

DATE OF DETERMINATION	18 August 2022
DATE OF PANEL DECISION	18 August 2022
DATE OF PANEL MEETING	11 August 2022
PANEL MEMBERS	Jan Murrell (Chair), Chris Wilson, Gabrielle Morrish and Jeremy Swan
APOLOGIES	Lee Kosnetter (COI)
DECLARATIONS OF INTEREST	None

Public meeting held by teleconference on 11 August 2022, opened at 1:30pm and closed at 3.30pm.
Papers circulated electronically on 29 July 2022.

MATTER DETERMINED

PPSSEC-156 - Waverley Council - DA-400/2021 - 194-214 Oxford Street and 2 Nelson Street, Bondi Junction
- Demolition of existing structures; construction of a shop top housing development, comprising ground floor retail, 10 floors of residential apartments across two buildings (known as Oxford Street tower and Nelson Street tower) and four levels of basement parking; and associated Planning Agreement for public domain works (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 listed at item 8 in Schedule 1.

The Panel members have all carried out a site inspection prior to determining this application to understand the context of the site and the issues raised by submitters.

Application to vary a development standard

Following consideration of a written request from the applicant, made under cl 4.6 (3) of the Waverley Local Environmental Plan 2012 (LEP), the Panel considers this has demonstrated that:

- a) compliance with cl.4.3 (Height of buildings) 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 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.4.3 (Height of buildings) of the LEP and the objectives for development in the B4 Mixed Use Zone; and
- c) the concurrence of the Secretary has been assumed.

Development application

On a merits assessment the Panel determined to approve the development application, subject to conditions, pursuant to section 4.16 of the *Environmental Planning and Assessment Act 1979*.

The decision was unanimous.

REASONS FOR THE DECISION

After considering all the information, including submissions and reports, the Panel determined to uphold the Clause 4.6 variation to building height and approve the application for the reasons outlined in the Council Officers Assessment Report and the additional reasons below.

The Panel is satisfied that the environmental outcomes justify the height exceedance, and the level of overshadowing of Centennial Park is considered acceptable with respect to Section 26 of the Greater Sydney Parks Trust Act 2022. The Panel considered the provisions the Greater Sydney Parks Trust Act 2022, specifically clause 26 which requires the consent authority to have regard to the impact of overshadowing on public open space, including the impacts set out in a Greater Sydney Parklands shadow modelling study. The Panel finds the shadow impact on Centennial Park acceptable and the Panel notes that the shadow cast by the height exceedance falls within an area identified in the Greater Sydney Parklands Shadow Modelling Study which allows for minor additional overshadowing.

The Panel is satisfied that the building design and placement of towers and their separation will achieve an appropriate entry marker to Bondi Junction Town Centre. The architectural form considers not only the visual presentation but also has regard to site specific planning principles and analysis including an acceptable human scale to the development, slender towers to mitigate visual amenity, impacts, good public amenity and landscaping and consideration of massing and wind effects. The design is a result of a competitive design process, consistent with Clause 6.10 of the Waverly LEP and the evolution of the design since awarding the competition winner has been reviewed and guided by the Competition Design Jury. The Panel has strengthened Condition 18 to require the final architectural detailing to be referred to the original (Competition) Design Excellence Jury Panel to ensure the built form presentation represents that envisaged by the Jury.

The Panel notes the community's concerns regarding traffic surveys being undertaken in April 2021. While not in lockdown, the community's concern is that surveys conducted by the Applicant at this time were unlikely to be representative of normal conditions. The Panel accepts that vehicle traffic may have been marginally less than usual during the conduct of these surveys. However, it is satisfied that given the minimal contribution that the development will make to traffic on the road network, particularly in the am and pm peaks, it is highly unlikely that the development will have a material impact on levels of service of nearby intersections, or traffic related matters generally.

The Panel is satisfied with Council's assessment of the traffic studies undertaken for the Planning Proposal (with studies undertaken by both the Council and the Proponent), and the further analysis provided for this development application. The changes from the conceptual scheme of the planning proposal and this development application would not warrant refusal of the application. The Panel notes that the Local Traffic Committee will continue to review local traffic management arrangements for the area.

The recommended conditions require a Construction Management Plan to be approved prior to the issuing of the construction certificate. In addition, Condition 25 requires a dilapidation report to be prepared and made available to affected property owners and a Noise Management Plan prior to any works.

The Panel is satisfied that all preconditions to the grant of consent have been satisfied including that the site can be remediated for its intended purpose and in this regard Condition 24 has been strengthened for greater certainty.

The Panel considered that the development as shown in the amended plans is one that could be anticipated by the planning controls and framework. In this regard the DCP guidelines the 2019 changes to the LEP controls to allow an increase in height and the increase in floor space ratio set the parameters as well as the requirement of cl.10 for a Design Competition and Jury. The role of this Panel is to determine the development application in the context of the controls. The Panel is satisfied the design excellence provisions have been achieved. In this regard the Panel has given due consideration to the DCP and ADG's Guidelines in its determination and is satisfied the development as shown in the amended plans is worthy of approval on a merit's basis.

By way of comment, the concepts prepared for the Planning Proposal are not the subject of assessment for this DA. The Panel must determine the merits of the application before it and has concluded the application is satisfactory including the additional height which does not result in adverse impacts. Also, by way of comment, the 'Planning Agreement' is not a matter for the Panel in its determination.

CONDITIONS

The Development Application was approved subject to the conditions in the Council Officers Assessment Report with the following amendments.

- The draft conditions of consent with respect to Deferred Commencement Condition 1 has been amended in accordance with agreement between Council and the applicant (Reason: To ensure the agreement between council and the applicant is executed).
- Condition 10a planning agreement amended in accordance with the agreement between Council and the applicant (Reason: To ensure an appropriate bank guarantee)
- Condition 18 is amended to ensure that the original (Competition) Design Excellence Jury is required to approve the final details of materials and finishes (Reason: To provide certainty in the quality and presentation of the design, materials, finishes and colours).
- Condition 24 is reworded for greater certainty with the submission of a site audit statement is to be submitted prior to the issue of any construction certificate (Reason: To provide certainty at the issuing of the first construction certificate).
- Condition 66 for tree removal is amended as agreed between council and the applicant (Reason: To provide certainty on trees to be retained)
- Condition 98(d) is amended to require a maximum of 50 spaces for residential parking purposes and the provision of 12 retail spaces (Reason: 12 spaces for retail as opposed to a maximum for viability of the retail component of the development. This may result in fewer residential parking spaces, which is now a maximum of 50).
- Condition 98A is inserted to require the building to provide suitable electrical phasing and infrastructure for owners of units to install electric vehicle charging points (Reason: To future proof the development).

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 the submissions were lodged and issues of concern included:

- Traffic, parking and pedestrian safety;
- Height exceedance;
- Visual impact;
- Overshadowing ;
- Privacy ;
- Setbacks and building separation ;
- Landscaping area and communal open space;
- Infrastructure;
- Wind analysis; and
- Planning agreement

The development application was exhibited from 7 October to 10 November 2021 and 114 submissions, as identified on the Council's website, were received. Amendments were made to the plans and made available on Council's website. These changes did not require re-advertising or re-notification in accordance with Council's policy as the changes did not result in further or new impacts.

The Panel notes the issues and concerns raised by the community have generally been addressed in Council's Assessment Report. Plus, the Panel also had the benefit of hearing from 12 people who addressed the Panel, and this includes the visual information forwarded to demonstrate a submitters concern. It is noted that the process does not allow new material to be presented after the public meeting for procedural fairness reasons.

The Panel has carefully considered the relevant issues raised by submitters in the determination of this development application.

PANEL MEMBERS	
 Jan Murrell (Chair)	 Chris Wilson
 Gabrielle Morrish	 Jeremy Swan

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPSSEC-156 - Waverley Council - DA-400/2021
2	PROPOSED DEVELOPMENT	Demolition of existing structures; construction of a shop top housing development, comprising ground floor retail, 10 floors of residential apartments across two buildings (known as Oxford Street tower and Nelson Street tower) and four levels of basement parking; and associated Planning Agreement for public domain works
3	STREET ADDRESS	194- 214 Oxford Street and 2 Nelson Street, BONDI JUNCTION NSW 2022
4	APPLICANT/OWNER	Westgate BJ Pty Ltd / Owners Corporation Strata Plan 34942
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 (Biodiversity and Conservation) 2021 State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 State Environmental Planning Policy (Industry and Employment) 2021 State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development State Environmental Planning Policy (Planning Systems) 2021 State Environmental Planning Policy (Resilience and Hazards) 2021 State Environmental Planning Policy (Transport and Infrastructure) 2021 Draft Waverley Local Environmental Plan 2022 Waverley Local Environmental Plan 2012 (Waverley LEP 2012) Draft environmental planning instruments: Nil Development control plans: <ul style="list-style-type: none"> Waverley Development Control Plan 2012 Planning agreements: Yes Provisions of the <i>Environmental Planning and Assessment Regulation 2000</i> 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: 28 July 2022 Clause 4.6 variation (Height of buildings) Written submissions during public exhibition: 105 Verbal submissions at the public meeting: <ul style="list-style-type: none"> Katy Brady, Howard Parry, Battina Orellana, Matthew Taylor, Kirsten Lunoe, Lindi Glass, Kristin Arthur, Gregory Phillips, Maya Michael, Amanda McPherson, Sam Harvey, Sonya Hammond Council assessment officer - Ben Magistrale, Mitchell Reid and Bridget McNamara On behalf of the applicant – Elia Leis, Adam Haddow, Juliet Grant, Anthony Kazacos, Igal Leis Total number of unique submissions received by way of objection: 105

8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> • Briefing: 28 April 2022 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Carl Scully (Chair), Jan Murrell, Gabrielle Morrish and Jeremy Swan ○ <u>Council assessment staff</u>: Ben Magistrale, Kylie Lucas and Bridget McNamara ○ <u>Applicant</u>: Elia Leis, Olivia Page, Igal Leis and Adam Haddow • Final briefing to discuss council's recommendation: 11 August 2022 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Jan Murrell (Chair), Chris Wilson, Gabrielle Morrish and Jeremy Swan ○ <u>Council assessment staff</u>: Ben Magistrale, Bridget McNamara and Mitchell Reid ○ <u>Applicant staff</u> – Elia Leis, Adam Haddow, Juliet Grant, Anthony Kazacos, Igal Leis
9	COUNCIL RECOMMENDATION	Approval
10	DRAFT CONDITIONS	Attached to the Council Assessment Report