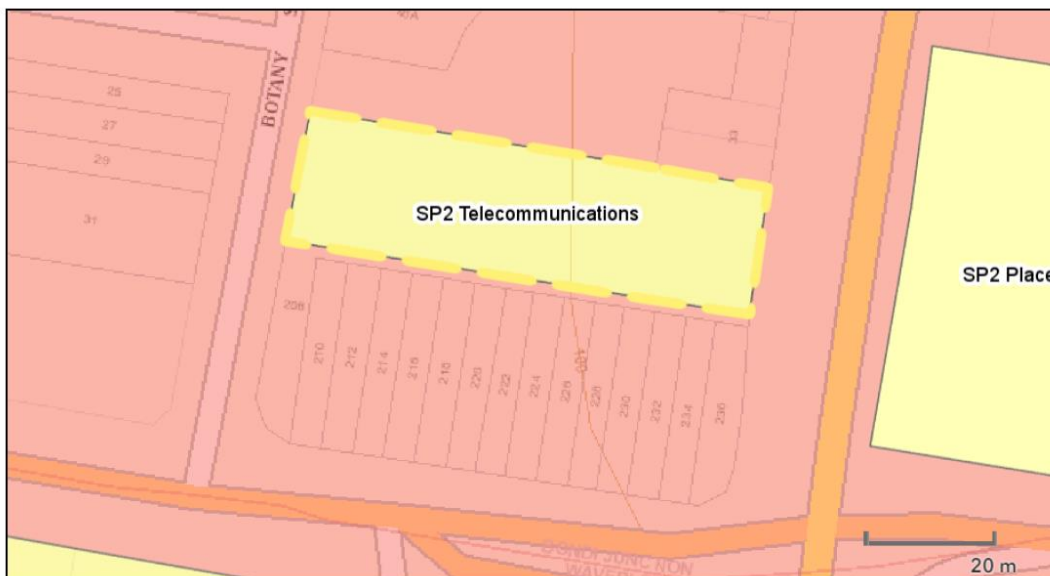


Figure 1. Existing site zoning.

The site also contains a heritage listing related to a now removed large telecommunications tower. The site is situated within the Botany Street Heritage Conservation Area and is located within proximity to a number of heritage items on surrounding lots adjacent to the site as outlined in Figure 2.

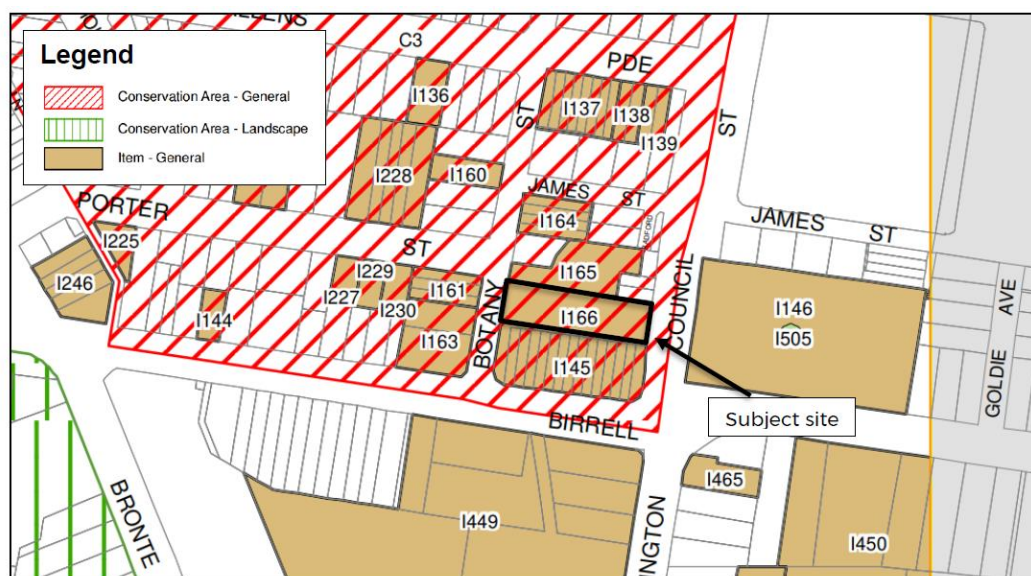


Figure 2. Subject site and heritage considerations.

The site has previously had development consent granted for the removal of the larger tower structure and erection of a smaller 'monopole' telecommunications structure (DA-79/2020/A) and separately for Torrens title subdivision of one lot into two (DA-62/2023). The site was previously owned by Telstra, which sold the site to the new owner in 2023. The monopole telecommunications structure has been erected and the telecommunications tower has been removed in early 2024. All that remains on the site aside from the new structure, which will be subject to a future subdivision, is a defunct building associated with the sites former use, a small Ausgrid substation (to be removed) along with some existing trees and vegetation. The subdivision that forms part of the previous approvals has not yet occurred and therefore the subject site remains as one lot.

3. Relevant Council Resolutions

Nil.

4. Discussion

The planning proposal

A planning proposal and associated supporting attachments were submitted on 19 January 2024 to Council seeking a number of amendments to the WLEP for the subject site.

The objectives of the proposal as outlined in the proponent planning proposal report include:

- Facilitate urban renewal of the land that is no longer required for SP2 Infrastructure (Telecommunications) purposes.
- Enhance the ecological values of the site.
- Minimise land use conflicts by permitting land uses that are sympathetic to the existing character of the area by creating a sensitive residential development that is consistent with the established residential neighbourhoods surrounding the subject site.
- Deliver new housing supply and improve dwelling diversity in the local area by providing appropriate housing typologies that will co-exist with the natural and infrastructure assets of the site without compromising their environmental or heritage significance.
- Make a financial contribution to the provision of affordable housing (discussed in this report).

- Remove a redundant heritage listing.

Specifically, the planning proposal seeks to amend the WLEP to do the following:

- Rezone a portion of the site from SP2 Infrastructure to R3 Medium Density Residential.
- Remove the redundant heritage listing.
- Introduce a minimum lot size of 232 square metres (consistent with surrounding).

Figure 3 illustrates the proposed rezoning.

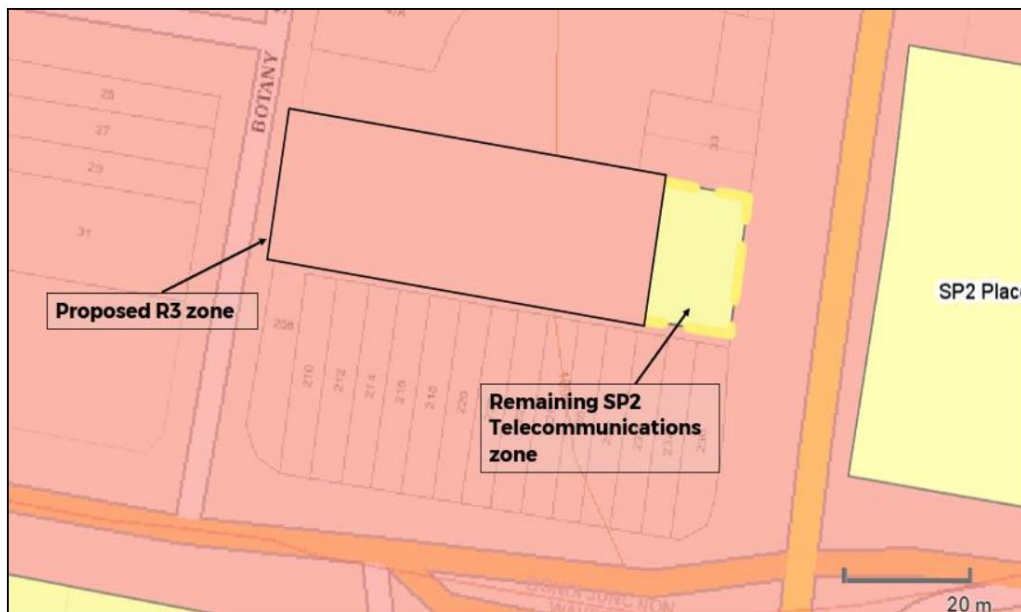


Figure 3. Proposed new zoning.

The planning proposal does not seek to amend the existing building height and floor space ratio (FSR) controls, being 0.75:1 FSR and 12.5 m maximum height of buildings.

The assessing Council officer has prepared the attached planning proposal report (Attachment 1), which sets out a detailed assessment against the relevant criteria and outlines the proposed changes to the WLEP.

Assessment process and key issues

To determine if a planning proposal should proceed, assessment is undertaken against the relevant DPHI criteria outlined in the LEP Making Guidelines (August 2023). A discussion against these criteria is summarised below and in Attachment 1 (Council) and Attachment 2 (proponent).

Relevant supporting attachments submitted by the proponent (and attached to this report) include:

- Proponent planning proposal report.
- Urban design analysis.
- Social and community needs assessment.
- Statement of heritage impact.
- Arboriculture impact assessment.
- Parking and traffic impact assessment.
- Preliminary site investigation.

In relation to these studies, the planning proposal report concludes that:

- Previous approvals for the site render the current heritage listing as defunct. Therefore, the removal of the heritage listing is supportable.
- Other relevant technical studies (relating to urban design analysis, arboriculture impact assessment, parking and traffic impact assessment and preliminary site investigation) are considered reasonable with no substantial issues identified at the planning proposal stage.
- In relation to the proposed affordable housing contribution, it is recommended that a clause and schedule be included in the WLEP.

Contribution toward affordable housing

The planning proposal submitted by the proponent references provision of an affordable housing contribution as a key objective and component of demonstrating strategic merit for proceeding to Gateway determination as explained below.

There are two ways in which an affordable housing contribution can be achieved for this proposal: the first is via voluntary planning agreement, in line with Council's Planning Agreement Policy 2014; the second is via an amendment to the Waverley LEP.

Section 7.32 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) provides the ability for a consent authority to apply a condition of consent to any development application if enabled by a local environmental plan and in accordance with a scheme for dedications or contributions set out in this plan.

The Waverley Affordable Housing Contribution Scheme (AHCS) 2022 seeks to apply a 1% levy to certain types of residential development (such as residential flat buildings). In addition, the AHCS sets a 10% target for sites receiving uplift via the planning proposal process. The subject proposal would receive a value 'uplift' from rezoning to a residential use, despite no increases to development standards due to the change from a low-value SP2 zone to a high-value medium density residential zone. The consideration of 'uplift' is consistent with the definition provided by the Greater Sydney Region Plan (the Region Plan) which speaks to 'the uplift in land value created as a result of a rezoning decision, which should be measured using a consistent viability test and core assumptions' as well as 'uplift' in the Department's Guidelines For the preparation of Affordable Housing Contribution Schemes which also refers to the objectives of the Region Plan.

Following a comprehensive process to determine a feasible contribution amount, this report (and relevant attachments) recommends a contribution amount of 9.27% of total gross floor area (GFA) be provided as affordable housing which equates to a monetary contribution of \$1,652,738. It is recommended that this contribution be levied via inclusion of a clause in the WLEP and as discussed in Council's planning proposal report (Attachment 1).

The LEP clause pathway is administratively efficient as payment would be required as a condition of future development consent at the occupation certificate stage.

Process to determine affordable housing contribution amount

The Waverley AHCS sets a 10% contribution as a 'target' with feasibility testing having been undertaken to determine the appropriate amount. This is consistent with the requirements set by the DPHI for Waverley's AHCS. A 'case by case' feasibility analysis is required to be undertaken for each planning proposal that receives uplift and includes a contribution toward affordable housing.

The submitted planning proposal outlined a contribution toward affordable housing, but no amount was specified or offered upfront. Sixty-six days after lodgement, an initial offer of \$100,000 was made, followed by a verbal, informal offer of \$500,000 (which was later withdrawn). No feasibility or justification was provided to support these offers, which were not accepted as they were not justified by a feasibility assessment, as set out in Council's AHCS and the DPHI guidelines.

Consequently, Council Officers commissioned feasibility consultants Hill PDA to undertake a feasibility assessment. Hill PDA reviewed inputs from the proponent, industry benchmarks as well as a quantity surveyor report commissioned by Council. The Hill PDA report concluded the 9.27% (\$1,652,738) percentage as feasible. The full study and further discussion regarding the feasible contribution amount and the process undertaken is outlined in the relevant attachment provided under separate cover.

Should Council support submission of the planning proposal for Gateway determination, the feasibility study would be reviewed by the housing policy team at the DPHI, and the proposed percentage and contribution amount confirmed as part of the Gateway determination. Any subsequent change would be discussed in a post-exhibition report to Council.

Social impact assessment

Following the recent adoption of Council's Social Impact Assessment Guidelines and updated Development Control Plan (DCP) provisions, the planning proposal was required to undertake a social impact assessment against the relevant Council documents. This was provided in the way of a Social and Community Needs Assessment (SICNA) the SICNA was provided at the time of lodgement and was peer reviewed by an external consultant as Council Officers do not have the relevant expertise. The peer review agreed that given the minor nature of the proposed rezoning, it is unlikely to result in substantive negative impacts which may require mitigating. The peer review did, however, request some minor updates to the documentation provided in terms of clarifications around any mitigation of impacts that may exist. Following the peer review the SICNA was updated and is provided in the relevant attachments under separate cover. The updated document as attached is considered sufficient.

Waverley Council position on SP2 Infrastructure zoning

Council has a long-standing policy position of retaining its SP2 Infrastructure zoning. This first occurred when Council moved to the standard instrument LEP in 2012 with the gazettal of the *Waverley Local Environmental Plan 2012* and was reiterated in the adoption of the Waverley Local Strategic Planning Statement 2020-2036 (LSPS). Importantly, the policy position relates to social infrastructure. Council has maintained this position in the refusal of a previously lodged planning proposal at 34 Flood Street, Bondi, which proposed to rezone the site from SP2 Place of Public Worship to R3 Medium Density Residential.

Notwithstanding, the subject site contains telecommunications infrastructure, rather than social infrastructure, and is therefore not considered inconsistent with the LSPS, particularly given some SP2 zoning will be retained to ensure the on-going telecommunications needs continue to be fulfilled.

Trees and biodiversity

The site forms part of Council's habitat corridor and has no trees listed on the significant tree register. An Arboricultural Impact Assessment (AIA) was submitted as part of the planning proposal. A site visit was undertaken by Council's Tree Management Officer who also reviewed the AIA and the health and status of the existing trees and trees on site. In their review, the Tree Management Officer supported the retention of the trees listed for retention as well as the possible future removal of five smaller trees, all of which were either identified as being suppressed by the building and other trees or self-sown.

Traffic and transport

The site is well located within Bondi Junction, which provides for a wide range of bus and train services, as well as retail and employment opportunities.

A Parking and Traffic Assessment was submitted with the planning proposal based on the concept scheme, which concludes the projected increase in traffic activity as a consequence of the development proposal is

minimal and would not result in any unacceptable traffic implications for the surrounding road network capacity.

Given the proposal seeks to adopt the same zoning and development standards as the properties that surround it, the conclusion of the report is generally supported. A review of the proposed concept scheme and Parking and Traffic Assessment was undertaken by Council's Traffic Engineer and did not identify any issues requiring resolution at the planning proposal stage.

Waverley Local Planning Panel

The planning proposal was reported to the Waverley Local Planning Panel on 26 June 2024 for advice. The Panel supported the recommendation of Council officers in relation to the affordable housing contribution. The unanimous resolution is provided as follows:

The Panel after considering the above material and hearing from the proponent and Council Officers support the planning proposal as provided in Council's planning proposal Report and provide the following further advice:

1. *The Panel notes that Council's policy in relation to the Affordable Housing Contribution Scheme is applicable to this proposal.*
2. *The Panel notes that the Preliminary Site Investigation by PRM dated November 2023 concludes that the site is likely to be contaminated and will require a detailed site investigation (DSI) to be completed following removal of all structures from the site to confirm the contamination status of the site. Should the DSI identify any additional risk to human health or the environment for the proposed redevelopment, additional sampling and/or remediation may be required.*

Strategic merit of the proposal

Strategic merit means a proposal has alignment with the NSW strategic planning framework and is government priority. The NSW Local Environmental Plan Making Guidelines (August 2023) outline that the planning proposal must demonstrate how the proposed amended LEP will give effect to the strategic planning framework to then ensure that the proposal has strategic merit.

The site is considered to have strategic merit subject to a number of key considerations outlined within this report. In particular, the contribution of an appropriate amount towards Council's affordable housing program is a key consideration.

An assessment against the relevant parts of the Waverley Local Strategic Planning Statement and Local Housing Strategy is provided below as an extract from Attachment 1.

Table 1. Waverley Local Strategic Planning Statement (March 2020).

Relevant planning priorities	Comment
6. Facilitate a range of housing opportunities in the right places to support and retain a diverse community.	<p>The proposal will enable residential development as a permissible use on, enabling the potential for housing to be delivered on the site which is within close proximity to jobs, services and public transport in Bondi Junction.</p> <p>The affordable housing contribution will contribute towards Council's affordable housing program which helps to provide affordable housing to reduce displacement from the Waverley LGA.</p>

In addition, when inclusive of an appropriate contribution toward affordable housing (9.27% in line with Council's AHCS), the proposal is also considered to align with the following considerations in the Waverley LSPS:

- Planning Principle – Grow and improve the provision of social and affordable housing.
- Action – Review planning controls to support the delivery of affordable housing.

Table 2. Waverley Local Housing Strategy.

Relevant Priorities	Comment
H1. Manage housing growth sustainably and in the right locations	The proposal will facilitate modest development which is consistent with the surrounding areas. The subject site is in a good location, within close proximity to jobs, services and public transport.
H3 Increase the amount of affordable rental housing and social housing.	The proposal, when inclusive of an appropriate affordable housing contribution will help to increase the amount of affordable rental housing and social housing.
H5 Ensure new development is consistent with desired future character	The proposal does not propose to increase the development standards for the site beyond what is present on the site and in the immediate surrounding area. This will help to ensure new development is consistent with desired future character.

Site-specific merit of the proposal

It is not anticipated that this planning proposal will result in an adverse natural environment, economic or social impacts that could not otherwise be adequately managed throughout the development application stage, nor does the Proposal have a negative impact on existing or future uses of the affected sites, passing the Site-Specific Merit test.

A concept scheme was provided by the proponent to demonstrate one potential built form outcome for the site. The concept scheme proposed a multi-dwelling outcome with 2 x 4 bedroom and 5 x 3 bedroom multi-unit dwellings.

The concept scheme was reviewed and considered to appropriately respond to the relevant LEP and DCP requirements under the proposed zoning. Any concept scheme prepared as part of a planning proposal is indicative and has no weight in any future development of the site. Whilst multi-dwelling development has been proposed as part of this scheme, a residential flat building would also be permissible by the WLEP 2012. Notwithstanding, any future development application would be subject to the usual development assessment process.

A more detailed assessment against the relevant criteria in the DPHI guidelines is provided in Attachment 1.

Consideration during caretaker period

Section 393B (exercise of council functions during caretaker) of the *Local Government (General) Regulation 2021* states that during the caretaker period (16 August to 13 September 2024 inclusive), Council must not exercise the following functions:

- Enter into a contract or undertaking involving the expenditure or receipt by Council of an amount equal to or greater than \$150,000 or 1% of Council's revenue from rates in the preceding financial year (whichever is larger).
- Determine a 'controversial development application.'
- Appoint or remove a General Manager.

The subject planning proposal is not excluded by the Regulation and therefore can be considered by Council.

In line with the NSW Local Environmental Planning Guidelines and Statement of Expectations Order issued by the Minister of Planning for Planning and Public Spaces, Councils are required to assess a 'basic' planning proposal within 80 working days. Due to the assessment and negotiations around the affordable housing contribution, this time frame has now passed and should the proponent wish, is able to lodge a request for a Rezoning Review.

A Rezoning Review is an independent planning panel evaluation and recommendation to the Minister whether a proposal should progress to Gateway, bypassing Council. Therefore, it is recommended that Councillors make a decision as to whether the proposal should proceed to a Gateway determination as soon as possible.

5. Financial impact statement/Time frame/Consultation

Financial impact statement

There have been no upfront or recurrent costs associated with this planning proposal other than staff costs associated with the administration, assessment and exhibition of the Proposal and these have been budgeted.

Time frame

The following indicative project timeline will assist with tracking the progress of the planning proposal through its various stages of consultation and approval. It is estimated that this amendment to WLEP will be completed by late 2024/early 2025.

The detail around the project timeline is expected to be prepared following the referral to DPHI for a Gateway determination.

Table 3. Indicative project timeline.

Tasks	Timeframe and/or date
Consideration by Council	August 2024
Council decision	August 2024
Gateway determination	October 2024
Pre-exhibition	October 2024
Commencement and completion of public exhibition period	November 2024
Consideration of submissions and post-exhibition review	December 2024 – January 2025
Post-Gateway Council decision	February 2025
Submission to the Department for finalisation (where applicable)	February 2025
Gazettal of LEP amendment	April 2025.

Consultation

If the DPHI recommend that the planning proposal proceed to public exhibition, it would be done so in accordance with any Gateway conditions.

6. Conclusion

The planning proposal for 50 Botany Street, Bondi Junction, which proposes to rezone part of the site to R3 Medium Density Residential, introduce a minimum lot size, remove the redundant heritage listing and provide a contribution toward affordable housing, is considered to have site specific and strategic merit, subject to the considerations discussed throughout this report, in particular the affordable housing contribution being provided in line with Council's AHCS.

It is recommended Council supports the planning proposal to be submitted to the DPHI for a Gateway determination.

7. Attachments

1. Council planning proposal (under separate cover)
2. Proponent planning proposal report (under separate cover)
3. Urban Design Analysis (under separate cover)
4. Social and Community Needs Assessment (under separate cover)
5. Statement of Heritage Impact (under separate cover)
6. Arboricultural Impact Assessment (under separate cover)
7. Parking and Traffic Impact Assessment (under separate cover)
8. Preliminary Site Investigation (under separate cover)
9. Valuation and Affordability Housing Assessment (under separate cover) .