

DETERMINATION AND STATEMENT OF REASONS
SYDNEY EASTERN CITY PLANNING PANEL

DATE OF DETERMINATION	Friday 13 March 2020
PANEL MEMBERS	Carl Scully (Chair), Sue Francis, Julie Savet Ward, Michael Shiels, Paul Pappas
APOLOGIES	Roberta Ryan
DECLARATIONS OF INTEREST	Jan Murrell was a member of the Local Planning Panel when the planning proposal was presented. Michael Nagi, Ed McDougall, Bill Saravinovski and Dorothy Rapisardi all declared a conflict of interest due to consideration of the planning proposal of the site at a Bayside Council meeting.

Public meeting held at Bayside Council, Rockdale Office, 444-446 Princes Highway, Rockdale on 13 March 2020, opened at 11.50am and closed at 1.25pm.

MATTER DETERMINED

PPS-2019ECI007 – Bayside – DA2019/6 at 146-154A O’Riordan Street, Mascot (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.

Application to vary a development standard

Following consideration of a written amended request from the applicant, made under cl 4.6 (3) of the 2103 Local Environmental Plan Botany Bay (LEP), and consideration of the amended cl4.6 by Council in their submission to the Panel dated 13/3/2020, that has demonstrated that:

- a) compliance with cl. 4.6 is unreasonable or unnecessary in the circumstances; and
- b) there are sufficient environmental planning grounds to justify contravening the development standard

The Panel is satisfied that:

- a) the applicant’s amended written request adequately addresses the matters required to be addressed under cl 4.6 (3) of the LEP; and
- b) the development is in the public interest because it is consistent with the objectives of cl. 4.6 of the LEP and the objectives for development in the B5 zone; and
- c) the concurrence of the Secretary has been assumed.

Development application

The Panel determined to grant deferred commencement consent to the development application pursuant to section 4.16 of the *Environmental Planning and Assessment Act 1979*.

The decision was unanimous.

REASONS FOR THE DECISION

- The non-compliance with the building height was amended at the request of the Panel to reduce the extent of variation to a maximum of 2.18m (9.9 per cent). The amended cl4.6 prepared by the applicant and assessed by the Council is acceptable in its context and in the circumstances of this development on this site.
- The development application is an integrated development and all necessary concurrences have been received.
- The Panel is satisfied that the access incorporating a slip lane is acceptable subject to conditions of consent.
- The Panel considers that the concern raised in relation to stormwater has been satisfactorily resolved by the amended deferred commencement condition, increasing the timeframe from 6 months to 24 months.
- The Panel considers that the dilapidation concern raised by the community has been satisfactorily addressed by a condition of consent with an amendment to include 1 additional property and include reference that the land owners whose properties are the subject of a dilapidation report are given a copy of that report upon its completion and prior to works commencing.

CONDITIONS

The development application was granted deferred commencement consent subject to the conditions in the council assessment report with the following amendments.

- DC1 amended as follows:

The Proponent is to obtain the necessary approval from the owner of the property at 263 – 273 King Street, Mascot, to enter and carry out the proposed stormwater deviation work and disuse the section of the stormwater pipe and stormwater channel within this property. The period of the “Deferred Commencement” consent is to be limited to 24 months.

- Amend Condition 18 to read as follows:
 - Prior to the commencement of any works, a dilapidation survey shall be undertaken of all properties and/or Council infrastructure, including but not limited to all footpaths, kerb and gutter, stormwater inlet pits, and road carriageway pavements, in the vicinity which could be potentially affected by the construction of this development. This includes development along Foster and Macintosh Streets to the east of the site (including 41 Foster Street). Any damage caused to other properties during construction shall be rectified. A copy of the dilapidation survey shall be submitted to the owner(s) of each property surveyed. A copy of the dilapidation survey and an insurance policy that covers the cost of any rectification works shall be submitted to the Principal Certifying Authority prior to issue of the Construction Certificate. The insurance cover shall be a minimum of \$10 million.

CONSIDERATION OF COMMUNITY VIEWS

In coming to its decision, the Panel considered written submissions made during public exhibition and heard from all those wishing to address the Panel. The Panel notes that issues of concern included:

- Flood risks
- Stormwater
- Dilapidation report

The Panel considers that concerns raised by the community have been adequately addressed in the assessment report subject to the amendment of the dilapidation condition. No new issues requiring assessment were raised during the public meeting. The Panel notes that in addressing these issues appropriate conditions have been imposed.

PANEL MEMBERS	
 Carl Scully (Chair)	 Sue Francis
 Julie Savet Ward	 Michael Shiels
 Paul Pappas	

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPS-2019ECI007 – Bayside – DA2019/6
2	PROPOSED DEVELOPMENT	Integrated Development for the demolition of existing buildings and construction of a mixed use development including 2 x seven (7) storey buildings and 2 x six (6) storey buildings containing 96 hotel rooms, 444 serviced apartments, restaurant, commercial tenancies and basement parking
3	STREET ADDRESS	146-154A O’Riordan Street, Mascot
4	APPLICANT/OWNER	Toplace Pty Ltd / JKN Park Pty Ltd
5	TYPE OF REGIONAL DEVELOPMENT	General development over \$30 million
6	RELEVANT MANDATORY CONSIDERATIONS	Environmental planning instruments: • Environmental Planning & Assessment Act 1979, Part 4 – Development Assessment & Schedule 7 of the SEPP- State and Regional Development 2011 which regional panels may be authorised to exercise consent authority functions of councils • Environmental Planning & Assessment Regulation 2000, Part 6 – Procedures relating to Development Applications • State Environmental Planning Policy (Infrastructure) 2007 • State Environmental Planning Policy No. 55 – Remediation of Land • State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 • Botany Bay Local Environmental Plan 2013 • Draft environmental planning instruments: Nil • Development control plans: • Botany 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	• Council assessment report: 14 February 2020 • Clause 4.6 variation request – Height • Written submission from McKees, on behalf of Toplace Pty Ltd – 25 February 2020 • Revised written Clause 4.6 variation request – Height – dated 13 March 2020 • Written memorandum from Council to the Panel on the revised Clause 4.6 variation request – Height – dated 13 March 2020

		• Written submissions during public exhibition: 1 • Verbal submissions at the public meeting: ○ In support – Nil ○ In objection – Phillip Manno, Paul Thomas ○ Council assessment officer – Angela Lazaridis, Ben Latta, Luis Melim ○ On behalf of the applicant – Larissa Brennan, Siobhan McInerney, Jean Nassif, David Kriep
8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	• Briefing: 16 May 2019 ○ <u>Panel members</u>: [Carl Scully (Chair), Sue Francis, John Roseth ○ <u>Council assessment staff</u>: Angela Lazaridis, Andrew Ison, Pascal Van Der Walle • Site inspection: 13 March 2020 ○ <u>Panel members</u>: Carl Scully (Chair), Sue Francis, Julie Savet Ward, Michael Shiels, Paul Pappas ○ <u>Council assessment staff</u>: Angela Lazaridis, Ben Latta, Luis Melim • Final briefing to discuss council's recommendation, 13 March 2020, 11.20 Attendees: ○ <u>Panel members</u>: Carl Scully (Chair), Sue Francis, Julie Savet Ward, Michael Shiels, Paul Pappas ○ <u>Council assessment staff</u>: Christopher Thompson, Angela Lazaridis, Luis Melim, Ben Latta
9	COUNCIL RECOMMENDATION	Approval
10	DRAFT CONDITIONS	Attached to the council assessment report