

COUNCIL SUPPLEMENTARY REPORT

Panel Reference	2018SCL011
DA Number	2014/68/2
LGA	Bayside Council
Proposed Development	Section 4.56 application to modify Development Consent No. 2014/68 to increase the number of basement car parking spaces, various amendments to the approved development including (but not limited to) increase footprint of buildings, additional levels on buildings, relocation of communal room, additional 38 apartments, and reconfiguration of apartment layouts
Street Address	8, 12, 14 and 16 Pemberton Street, Botany
Applicant/Owner	Applicant: Krikis Tayler Architects Owner: JKN Australia Pty Ltd
Report prepared by	Andrew Ison – Senior Development Assessment Planner
Report date	29 January 2019

BACKGROUND

On 20 December 2018, this application was reported to the Sydney Eastern Planning Panel (the Panel), as the Consent Authority for determination.

The Panel's recommendation was to defer the decision. The reasons for deferral, as published on the Planning Panels website, was as follows:

The Panel notes that this application has been before a previous panel, where it was refused, then before the Land and Environment Court, where an agreement between the parties was reached and Court consent orders issued; and now again before this Panel. The Panel notes also that the various forms of the application have had different apartment numbers, different FSRs and different building heights.

Compounding the complexity of the situation is the fact that part of the site is in a B4 zone and part in a R3 zone, which have different planning controls and that there was a previous masterplan on the site. While the Panel sought information during the meeting in relation to the FSR and building height of previous applications, it was unable to form a clear picture of what had been refused by the previous Panel and allowed by the Court consent and how that relates to what is being sought by the applicant and to what is recommended by the assessment report. In the absence of this information, the Panel is unable to make an informed decision.

The Panel therefore defers the determination of the application in order to allow the Council to provide this information in clear tabular form in a supplementary report. The information sought should be given for each of the variations of the application mentioned above and should include:

- *The relevant controls over time that have applied to the site*
- *The FSR (including any bonuses), total and as distributed between the parts of the site zoned B4 and R3;*
- *The building heights for each building and the extent to which they vary from the control, from the masterplan, JRPP refusal, S34 agreement and current proposal;*
- *The number of apartments.*

The Panel requests the assessment officer to provide this information to the Panel, in a supplementary report, by 25 January 2019. On receipt of the information, the Panel will determine the application at a private meeting unless the Chair considers that a further public meeting is required.

The decision to defer the matter was unanimous.

1. The relevant controls over time that have applied to the site

Pre Master Plan

- The subject site was part zoned 4(b1) Mixed Industrial – Restricted Industrial and 2(b) Residential under the Botany Local Environmental Plan 1995.
- The Floor Space Ratio under 2(b) Residential was 0.5:1 and it was 1:1 under the 4(b1) Mixed Industrial – Restricted Industrial zone. However, under Clause 12(2) of LEP 1995, FSR of 1:1 was permitted in the 2(b) zone where the allotment exceeds 2,500 square metres.
- The maximum height was prescribed under Development Control No. 31 – Pemberton-Wilson Street Precinct (now repealed).

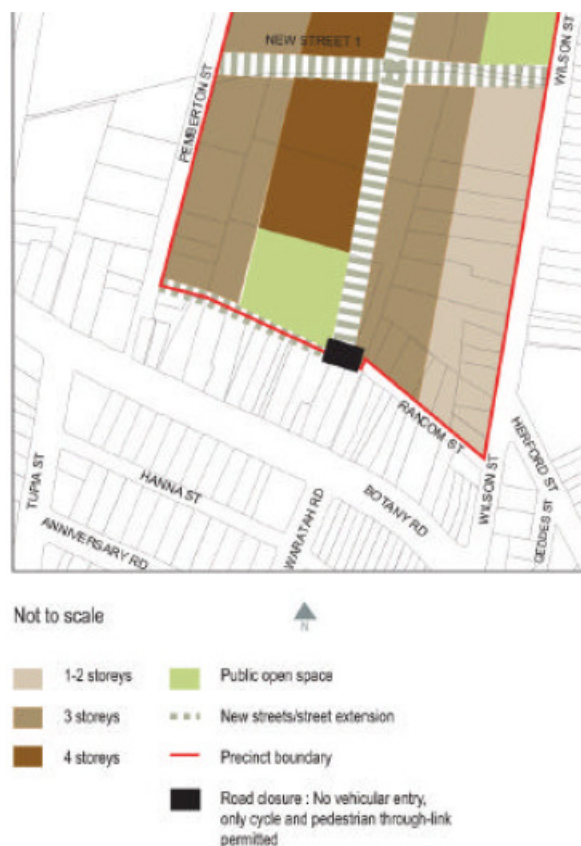


Figure 5.3 Building Heights (storeys)

Figure 1: Extract from DCP 31

Master Plan

- Development Application 05/459 was approved by the former City of Botany Bay Council on 10 August 2006 which established the Masterplan for the subject site.



Figure 2: Extract from approved Master Plan

- The subject application refers to parts A, B1, B2 and C as shown above.
- The approved FSR under the Master Plan was 1.02:1 for the 4(b1) Mixed Industrial – Restricted Industrial zone and 1.19:1 for the 2(b) Residential zone.
- The approved building heights, as per condition 8 of the development consent set out the following building heights:
 - RL 25.6 (21.4 metres) for Building A;
 - RL 18.6 (14.2 metres) for Building B1;
 - RL 26.1 (23.8 metres) for Building B2; and
 - RL 22.5 (17.7 metres) for Building C
- The most recent amendment was approved by the former City of Botany Bay Council on 5 September 2012.

Botany Bay Local Environmental Plan (LEP) 2013

- The LEP was gazetted on 21 June 2013.

- The 4(b1) Mixed Industrial – Restricted Industrial zone changed to B4 Mixed Use and 2(b) Residential changed to R3 Medium Density Residential.
- The Floor Space Ratio (FSR) map as prescribed at the time of gazettal has the entire site as having a development standard 1:1. This has not been amended to date.
- As per Clause 4.4B of the LEP, a bonus of up to 1.65:1 is permitted in R3 zones if the site is equal to or greater than 2,000 square metres as well as other requirements.
- The Height of Building (HOB) map as prescribed at the time of gazettal has the entire site as having a development standard 10 metres. This has not been amended to date.
- As per Clause 4.3 of the LEP, a bonus of up to 22 metres is permitted in R3 zones if the site exceeds 2,000 square metres.
- Amendment No. 2 was gazetted on 16 February 2016, which added Clause 4.4C and amended Clause 4.6 to include additional criteria to be satisfied, relating to design criteria.

2. The FSR (including any bonuses), total and as distributed between the parts of the site zoned B4 and R3

Zone	LEP	Refused DA	Section 34	Current	Recommended
B4	1:1	1.62:1	1.3:1	1.6:1	1.6:1
R3	1.6:1	1.46:1	1.06:1	1.2:1	1.13:1

Note:

- B4 zone contains Buildings A1, A2, A3 and C1
- R3 zone contains Buildings B1, B2, B3, C2 and C3.
- Recommended is a recalculation based on the deleted units as per the first report

3. The building heights for each building and the extent to which they vary from the control, from the masterplan, JRPP refusal, Section 34 agreement and the current proposal

Building	Master Plan	LEP	Refused DA	Section 34	Current
A	21.4m	10m	21.1m	17.2m	20.2m
B1	14.2m	22m	27.1m	22.9m	22.9m
B2 and B3	23.8m	22m	25.9m	22m	25m
C1	23.8m	10m	19.65m	15.85m	16.85m
C2 and C3	17.7m	22m	22.15m	19.15m	22m

4. The number of apartments

Building	Refused DA	Section 34	Current
A1	34	24	30
A2	17	21	27
A3	15	14	18
B1	44	39	40
B2	47	34	46
B3	47	40	46
C1	9	8	10

C2	26	25	27
C3	74	57	63
Total:	313	268	306

CONDITIONS

Further to the 20 December meeting, the following is to be considered:

Amendments to Condition 1

Reason: The applicant presented a marked up schedule of conditions on 20 December to Council, in which there were some minor errors with relation to the referenced plans. These have been reviewed and deemed acceptable.

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 No.	Rev	Author	Dated
A03 – Basement Level 2 Plan (DA-2014/68/2)	14	Krikis Tayler Architects	22 August 2017 (DA-2014/68/2)
A04- Basement Level 1 Plan	17 19 (DA-2014/68/2)		3 February 2017 22 August 2017 (DA-2014/68/2)
A05- Level 1 (Ground) Plan	22A 24 (DA-2014/68/2)		17 October 2017 28 August 2017 (DA-2014/68/2)
A06- Level 2 Plan	18 21 (DA-2014/68/2)		3 February 2017 25 August 2017 (DA-2014/68/2)
A07- Level 3 Plan	14 17 (DA-2014/68/2)		3 February 2017 25 August 2017 (DA-2014/68/2)
A08- Level 4 Plan	13 16 (DA-2014/68/2)		3 February 2017 25 August 2017 (DA-2014/68/2)
A09- Level 5 Plan	13 16 (DA-2014/68/2)		3 February 2017 25 August 2017 (DA-2014/68/2)
A10- Level 6 Plan	12 15 (DA-2014/68/2)		3 February 2017 25 August 2017 (DA-2014/68/2)
A11- Level 7 Plan	12 15 (DA-2014/68/2)		3 February 2017 25 August 2017 (DA-2014/68/2)

A13- Roof Plan	12 15 (DA-2014/68/2)		3 February 2017 25 August 2017 (DA-2014/68/2)
A20- Elevations 1	16 20 (DA-2014/68/2)		3 February 2017 25 August 2017 (DA-2014/68/2)
A21- Elevations 2	16A 20 (DA-2014/68/2)		17 October 2017 25 August 2017 (DA-2014/68/2)
A22- Elevations 3	13 17 (DA-2014/68/2)		19 May 2017 25 August 2017 (DA-2014/68/2)
A23- Elevations 4	11 15 (DA-2014/68/2)		3 February 2017 25 August 2017 (DA-2014/68/2)
A30- Sections	9 12 (DA-2014/68/2)		3 February 2017 22 August 2017 (DA-2014/68/2)
Apartment Schedule	P S (DA-2014/68/2)		6 February 2017 30 August 2017 (DA-2014/68/2)
SK170522-02- Page 1 to 11- GFA Diagrams (DA-2014/68/2)	-		22 May 2017 (DA-2014/68/2)
SK170522-01- Page 1 to 3- Car park entry details	-	-	22 May 2017
000- Cover Sheet	G I (DA-2014/68/2)	Site Image Landscape Architects	2 August 2017 25 August 2017 (DA-2014/68/2)
001- Landscape Masterplan	G I (DA-2014/68/2)		2 August 2017 25 August 2017 (DA-2014/68/2)
101- Landscape Plan- South West	G I (DA-2014/68/2)		2 August 2017 25 August 2017 (DA-2014/68/2)
102- Landscape Plan- North West	G I (DA-2014/68/2)		2 August 2017 25 August 2017 (DA-2014/68/2)
103- Landscape Plan- South East	G I (DA-2014/68/2)		2 August 2017 25 August 2017 (DA-2014/68/2)
104- Landscape Plan- North East	G I (DA-2014/68/2)		2 August 2017 25 August 2017 (DA-2014/68/2)

105- Landscape Plan- Level 2 and 3	G I (DA-2014/68/2)		2 August 2017 25 August 2017 (DA-2014/68/2)
106- Landscape Plan- Nature Playground	G		2 August 2017
401- Landscape Planting Plan South West	G I (DA-2014/68/2)		2 August 2017 25 August 2017 (DA-2014/68/2)
402- Landscape Planting Plan North West	G I (DA-2014/68/2)		2 August 2017 25 August 2017 (DA-2014/68/2)
403- Landscape Planting Plan South East	G I (DA-2014/68/2)		2 August 2017 25 August 2017 (DA-2014/68/2)
404- Landscape Planting Plan North East	G I (DA-2014/68/2)		2 August 2017 25 August 2017 (DA-2014/68/2)
405- Planting Plan Level 2 and 3	G I (DA-2014/68/2)		2 August 2017 25 August 2017 (DA-2014/68/2)
501- Landscape Details	G I (DA-2014/68/2)		2 August 2017 25 August 2017 (DA-2014/68/2)
502- Landscape Details, Specification and Plant Schedule	G I (DA-2014/68/2)		2 August 2017 25 August 2017 (DA-2014/68/2)
D20- Landscape Stormwater Drainage Plan	B	Australian Consulting Engineers	July 2017
000 - Cover sheet, legend & drawing schedule	A	Australian Consulting Engineers	August 2015
001 - Basement 2 storm water drainage plan and details	B		
002 - Basement 1 storm water drainage plan	B		
003 - Level 1 storm water drainage plan	C		
004 - Level 2 storm water drainage plan	A		
005 - Level 3 storm water drainage plan	A		
006 - Level 4 storm water drainage plan	A		
007 - Level 5 storm water drainage plan	A		
008 - Level 6 storm water drainage plan	B		
009 - Level 7 storm water drainage plan	B		
010 - Level 8 storm water drainage plan	B		

011 - Roof level storm water drainage plan	A		
015 - Storm water drainage sections and details	B		

Reference Document(s)	Author	Dated
Letter re: Proposed Modifications to Parkgrove Buildings A, B and C, Botany Ref: JH/8501/jj JH/10642/jj (DA-2014/68/2)	Colston Budd Hunt and Kafes Pty Ltd	19 August 2015 31 August 2017 (DA-2014/68/2)
Internal Traffic Assessment	Thompson Stanbury Associates	November 2016
NaTHERS- Class 2 Summary	SLR Consulting Pty Ltd	3 November 2016 31 August 2017 (DA-2014/68/2)
BASIX Certificate No. 540244m_04 540244m_06	SLR Consulting Pty Ltd	3 November 2016 31 August 2017 (DA-2014/68/2)
Noise Intrusion Assessment Report No. 5367-3.1R Rev A	Day Design Pty Ltd	8 November 2016
Environmental Noise Assessment Report 5367-3.2R Rev A	Day Design Pty Ltd	8 November 2016
Geotechnical Assessment 2373- B	Asset Geotechnical	27 March 2014
Geotechnical Assessment Addendum 2373-2-L1 Rev 1 Report No. E22374 GA	Asset Geotechnical	11 November 2016
Dewatering Assessment 2373-1-L1 Rev 1	Asset Geotechnical	17 June 2016
Access Report Job No. IAC-594	Iaccess Consultants	3 November 2016
Letter Re Flood Storage and OSD Storage, Parkgrove, KF111540-L03	KF Williams and Associated Pty Ltd	9 September 2015
Waste Management Plan	Elephants Foot Recycling Solutions	September 2015
Pedestrian Wind Environment Statement WB999-03F01	Windtech Consultants Pty Ltd	4 November 2016
Remediation Action Plan Part of Former Brambles Site Report ID: CES021209- AUS-11-F	Consulting Earth Scientists	15 June 2005
Remediation Action Plan Former Aerosols Australia Site and Proposed Commercial Redevelopment Report ID: CES021209-AUS-12-F2	Consulting Earth Scientists	13 February 2006
Report on Additional Groundwater Investigation	Consulting Earth Scientists	6 February 2006
Sampling Analysis and Quality Plan: Groundwater Monitoring,	Consulting Earth Scientists	16 February 2004

Austcorp Botany Site, Botany Report JD: CESD21209-AUS-02-F (SAQP)		
Letter Re: Proposed Modifications to Parkgrove Buildings A, B and C, Botany	Zoic Environmental Pty Ltd	21 September 2015
BCA Capability Report Ref: J160528	Vic Lilli and Partners Consulting	4 November 2016

Where there is any inconsistency between the drawings listed in (a) and (b), the architectural plans shall prevail.

Amendments to Condition 1A

Reason: The applicant presented a marked up schedule of conditions on 20 December to Council, in which there were some minor incorrections with relation to the referenced plans. These have been reviewed and deemed acceptable.

1A. *Notwithstanding the above, the following amendments are to be noted on the approved plans:*

- (a) The communal room in Building C2 is to be retained, as per the Level 1 (Ground Plan), Drawing A05 Issue 22A as determined by Bayside Council on 12 December 2017***
- (b) The roof plan for Building B upper roof is to be retained, as per Roof Plan, Drawing A13, Issue 12 as determined by Bayside Council on 12 December 2017.***
- (c) The elevations for Building B is to be retained, as per Elevations 1 (Drawing A20, Issue 16), Elevations 3 (Drawing A22, Issue 13) and Elevations 4 (Drawing A23, Issue 11) as determined by Bayside Council on 12 December 2017.***
- (d) The sections for Building B is to be retained, as per Sections, Drawing A30, Issue 9 as determined by Bayside Council on 12 December 2017. (DA-2014/68/2)***

Proposed additional Condition 91A

Reason: The standard condition for construction noise was omitted when the conditions for the Consent Order was being prepared. The inclusion of this condition will allow Council an opportunity to better regulate construction on the subject site.

The following shall be complied with during construction and demolition:

- (a) Construction Noise***
 - (i) Noise from construction activities associated with the development shall comply with the NSW Environment Protection Authority's Environmental Noise Manual – Chapter 171 and the Protection of the Environment Operations Act 1997.***
- (b) Level Restrictions***

- (i) *Construction period of 4 weeks and under:*
 - (1) *The L10 sound pressure level measured over a period of not less than 15 minutes when the construction site is in operating must not exceed the background level by more than 20dB(A).*
- (ii) *Construction period greater than 4 weeks and not exceeding 26 weeks:*
 - (1) *The L10 sound pressure level measured over a period of not less than 15 minutes when the construction site is in operating must not exceed the background level by more than 10 dB(A).*
- (c) *Time Restrictions*
 - (i) *Monday to Friday 07:00am to 06:00pm*
 - (ii) *Saturday 08:00am to 01:00pm*
 - (iii) *No demolition or construction to take place on Sundays or Public Holidays.*
- (d) *Silencing*

All possible steps should be taken to silence construction site equipment.