

Thursday, 16 July 2020

**Att: Sharon Edwards**

**Planning Panels Secretariat**

[enquiry@planningpanels.nsw.gov.au](mailto:enquiry@planningpanels.nsw.gov.au)

Panel Reference: **PPSSEC-19**  
DA No: **DA-2019/359**  
Street Address: **16-18 John St and 23-25 Church Mascot**  
Applicant: **Da Vito Ferro Apartments**

Dear Hon Carl Scully and The Panel,

As the Panel is aware, the applicant has commenced appeal proceedings in the Land and Environment Court against the deemed refusal of this application.

It would be preferable and far more efficient, if this application could be resolved with the input of the Regional Panel on the items which are in contention in the assessment report before the Panel; summarised by council as follows:

- Concurrence of Water NSW as required and has not been received
- Owner's consent for potential underpinning works of neighbouring properties
- FSR non-compliance
- Setbacks/bulk/scale
- Built form relationship to neighbouring western building
- Apartment amenity
- Arrangement and layout of the vehicular access and relationship with pedestrian movements
- Proposed through site link
- Retention of existing building facade

It is important to note the following;

- The landowners have been in the area since 1987 when Mascot was an Industrial hub and still operate their steel fabrication from the Church Ave facility
- The landowners are building these 2 towers in memory of their parents, and
- The landowners intend to hold the Church Ave tower and commercial space – thereby having a clear interest in the highest quality and best building practices

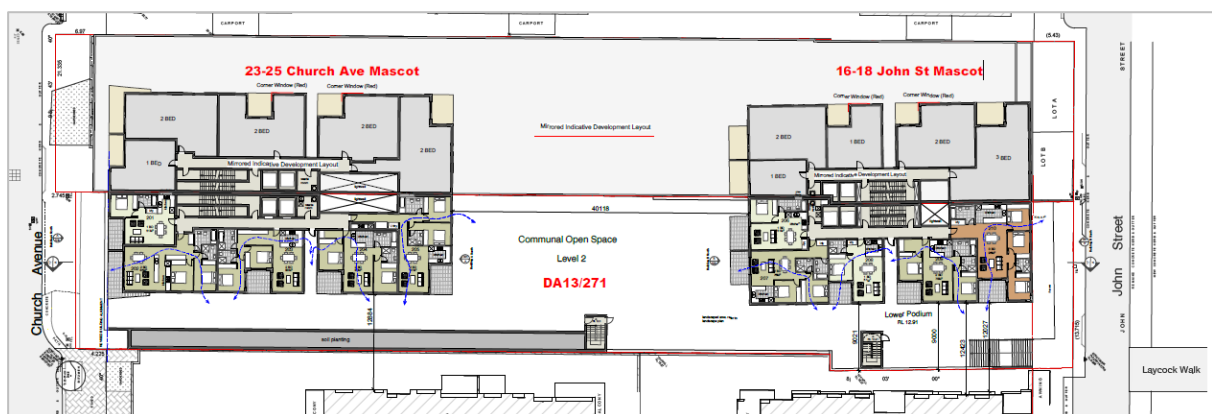
The panel will undoubtedly agree what the Applicant proposes is unique to the Mascot Station Precinct area. In line with the Applicants interest in the development, will make this development a landmark site and inject a much needed positive attitude into the area.

In recent years the landowners spent 3 years objecting to the neighbouring development at 27 Church Ave + 18A & 20-22 John St Mascot (DA13/271). The neighbouring applicant misrepresented a 'mirror' design could be adopted over the Subject Properties and any future DA would achieve 85.5% solar compliance. Despite the land owners raising serious concerns regarding the accuracy of the solar analysis and the impact the adjoining approval would have to any future redevelopment potential over the landowners properties, the adjoining development was approved through a S34 conference through the Land and Environment Court; the applicants design (as will be expanded below) responds to the adjoining parameters

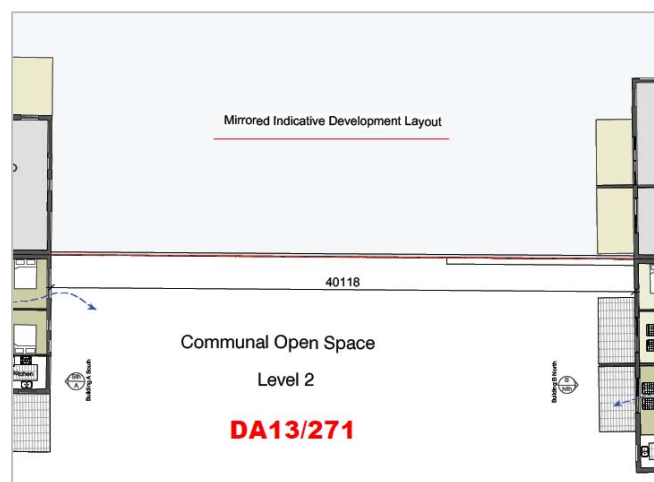
### 'Mirror' Design

As noted above, the adjoining DA misrepresented a mirror design could be adopted over 23-25 Church Ave & 16-18 John St Mascot; please refer to the below drawing extracts which indicates 'Mirrored Indicative Development Layout' over the applicants properties.

Further, adopting a mirror design would result in the majority of units being East facing



The above image is an extract from Drawing DA06/L relating to DA13/271 (27 Church Ave + 18A & 20-22 John St Mascot)



The above image is an enlarged extract from Drawing DA06/L indicating the words 'Mirrored Indicative Development Layout'

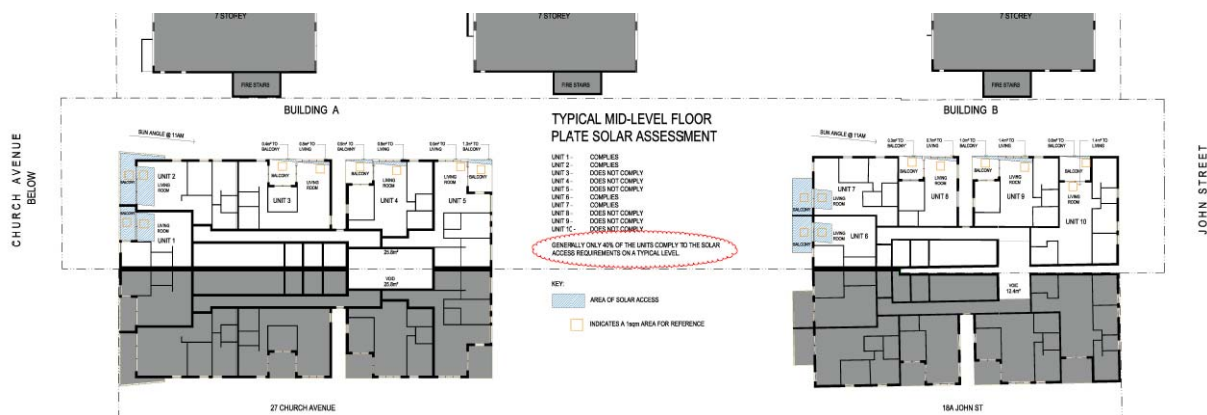
With the above in mind and in reference to Councils email dated 22 May 2020, where they state;

*“- Rear north eastern portion of Building A too close to the boundary & orientation of apartments across the side boundary increases privacy/bulk impacts. Tower B nil setback to the east is unsatisfactory and not supported. Expressed grooves in the exterior finish do not ameliorate the concerns previously raised. **It was envisaged that the buildings on this site would somehow mirrored the neighbour on the west** and greater setback to the east be provided to allow a break in building mass along this boundary and provide a continuous setback.” [Emphasis added]*

It would appear Council are under the impression that the Applicants proposal can be altered to ‘mirror’ the neighbours design and by adopting a ‘mirror’ will result in a compliant development – **this is grossly inaccurate** as will be expanded below

## Solar Analysis

Squillace Architects have conducted a solar analysis on the basis of adopting a mirror design. Due to the length of the adjoining towers and the fact that the properties are positioned 9.5 degrees off true north, this has revealed that only 40% of the apartments would receive the minimum 2 hour of sunlight. Not only does this demonstrate a serious non-compliance, it validates the landowners concerns regarding the inaccuracy of the solar analysis as provided by the neighbouring DA

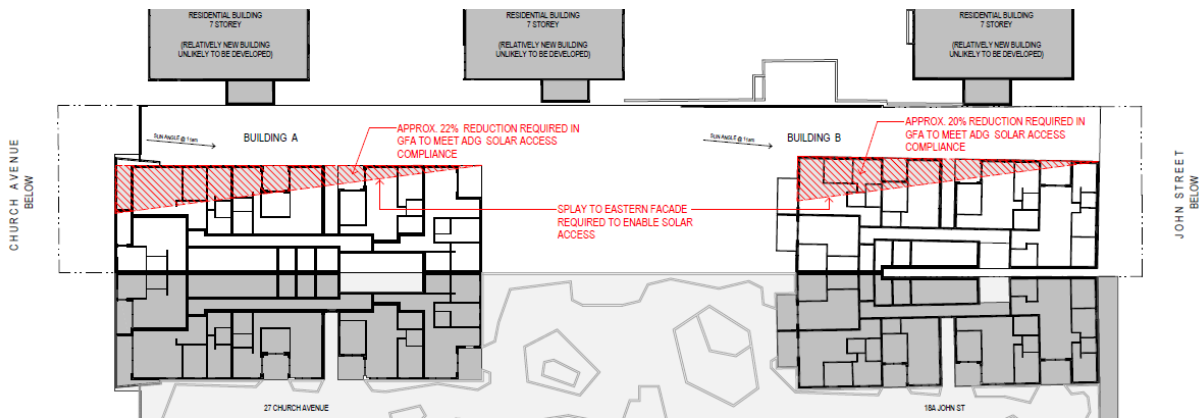


The above image relates to the solar analysis as prepared by Squillace Architects which illustrates that only 40% of the apartments receive the minimum 2 hour solar access

## Shaping of Towers

In circumstances where the JRPP refused the adjoining DA with its principal reason for refusal being solar non-compliance, as the Panel can appreciate Squillace Architects main focal points has been solar **compliance**.

The below image illustrates the impact to a future redevelopment, whereby in order to meet the minimum 2 hour solar compliance any future redevelopment would require a reduction in GFA of approx. 20-22%. In addition, the width of the towers would be extremely narrow (approx. half the width of the neighbouring towers) to the northern faces of the towers which would provide a highly undesirable design outcome



*The above image illustrates that in order to meet solar compliance, the towers need to be tapered*

From a design point of view, to complement the neighbouring DA Squillace Architects increased the width of the frontage, which to an extent ‘mirrored’ the width of the frontage of the adjoining neighbouring. This created the ‘Yin – Yang’, which can be seen in the below illustration



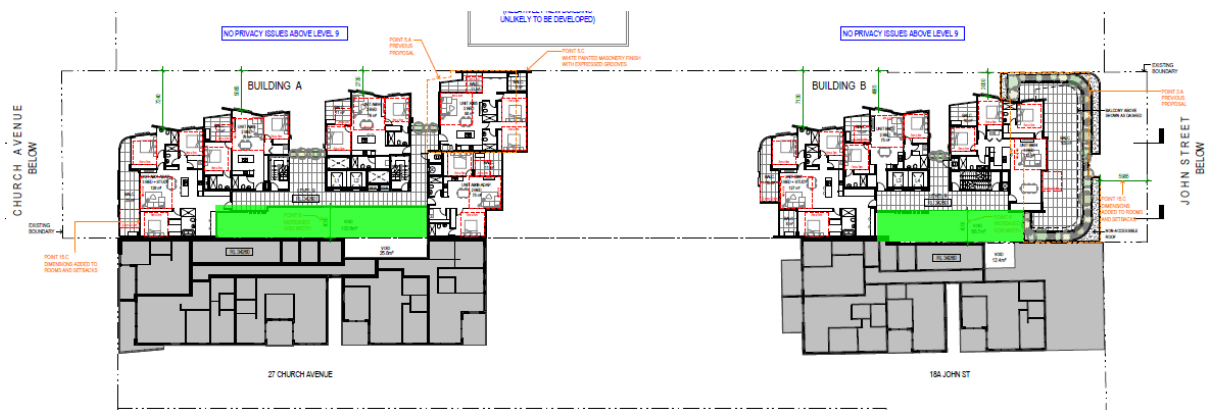
*The above image illustrates how the proposed design (white building) complements the neighbouring approved & recently completed (black building)*

As can be seen above, increasing the width of the towers worked perfectly to the front and having a tapered building shape allowed for the majority of the apartments to be North facing (in lieu of East facing as proposed by the neighbour), however while this resolved the appearance of the frontage and provided a much better amenity for the apartments, it created a knock on effect; it increased the width of the towers rear and had a significant impact (i.e. increase) on FSR.

## Introduction of voids

As noted above the building shape is as a result of complying with solar access, which the applicant is pleased to inform the Panel, 70% of the apartments meet the minimum 2 hour solar compliance (compared to 40% if an identical mirror design had been adopted)

Mirroring the frontage resulted in the width of the rear of the towers increasing, which in turn impacted FSR. Therefore, to deal with the FSR impact, **which at this point was at 4.32:1**, the team at Squillace Architects creatively introduced voids along the western boundary through both towers. *Please refer to below images which have the voids highlighted in green*



The above is an extract from drawing DA-109 revision B, the area highlighted green represent voids throughout the towers which equate to approx. 1636.80 sqm

The total area for both voids is approx. 1636.80 sqm, this successfully reduced the FSR from 4.32:1 to 3.77:1. The introduction of the voids has provided the added benefit of increasing cross ventilation to 100%, which exceeds the minimum requirement being 60%. *Cross ventilation to the voids has been confirmed by Windtech, the consultant used for the wind report*

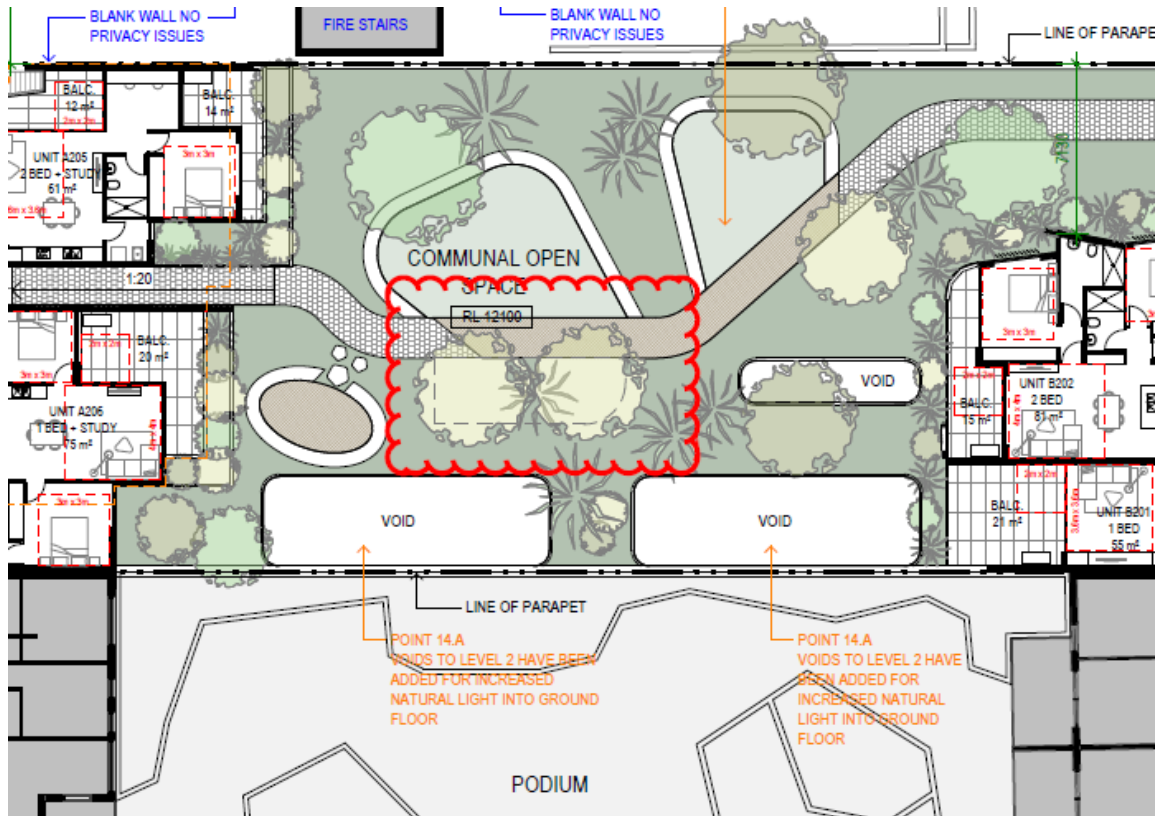
## Design rigorously tested

By now the Applicant has demonstrated to the Panel that the design has been rigorously tested. To demonstrate this even further we need look no further than Councils Assessment; specifically page 18 which deals with **'Apartment Design Guide'**

Out of the 11 controls, council has stated 'No' beside 2 controls being; Deep Soil & Cross ventilation

### Deep Soil

The development provides a basement, it is not possible to provide deep soil but it should be noted the neighbouring DA also provided NIL, which was approved by Council. However in an attempt to provide Deep Soil, Squillace Architects have introduced a 6 metre deep planter box which is located in the communal open space, *please refer to below image which clouds the 6 metre planter box*



The above is an extract from drawing DA-102 revision D

In addition to the 6 metre deep planter box, the design provides a substantial amount of communal open space which is located on level 2 and both roof tops

LEVEL	PROPOSED HARD LANDSCAPE AREA
LEVEL 2	217.1 sqm
ROOF LEVEL	432.5 sqm
<b>TOTAL</b>	<b>649.6 sqm - (24.9%)</b>

ADJUSTED AREA AS PER THE PODIUM AND ROOF LEVEL CHANGES

LEVEL	COMMUNAL OPEN SPACE
LEVEL 2	586.3 sqm
ROOF LEVEL	568.5 sqm
<b>TOTAL</b>	<b>1154.8 sqm - (44.3%)</b>

ADJUSTED AREA AS PER THE PODIUM AND ROOF LEVEL CHANGES

The above is an extract from drawing DA-510 revision D

## *Cross ventilation*

Section 4B – *Natural Ventilation* addresses Council’s view of the cross ventilation. The applicant advises it is not appropriate to characterise the void area adjacent to the western boundary as a ‘light well’ due to its substantial volume and connection through the building to the east.

Furthermore within the ‘*Pedestrian Wind Environment Statement Report dated 27 September 2019*’ prepared by Windtech Consultants, as provided by the Applicant, it states the following;

*“Windtech have undertaken a high level review of the natural cross ventilation performance of the apartments within the subject development. It is noted that a number of apartments within the development will rely of the use of the voids and corridor openings to obtain adequate natural ventilation. **Windtech can confirm that the use of voids in building design has been utilised in other similar developments to provide adequate natural ventilation.** It is expected that the sizing and layout of the voids and corridors through the development will be sufficient to provide adequate natural ventilation for the apartments opening to these spaces.”* [Emphasis added]

Therefore in circumstances where an expert body has confirmed that the voids do increase the flow of natural ventilation and in circumstances where the design exceeds the minimum requirement of 60% as prescribed by ADG, the applicant is somewhat confused as to what Council’s issue is

## **In response to Councils Summary of Key Submissions**

*While reviewing the planning portal it appears council has not uploaded marked up architectural drawings with proposed amended which were provided to council on 20 May 2020. The Applicants therefore assumes the Panel have not viewed these drawings*

### **1. Concurrence of Water NSW is required and has not been received**

We appreciate that the Panel cannot lawfully approve the application without the GTA’s from Water NSW. It is not clear from the report whether Water NSW has indicated that it will not issue GTA’s, or whether they have simply failed to respond to Council. If it is the case that they haven’t responded to Council, it is also not clear from the assessment report whether Council has referred the matter to the Secretary who has the power to respond on behalf of Water NSW under Section 4.47(4A) of the Environmental Planning & Assessment Act.

It would be unfair to refuse the application on the basis that Water NSW has failed to discharge their statutory responsibilities and the Council has failed to initiate the remedy provided in Section 4.47(4A). In this regard the best the Panel can do is defer the matter while efforts are made to determine whether Water NSW or the Secretary will issue GTA’s for the proposal

2. Owner's consent for potential underpinning works of neighbouring properties

The Mascot Towers incident is a live issue in the applicants mind, which has lead to the applicant investigating advanced shoring systems, such as Cutter Soil Mix (CSM) and Diaphragm walls as illustrated below. The applicant also wishes to clarify that it does not intend to underpin any adjacent buildings.

Given the applicants interest in the development, in the interest of public safety and to provide purchasers the utmost assurance that the shoring system exceeds the minimum standards, the applicant will also be employing a peer review of the structural design which can be provided to council at time of issuing a construction certificate

Therefore, to provide Council and the Panel comfort a condition could be imposed requiring a detailed structural engineering methodology to be peer reviewed and provided to Council prior to the granting of a construction certificate. Include in the condition a requirement that there be no underpinning of adjacent buildings without the consent of the owners of those buildings.

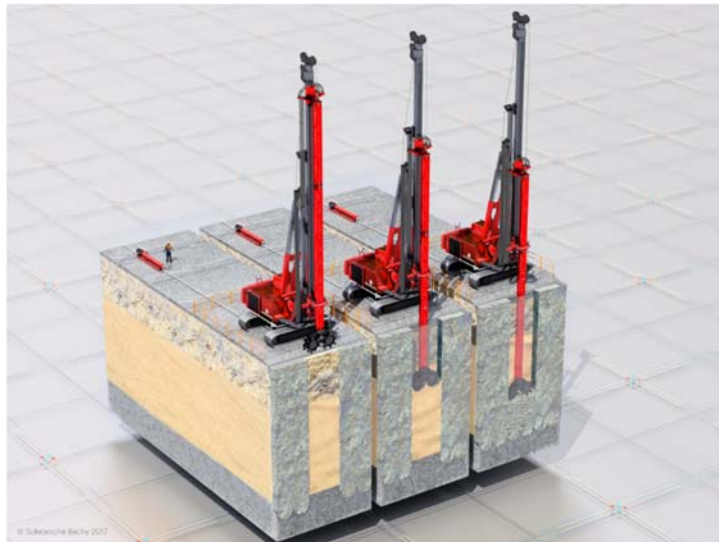


Image above illustrates a shoring wall using **Cutter Soil Mix (CSM)**

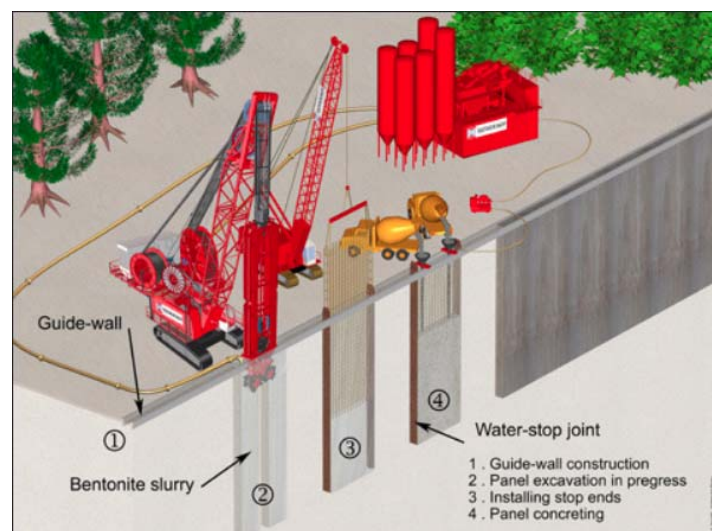


Image above illustrates a shoring wall using **Diaphragm Wall**

### 3. FSR non-compliance

This has been addressed above, however in circumstances where the JRPP refused the adjoining DA with one of its primary reasons being solar non-compliance, as the Panel can appreciate the applicants focal points has been solar compliance. There have also been attempts to reduce FSR by introducing voids through the tower which has successfully reduced the impact

Notwithstanding the above, there are sufficient environmental planning grounds to justify the variation to the Floor Space Ratio standard.

For example; the length of the adjoining towers and adherence to solar compliance has created the tapered building shape, this is has been a contributor to the FSR non-compliance.

The amendment described above provides justification to vary a control which has been created by the neighbouring approval but Council, by its own actions, has already abandoned.

There is a long list of variations granted by Council, many of which far exceed the variation sought in this application, and are provided in the clause 4.6 variation request submitted with the development application.

### 4. Setbacks/bulk/scale

The arrangement of the towers and relationship to the eastern boundary is an appropriate response to the poorly planned and designed development to the east. Moreover, it facilitates the achievement of 70% solar access to the development without compromising the amenity of the neighbouring apartments. A development scheme on our site which mirrored the development on the adjoining site to the west would achieve only 40 per cent solar access.

The arrangement of the towers was in fact described by one of the design review panel members as an intelligent design response to the existing context.

### 5. Built form relationship to neighbouring western building

Council are referring to the substantial setback to the neighbouring DA, particularly the John St Tower, however it appears Council are not familiar with the applicant's, in that DA, reason;

The applicant for that DA wrote to council on 18 May 2016 addressing, amongst other things, view corridors. Below is an extract from that correspondence which outlines their reason for the substantial setback;

#### *1.4 View Corridors*

*The Council has identified an east-west view corridor from Bourke Street across the site. This corridor has been maintained by the proposal.*

***The view from the public domain of Laycock Walk towards the north has been maximised by creating a substantial setback between the proposed buildings and the existing buildings at No. 24-26 John Street and Mascot Towers. [Emphasis added]***

Unfortunately, Council have recently abandoned the view corridor from Bourke Street across the site which has been obstructed by the proposed Student Accommodation at 6-8 John St & 13B Church Ave Mascot.

However, through rigorous solar analysis studies Squillace Architects have confirmed the applicants proposed John St tower design does not impact on council's Laycock Walk. The setback has been designed to respond and complement surrounding tower heights, as illustrated below



*The above image relates to the rear view of the John St Tower and it responds to the neighbouring development to its west*

#### 6. Apartment amenity

As noted above the apartments achieve the objectives and the numerical criteria in the Apartment Design Guide (ADG) as they relate to natural ventilation, notwithstanding the assertion in the assessment report. Given the apartments also achieve the objectives and design criteria related to solar access, apartment sizes, apartment configuration, private and communal open space, the apartment amenity is of a high standard.

#### 7. Arrangement and layout of the vehicular access and relationship with pedestrian movements

Please refer below to “Proposed through site link” which responds to this concern

#### 8. Proposed through site link

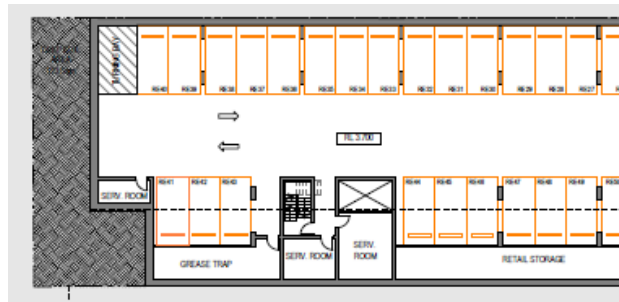
The proposed through site link activates a dull part of Church Ave which presently has no retail. The public will greatly benefit from this link as it connects a pedestrian from Church Ave through to John St through to the Council's Laycock Walk

The site through link was welcomed by the design review panel during the June 2019 meeting where the panel indicated the following;





Putting the above commentary into perspective, the original design indicated the basement wall following the internal shape of the existing façade as noted below.

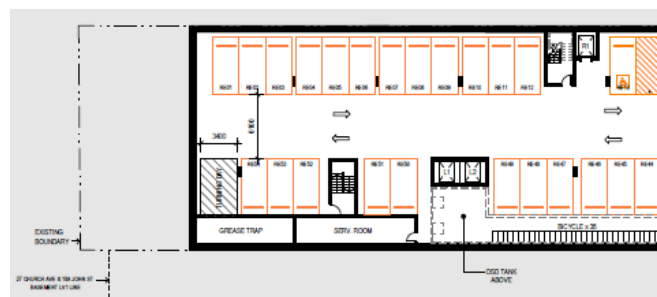


The above image relates to the proposed basement specifically following the existing façade to the Church Ave end as provided within design review panel submission dated May 2019

The panel raised concerns that the façade could be damaged and asked for clarification how the façade would be protected during the installation of the shoring walls. At the time there was a comment to the effect of, 'if need be the façade could be dismantled and rebuilt once the basement had been constructed', which in response the panel stated

*The Panel would be supportive of a heritage interpretation of both the building and steel fabrication elements within the new building. **The current proposal, to demolish, reconfigure and rebuild** much of the factory **over a new basement** structure with a tower above **diminishes the integrity and justification to retain the building in the current street alignment.** [Emphasis added]*

Therefore to maintain the integrity and justification to retain the building in the current street alignment, the design was amended so the basement sat wholly behind the façade. Please see below line of new basement



The above image relates to the amended basement placing the basement line away from existing façade to the Church Ave end as provided within drawing DA-099 revision D

During the December 2019 design review panel meeting the chairman complemented the use of the existing façade and suggested the façade better suit a colonnade. In line with the chairman’s suggestion the existing façade has been converted into a colonnade as illustrated below



The retention of the existing facade has been endorsed by GBA Heritage Architects (a copy of that letter has been provided to council). GBA Heritage Architects stated, amongst other things, the following;

*“The retention of the masonry facade, not only provides for a legible artefact, but for a scaled structure set apart from the high rise development. An urban marker will improve the pedestrian interface and transition experience from Church Street through the link to the John Street site.”*

The below image illustrates that the existing façade does not intrude into the public domain but adds character to the development and further enhances the pedestrian experience as noted by GBA, above



The applicant is hopeful the above provides the Panel further explanation of the design and further looks forward to the Panels support to approve the application

If the Panel agrees that the application is worthy of approval with some minor amendments, we would ask that the application be deferred for a period of time which would also need to take into account current court timetable and will enable the submission of amended plans. This would benefit all parties and provide a more efficient resolution of the development application. It would also enable Council to pursue the general terms of approval from Water NSW.

Thank you, we welcome any questions

Regards,

**Da Vito Ferro Apartments**

**Mario Pizzolato**

Project Director

