

DATE OF DETERMINATION	Thursday 25 July 2019
PANEL MEMBERS	Carl Scully (Chair), Sue Francis, John Roseth, Ed McDougall, Michael Nagi
APOLOGIES	None
DECLARATIONS OF INTEREST	None

Public meeting held at Fraser Suites, 488 Kent Street Sydney on 25 July 2019, opened at 2.30pm and closed at 4.05pm.

MATTER DETERMINED

2018SCL003 – Bayside – DA2017/1236 at 551, 553, 555-559 Gardeners Road Mascot for an Integrated Development (as described in Schedule 1)

PANEL CONSIDERATION AND DECISION

The Panel considered: the matters listed at item 6, the material listed at item 7 and the material presented at meetings and briefings and the matters observed at site inspections listed at item 8 in Schedule 1.

The Panel adjourned during the meeting to deliberate on the matter and formulate a resolution.

The Panel determined to approve the development application pursuant to section 4.16 of the *Environmental Planning and Assessment Act 1979*.

The decision was 3:2 in favour, against the decision were Ed McDougall and Michael Nagi.

REASONS FOR THE DECISION

The Panel notes that the proposal exceeds the height development standard of 26m applying to the site in the Botany Bay LEP 2013. The variation is granted in response to a written submission by the applicant under cl 4.6 of the LEP, which justifies the variation. While the variation is almost 20%, it relates mainly to the rooftop communal area, including the overrun of the lift tower, services and parapet.

The Panel notes that the proposal complies with the FSR development standard and that a similar variation has been granted to the nearby sites at 563-567, 577 and 581-587 Gardeners Road. The Panel is satisfied that the variation of the standard is consistent with the objectives of the zone and of the development standard, that strict compliance with the standard is unreasonable and unnecessary in this case, and that there are sufficient environmental planning reasons for the variation to be granted.

The Panel notes that the proposal contains separation distances between buildings which exceed the requirements of the ADG. The Panel is satisfied that the fenestration is arranged to avoid overlooking between apartments.

The proposal responds to the future character envisioned for the locality and provides residential accommodation with acceptable internal amenity.

Voting against the approval was Ed McDougall and Michael Nagi, instead suggesting that the proposal be deferred so that further information could be provided clarifying the overshadowing of neighbouring lots and the conflicting oral and written assessment by Council officers.

CONDITIONS

The development application was approved subject to the conditions in the Council Assessment Report with the following amendments:

- General Condition 1 amended to read as follows:
The development is to be carried in accordance with the following plans and documentation listed below and endorsed with Council's stamp, except where amended by other conditions of this consent.

Drawing N°	Author	Dated Received
Demolition Plan DA105 Revision A Dated 14/06/2019	DKO Architecture	14/06/2019
Site Plan DA106 Revision F Dated 14/06/2019	DKO Architecture	14/06/2019
Basement 2 DA201 Revision C Dated 14/06/2019	DKO Architecture	14/06/2019
Basement 1 DA202 Revision B Dated 14/06/2019	DKO Architecture	14/06/2019
Ground Floor Plan DA203 Revision F Dated 14/06/2019	DKO Architecture	14/06/2019
Level 01 DA204 Revision D Dated 14/06/2019	DKO Architecture	14/06/2019
Level 02-03 DA205 Revision D Dated 14/06/2019	DKO Architecture	14/06/2019
Level 04-05 DA206 Revision D Dated 14/06/2019	DKO Architecture	14/06/2019
Level 06 DA207 Revision F Dated 14/06/2019	DKO Architecture	14/06/2019
Level 07 DA208 Revision F Dated 14/06/2019	DKO Architecture	14/06/2019
Roof Plan DA209 Revision D Dated 14/06/2019	DKO Architecture	14/06/2019
Street Elevation	DKO Architecture	14/06/2019

DA300 Revision D Dated 14/06/2019		
Tower A North Elevation DA301 Revision D Dated 14/06/2019	DKO Architecture	14/06/2019
Tower A East Elevation DA302 Revision F Dated 14/06/2019	DKO Architecture	14/06/2019
Tower A South Elevation DA303 Revision E Dated 14/06/2019	DKO Architecture	14/06/2019
Tower A West Elevation DA304 Revision D Dated 14/06/2019	DKO Architecture	14/06/2019
Tower B North Elevation DA305 Revision F Dated 14/06/2019	DKO Architecture	14/06/2019
Tower B East and West Elevation DA306 Revision F Dated 14/06/2019	DKO Architecture	14/06/2019
Tower B South Elevation DA307 Revision F Dated 14/06/2019	DKO Architecture	14/06/2019
Section A DA308 Revision E Dated 14/06/2019	DKO Architecture	14/06/2019
Section B DA309 Revision D Dated 14/06/2019	DKO Architecture	14/06/2019
Section C DA310 Revision F Dated 14/06/2019	DKO Architecture	14/06/2019
Adaptable Apartment DA412 Revision F Dated 14/06/2019	DKO Architecture	14/06/2019
Adaptable Apartment Layout DA413 Revision A Dated 14/06/2019	DKO Architecture	14/06/2019
Ground Level Landscape Plan Page 10	Urbis	01/07/2019
Level 6 Program Page 15	Urbis	01/07/2019

Level 4 and 6 Program Page 16	Urbis	01/07/2019
Roof Plan Program Page 19	Urbis	01/07/2019
Roof Plan Page 20	Urbis	01/07/2019
Landscape Sections Page 22	Urbis	01/07/2019
Landscape Details Page 23	Urbis	01/07/2019
Planting Strategy Page 24	Urbis	01/07/2019
Material Strategy + Palette Page 25	Urbis	01/07/2019

Reference Document(s)	Author	Date Received
Waste Management Plan Dated 30/04/2019	Elephants Foot	01/07/2019
Environmental Site Assessment Stage 2 Dated 28/09/2018	Environmental Investigations Australia	09/11/2018
Preliminary State 1 Environmental Site Assessment Dated 27/10/2017	Environmental Investigations Australia	07/12/2017
Geotechnical Investigation Dated 25/09/2017	JK Geotechnics	07/12/2017
Arboricultural Impact Assessment Report Dated September 2017	Earthscape Horticultural Services	07/12/2017
Acoustic Assessment Dated 20 July 2017	Renzo Tonin & Associates	07/12/2017
BASIX Certificate Number: 863324M_02	Cundall	24/07/2019

- Condition 34 to be deleted, and replaced with new condition 11 to read as follows:
No structures, including but not limited to stairs, planters or other building components shall be located in the existing Right of Way.
- Condition 37 to be deleted, and replaced with a new condition 101 to read as follows:
The existing Sydney Water easement affecting the site shall be extinguished prior to the issue of any Occupation Certificate.
- Condition 47 amended to read as follows:
All landscape area, including planter boxes, shall be fully automatic irrigated. Construction details and sections shall be provided to the satisfaction of the Certifying Authority. The planter boxes on the roof top terrace shall have a minimum depth of 800mm (trees), 600mm (shrubs) and 300mm (groundcovers).
- Condition 64(b) amended to read as follows:
Southern edge of roof terrace common open space on level 6 of tower B shall include a perimeter built in planter box to ensure privacy. Planter box shall allow a minimum soil width of 700 mm, and a minimum depth of 600mm. Shall include screen shrubs of small leaves to ensure wind break and shall be able to reach a minimum mature height of 1.2 meters.

- Full set of conditions to be renumbered.

CONSIDERATION OF COMMUNITY VIEWS






In coming to its decision, the Panel considered written submissions made during the public exhibition and heard from one objector who addressed the Panel at the public meeting. The Panel notes that the main issues raised were overshadowing, overlooking and noise impact on nearby properties. In addition, there is concern about the structural impact of excavation and construction.

As regards overshadowing, the Panel notes that the additional height granted to the lift tower does not cause overshadowing. The Panel accepts that the objectors concern about loss of sunlight is legitimate. The Panel notes at page 38 of the assessment report dated 10 July 2019 that 9 adjoining west facing residential units “would be left with less than 2 hours solar access on June 21”.

The Panel notes that, in order to reduce the loss of sunlight caused by the proposal, its height and density would have to be reduced to significantly below that allowed by the controls in circumstances where nearby and adjoining sites are being developed to those heights and densities. The ADG acknowledges such circumstances under objective 3D-2 where it suggests that in such circumstances greater building separation should be encouraged. In this case, both the subject proposal and the neighbouring development significantly exceed the minimum separation distances suggested by the ADG.

As regards overlooking, the Panel notes that the proposal provides a 6m wide deep soil area along its southern boundary, which allows for substantial landscaping. Balconies with a direct line of sight to neighbouring properties have fixed screening on their balconies.

Condition 23 requires a dilapidation survey.

PANEL MEMBERS	
 Carl Scully (Chair)	 Sue Francis
 John Roseth	 Ed McDougall
 Michael Nagi	

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	2018SCL003 – Bayside – DA2017/1236
2	PROPOSED DEVELOPMENT	Integrated Development for the demolition of three existing buildings, construction and use of the site for two residential flat buildings six (6) and eight (8) storeys comprising of ground floor retail tenancy fronting Gardeners Road, with 109 apartments, rooftop communal open spaces to each tower, two level of basement car parking to accommodate 123 spaces and associated landscaping and diversion of the Sydney Water Sewer Main.
3	STREET ADDRESS	551,553,555-559 Gardeners Road, Mascot
4	APPLICANT/OWNER	Applicant: Bravo Global Pty Ltd C/-Urbis Pty Ltd Owner: Bravo Global Pty Ltd
5	TYPE OF REGIONAL DEVELOPMENT	General development over \$30 million
6	RELEVANT MANDATORY CONSIDERATIONS	<ul style="list-style-type: none"> Environmental planning instruments: <ul style="list-style-type: none"> State Environmental Planning Policy (Infrastructure) 2007 State Environmental Planning Policy No.55 – Contaminated Land State Environmental Planning Policy No.65 – Design Quality of Residential Apartment Development and the Apartment Design Guide Botany Bay Local Environmental Plan 2013 Draft environmental planning instruments: Nil Development control plans: <ul style="list-style-type: none"> Botany Bay Development Control Plan 2013 Planning agreements: Nil Provisions of the <i>Environmental Planning and Assessment Regulation 2000</i>: Nil Coastal zone management plan: Nil The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality The suitability of the site for the development Any submissions made in accordance with the <i>Environmental Planning and Assessment Act 1979</i> or regulations The public interest, including the principles of ecologically sustainable development
7	MATERIAL CONSIDERED BY THE PANEL	<ul style="list-style-type: none"> Council assessment report: 11 July 2019 Clause 4.6 Variation Request - Height Written submissions during public exhibition: 21 Verbal submissions at the public meeting: <ul style="list-style-type: none"> In objection – Eli Gescheit Council assessment officer – Patrick Nash On behalf of the applicant – Nick Wheeler
8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> Site inspection: 20 February 2018 Briefing: 20 February 2018 Final briefing to discuss council's recommendation, 25 July 2019 at 2pm. Attendees: <ul style="list-style-type: none"> <u>Panel members</u>: Carl Scully (Chair), Sue Francis, John Roseth, Michael Nagi, Ed McDougall <u>Council assessment staff</u>: Patrick Nash, Andrew Ison, Marta Gonzalez-Valdes
9	COUNCIL RECOMMENDATION	Approval
10	DRAFT CONDITIONS	Attached to the council assessment report