

SYDNEY EASTERN CITY PLANNING PANEL PANEL DETERMINATION MEETING

COUNCIL ASSESSMENT REPORT

Panel Reference	PPSSEC- 19
DA Number	DA-2019/359
LGA	Bayside Council
Proposed Development	Integrated Development - Retention of part of Church Street facade, demolition of all remaining structures, excavation for basement parking levels and construction of two (2) x thirteen (13) storey mixed use buildings comprising ground level commercial and 122 residential units and rooftop communal open space including solar panels.
Street Address	16-18 John Street and 23 Church Avenue, Mascot
Applicant/Owner	Da Vito Ferro Apartments Pty Ltd
Date of DA lodgement	9 October 2019
Number of Submissions	26 submissions
Recommendation	Refusal
Regional Development Criteria (Schedule 7 of the SEPP (State and Regional Development) 2011	Development with a CIV of \$45,637,884.00
List of all relevant s4.15(1)(a) matters	<ul style="list-style-type: none"> • 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 No. 55 – Remediation of Land • State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 • State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 • State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development • Botany Bay Local Environmental Plan 2013 • Botany Development Control Plan 2013 • Draft Bayside Local Environmental Plan 2020
List all documents submitted with this report for the Panel's consideration	<ul style="list-style-type: none"> • Architectural Plans- prepared by squillace • Clause 4.6 variation FSR- prepared by City Plan • Clause 4.6 variation Height – prepared by City Plan • Survey Plan – prepared by LTS • Landscape Plans- prepared by Site Image • Design Review Panel Minutes- Bayside Council
Clause 4.6 requests	<ul style="list-style-type: none"> • Non-compliance with Clause 4.3 of BBLEP 2013 – Building Height • Non-compliance with Clause 4.4 of BBLEP 2013 – Floor Space Ratio

Summary of key submissions	<ul style="list-style-type: none"> • The DA is the subject of a Class 1 appeal in the NSWLEC • Concurrence off Water NSW is 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
Report prepared by	Patrick Nash - Senior Development Assessment Planner
Report date	30 June 2020

Summary of s4.15 matters

Have all recommendations in relation to relevant s4.15 matters been summarised in the Executive Summary of the assessment report? **Yes**

Legislative clauses requiring consent authority satisfaction

Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarized, in the Executive Summary of the assessment report?
e.g. Clause 7 of SEPP 55 - Remediation of Land, Clause 4.6(4) of the relevant LEP **Yes**

Clause 4.6 Exceptions to development standards

If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report? **Yes**

Special Infrastructure Contributions

Does the DA require Special Infrastructure Contributions conditions (S7.24)? **Not Applicable**
Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions

Conditions

Have draft conditions been provided to the applicant for comment? **No, application is recommended for refusal**
Note: in order to reduce delays in determinations, the Panel prefer that draft conditions, notwithstanding Council's recommendation, be provided to the applicant to enable any comments to be considered as part of the assessment report

RECOMMENDATION

It is RECOMMENDED that the Sydney Eastern City Planning Panel (SECPP), as the Consent Authority, resolve:

- a) THAT the Sydney Eastern City Planning Panel, exercising the functions of the Council as the consent authority pursuant to s4.16 of the Environmental Planning and Assessment Act 1979 does not support the variation to the Floor Space Ratio prescribed by clause 4.4 of Botany Bay Local Environmental Plan 2013, as it is not satisfied that the applicant's request has adequately addressed the matters required to be demonstrated by clause 4.6 of that Plan, and the proposed development would not be in the public interest because it is not consistent with the objectives of that particular standard and the objectives for development within the zone.
- b) THAT the Sydney Eastern City Planning Panel, exercising the functions of the Council as the consent authority pursuant to s4.16 of the Environmental Planning and Assessment Act 1979 is not satisfied that the proposed development exhibits design excellence as required by clause 6.16 of Botany Local Environmental Plan 2013.
- c) THAT Development Application No. 2019/359 for retention of part of Church Street facade, demolition of all remaining structures, excavation for basement parking levels and construction of two (2) x thirteen (13) storey mixed use buildings comprising ground level commercial and 122 residential units and rooftop communal open space including solar panels at 16-18 John Street & 23 Church Avenue, Mascot be refused pursuant to s4.16(1)(b) of the Environmental Planning and Assessment Act 1979 for the following reasons:
 1. The proposed development constitutes Integrated Development and is subject to the requirements of Part 4 Division 4.8 of the Environmental Planning and Assessment Act 1979. The application is subject to a Water Supply Work Approval under the Water Management Act 2000 for dewatering during the construction phase and for construction details to ensure basement is technically correct and impacts on adjoining properties minimised. General Terms of Approval (GTAs) have not been issued by WaterNSW.
 2. The proposed structural design and construction methods associated with such are not certain. The structural letter of support prepared by Webber Design identifies that underpinning to the neighbouring property would likely be required subject to a further review of the existing structural information of the properties to complete a further assessment. Owners consent from the neighbouring property has not been provided; pursuant to the provisions of Clause 50 of the Environmental Planning and Assessment Regulation 2000.
 3. Pursuant to the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development does not comply with the maximum allowable Floor Space Ratio (FSR) for the site under clause 4.4 of Botany Bay Local Environmental Plan 2013. The clause 4.6 exception provided does not adequately address the matters required to be demonstrated by clause 4.6 of Botany Bay Local Environmental Plan 2013.
 4. Pursuant to the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development does not exhibit design excellence and does not satisfy clause 6.16(4) of Botany Bay Local Environmental Plan 2013.

5. Pursuant to the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the development does not demonstrate that adequate regard has been given to the Design Quality Principles and the objectives specified in the Apartment Design Guide contrary to clause 30(2) of State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development.
6. Pursuant to the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the amended development was not accompanied by a valid BASIX Certificate and therefore does not satisfy State Environmental Planning Policy (BASIX) 2004.
7. The proposed development, pursuant to the provisions of Section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979, results in an undesirable and unacceptable impact on the streetscape and adverse impact on the surrounding built environment.
8. The proposed through site link is of poor quality and presents an unsatisfactory conflict between vehicular and pedestrian movements, pursuant to the provisions of Section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979
9. Pursuant to the provisions of Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979, and in consideration of the impacts and submissions made, the proposed development is not considered to be in the public interest.
10. Pursuant to the provisions of Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposed development does not meet the requirements of the Botany Bay Development Control Plan 2011, including:
 - 3A – Parking & Access
 - 3G – Stormwater Management
 - 3H – Sustainable Design
 - 3I – Crime Prevention, Safety & Security
 - 3L – Landscaping & Tree Management
 - 4C – High Density Residential
 - 9A – Mascot Station Town Centre Precinct

d) That the submitters be advised of the Sydney Eastern City Planning Panel decision.

The reasons for the recommendation is as follows:

- a) The proposed development does not comply with the FSR development standard and is inconsistent with the objectives of that control as contained in clause 4.4 of Botany Bay Local Environmental Plan 2013;
- b) The proposed development is inconsistent with the Apartment Design Guide, the Design Quality Principles contained within SEPP 65 and does not exhibit design excellence contrary to clause 6.16 of Botany Bay Local Environmental Plan 2013; and
- c) The proposal provides a built form response that will result in unreasonable impacts upon neighbouring properties and/or the streetscape along John Street and Church Avenue.

EXECUTIVE SUMMARY

Council received Development Application No. 2019/359 on 9 October 2019 for retention of part of Church Street facade, demolition of all remaining structures, excavation for basement parking levels and construction of two (2) x thirteen (13) storey mixed use buildings comprising ground level commercial and 122 residential units and rooftop communal open space including solar panels at 16-18 John Street and 23 Church Avenue, Mascot.

The Development Application is required to be referred to the Sydney Eastern City Planning Panel (SECPP) pursuant to Schedule 7 of the State Environmental Planning Policy (State and Regional Development) 2011 as the Capital Investment Value of the proposal is greater than \$30,000,000.00.

A Class 1 'deemed refusal' appeal has been filed with the NSW Land & Environment Court on 11 June 2020.

The key issues in the assessment of the development application include the non-compliant floor space ratio, vehicular access, setbacks, apartment amenity, design excellence, built form relationship to the immediately adjoining eastern and western neighbouring buildings, pedestrian movements and the retention of a portion of the existing building along Church Avenue.

The maximum FSR allowed on the site is 3.2:1 (9456sqm). The proposed development has an FSR of 3.77:1 (applicant's figures) equating to 11,139sqm. The proposed FSR does not comply, being 1683sqm or 17.7% above the maximum allowable. The applicant has provided a Clause 4.6 variation to the maximum allowable FSR of 3.2:1 which has been provided to the Panel for reference. Council does not support the contravention to the FSR development standard in this instance.

The applicant has provided a Clause 4.6 variation to the maximum permissible building height of 44 metres under Clause 4.3 of the BBLEP 2013. The applicant has provided a Clause 4.6 variation to the maximum allowable building height of 44m under clause 4.3 of BBLEP 2013. The proposal has a maximum building height of 46.5m, a breach of 2.5m or 5.6% at the worst point.

The proposed development was reviewed by the Design Review Panel (DRP) on two separate occasions during the assessment of the application. It is also noted that a Pre-DA was lodged and reviewed by the DRP, prior to this DA being lodged. At each review, the DRP raised significant design concerns and do not consider that the proposal exhibits design excellence as required by clause 6.16 of BBLEP 2013.

The development application is Integrated Development in accordance with the *Water Management Act 2000* as the development involves a temporary construction dewatering activity. In this regard, the development application was referred to Water NSW. At the time of writing this report, Water NSW has not provided its General Terms of Approval (GTA) for the proposed development. The proposed structural design and construction methods associated with such are not certain noting the Structural letter of Support prepared by Webber Design which identifies that underpinning to the neighbouring property would likely be required subject to a further review of the existing structural information of the properties to complete a further assessment. No owners consent from the neighbouring building(s) has been provided.

In summary, the proposed development application has been assessed against the relevant controls and is recommended for refusal.

SITE DESCRIPTION

The subject site is comprised of Lot Z in DP 405064, Lot A in DP 316950 and Lot B in DP 360656. The site is commonly known as 16 – 18 John Street and 23 Church Avenue, Mascot. The sites are located on the northern side of John Street (16-18 John Street) and the southern side of Church Avenue (23 Church Avenue). The site has a north-south orientation with 23 Church Avenue being to the north while the other two sites are to the south. The block is situated between O’Riordan Street to the east and Bourke Street to the west.

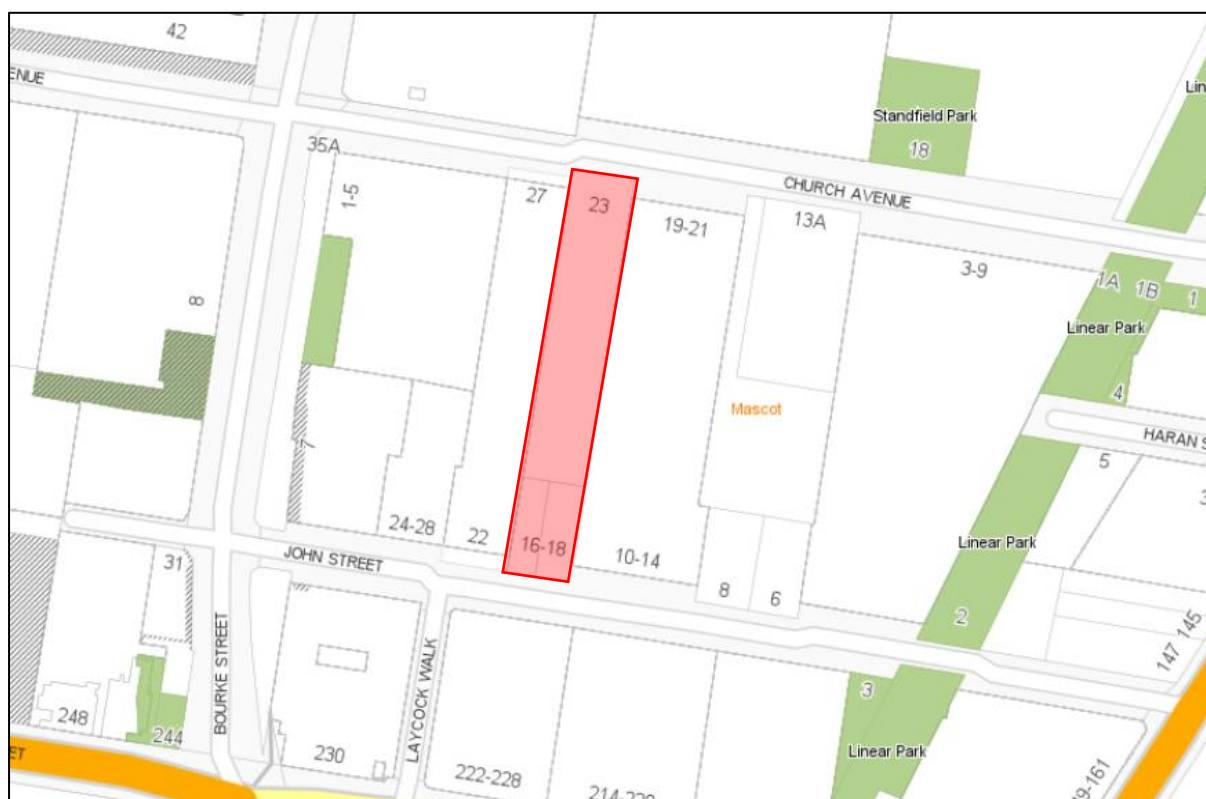


Figure 1 - Locality Plan

The site is generally rectilinear in shape with a frontage to John Street of 21.63m and a frontage to Church Avenue of 21.33m. The total site area is 2955m². The site has a cross fall from south to north of approximately 2 metres. The site currently accommodates an existing warehouse building located at the southern end of the site that is used as a car park and a warehouse at the northern end of the site which operates as a steel fabrication workshop. The central portion of the site is generally a vacant hardstand area. The site does not contain a listed heritage item, is not within a heritage conservation area and is not located in close proximity to any heritage items.



Figure 2 - Existing warehouse at 16-18 John Street



Figure 3 – Existing building at Church Avenue

SURROUNDING LOCALITY

Development surrounding the site within its immediate vicinity is characterised by a mix of uses including residential developments. John Street exhibits a street wall height of 6-8 storeys comprising of residential apartment development and Church Avenue exhibits scales of development ranging from 6-13 storeys of residential apartment/mixed use development.

A recently completed mixed use development adjoins the site immediately to the west at 27 Church Avenue & 18A John Street (shown in **Figure 2**). This building presents a blank wall along its eastern boundary which is shared with the subject site. Immediately adjoining the site to the west is 19-21 Church Avenue and 10-12 John Street which is a residential development comprised of three (3) separate forms/buildings across the site. See below:



Figure 4 - Existing development at 10-12 John Street



Figure 5 – Existing development on the opposite (southern) side of John Street



Figure 6 – Aerial view identifying neighbouring sites
Source: Statement of Environmental Effects

The site is located in close proximity to both Mascot Town Centre and 150m east of the Mascot Station Transport Interchange. It is also located approximately 1.2km north of the Sydney Airport Domestic Terminal and approximately 2km south west of Green Square Town Centre. The site is identified as flood affected and is located within a 20-25 ANEF Contour area.

BACKGROUND

Development Application History

- 9 October 2019 – Development Application was lodged with Bayside Council.
- 24 October 2019 until 25 November 2019 – The development application was publicly notified in accordance with BBDCP 2013.
- 6 November 2019 – The application was reviewed by the Bayside Traffic Development Advisory Committee.
- 12 December 2019 – The application was presented to a Design Review Panel as the proposal is subject to the requirements of SEPP 65 and the site is located within Mascot Station Precinct which requires an assessment on Design Excellence.
- 17 February 2020 – Following an assessment of the application, Council sent the applicant a letter raising concerns with respect to: significant number of concerns raised by the Design Review Panel, inability of the development to achieve design excellence as required by the LEP, insufficient building setbacks and subsequent unsatisfactory relationship to neighbouring buildings and the streetscape, FSR breach not supported, inadequate environmental planning grounds to justify variation to the FSR development standard, front façade retention not supported, poor sunlight availability to communal open space areas, insufficient building separation, poor apartment amenity, calculation of gross floor area, additional information regarding solar access, tree removal, various matters regarding traffic, parking, access, stormwater/flood management and landscape treatment.

Council advised that it will accept one (1) set of amended plans which will be referred back to the Design Review Panel for consideration.

- 27 February 2020 – A briefing meeting was held with the Sydney Eastern City Planning Panel.
- 25 March 2020 – The applicant submitted a comprehensive amended plan submission. These plans are relied upon for assessment in this report. The applicant identified that the following changes were made in the architectural floor plans:

Basement Levels 2-4:

- Turning Bays removed
- Aisle widths a minimum of 5.8m
- Basement line on John Street setback to be in line with the ground floor road widening requirements
- Turning areas to base of ramp widened to allow improved passing and turning

Basement Level 1:

- Aisle widths a minimum of 5.8m
- Basement line on John Street setback to be in line with the ground floor road widening requirements
- Turning areas to top and base of ramp widened to allow improved passing and turning
- Revised exit ramp to improve passing and turning

Ground Level:

- Shopfront glazing removed from existing brick warehouse façade on North, East and West sides
- New shopfront glazing to Church Avenue located behind road widening setback requirements
- Indicative restaurant/retail areas shown
- Boom gates installed at driveway entry to Church Avenue
- Security gates setback to driveway entry to Church Avenue to accommodate a MRV
- Crest of RL 7.04 is shown at mid-section of driveway as required by new flood advice
- Driveway widths increased to 4.1m including 2 x 300mm kerb allowance
- Loading dock arrangement revised to accept 2 x MRV's, which allows for turning and passing of MRV's within the loading dock
- 2 x new voids introduced to level 2 podium above entry driveway
- Exit driveway increased to 4.1m including 2 x 300mm kerbs
- Flood gate of 300mm installed at exit driveway on top of proposed crest of RL 8.53

Level 2:

- Dimensions to rooms added to demonstrate compliance with the ADG
- Dimensions to boundaries shown
- Width of voids increased to 4m
- Unit A205 setback to increase building separation to 19-21 Church Avenue (northern building)
- Highlight and slot windows to western façade of 19-21 Church Avenue and 12 John Street shown
- Balcony of Unit B205 increased to be in line with new southern boundary
- 2 x new voids added to western boundary of communal landscaped area for additional natural light into through link below.

Level 3-8:

- Dimensions to rooms added to demonstrate compliance to ADG
- Dimensions to boundaries shown
- Width of voids increased to 4m
- Unit A305-A805 setback to increase building separation to 19-21 Church Avenue (northern building).
- Highlight and slot windows to western façade of 19-21 Church Avenue and 12 John Street shown.
- Balcony of Unit B305-B805 increased to be in-line with new southern boundary.

Level 9:

- Dimensions to rooms added to show compliance to ADG
- Dimensions to boundaries shown
- Width of voids increased to 4m
- Unit A905 setback to increase building separation to 19-21 Church Avenue (northern building).
- Units B904, B905, B906 amalgamated into one 3-bedroom unit and terrace added

Level 10:

- Dimensions to rooms added to show compliance to ADG
- Dimensions to boundaries shown
- Width of voids increased to 4m
- Unit A1005 setback to increase building separation to 19-21 Church Avenue (northern building)
- Units B1004, B1005, B1006 amalgamated into one 3-bedroom unit

Level 11:

- Dimensions to rooms added to show compliance to ADG
- Dimensions to boundaries shown
- Width of voids increased to 4m
- Unit A1105 setback to increase building separation to 19-21 Church Ave (northern building).
- Terrace removed to Unit B1104

Level 12-13:

- Dimensions to rooms added to show compliance to ADG
- Dimensions to boundaries shown
- Width of voids increased to 4m
- Unit A1205 + A1305 setback to increase building separation to 19-21 Church Ave (northern building)
- Balcony adjusted to B1204 + B1304

Roof:

- Communal rooftop area added to Building A
- Width of voids increased to 4m
- Roof to Unit A1305 setback to increase building separation to 19-21 Church Avenue (northern building).
- Communal rooftop area reduced to southern section of building B removed

- 2 April 2020 – The amended application was reviewed by the Design Review Panel.
- 29 April 2020 – The Design Review Panel minutes were sent to the applicant.
- 19 May 2020 – A meeting was held between Council and the applicant. The applicant presented concept architectural sketches with indicative design changes identified.
- 22 May 2020 – Following a review of the concept architectural sketches in greater detail, the applicant was advised that they do not sufficiently address the substantive design issues raised by both Council and the Design Review Panel. An opportunity was provided for one (1) last set of amended plans to be formally submitted. To date, a further amended plan submission has not been made.
- 11 June 2020 - A Class 1 ‘deemed refusal’ application was filed in the NSW Land & Environment Court.
- 18 June 2020 – Council advised the Regional Panel of the above appeal. The Regional Panel provided advice to Council confirming that the 16 July 2020 determination meeting will proceed, notwithstanding the Class 1 appeal.

DESCRIPTION OF PROPOSED DEVELOPMENT

The proposed development, in its amended form, is for retention of part of Church Street facade, demolition of all remaining structures, excavation for basement parking levels and construction of two (2) x thirteen (13) storey mixed use buildings comprising ground level commercial and 122 residential units and rooftop communal open space including solar panels.

The proposal is further summarised as follows:

Basement Level 4

- 17 residential car spaces, including 3 adaptable spaces

Basement Level 3

- 59 residential car spaces, including 4 adaptable spaces; and
- 3 motorcycle spaces

Basement Level 2

- 33 residential spaces, including 4 adaptable spaces;
- 26 visitor spaces, including 2 adaptable spaces; and
- 3 motorcycle spaces.

Basement Level 1

- 54 retail spaces, including 2 adaptable spaces; and
- 35 bicycle spaces.

Ground Floor Plan

- Retention of a portion of the existing building façade on Church Avenue that is within the identified road widening area in Part 9A – Mascot Station Town Centre Precinct within BBDGP 2013;
- Removal of the existing tree at the Church Avenue frontage;
- A new through-site pedestrian link between Church Avenue and John Street;
- Vehicular entry point along Church Avenue which facilitates access to the basement levels. The vehicular exit point is proposed on John Street;
- Loading dock;
- Residential lobbies; and
- Retail tenancies facing Church Avenue and John Street.

Level 2

- Building A facing Church Avenue – 6 apartments
- Building B facing John Street – 6 apartments
- Communal open space and associated landscaping within the centre of the site

Levels 3-7

- Building A facing Church Avenue – 6 apartments per level

- Building B facing Church Street – 6 apartments per level

Level 8

- Building A facing Church Avenue – 5 apartments
- Building B facing Church Street – 5 apartments

Level 9

- Building A facing Church Avenue – 5 apartments
- Building B facing Church Street – 3 apartments

Level 10

- Building A facing Church Avenue – 5 apartments
- Building B facing Church Street – 3 apartments

Level 11

- Building A facing Church Avenue – 5 apartments
- Building B facing Church Street – 3 apartments

Level 12

- Building A facing Church Avenue – 5 apartments
- Building B facing Church Street – 3 apartments

Level 13

- Building A facing Church Avenue – 5 apartments
- Building B facing Church Street – 3 apartments

Roof Plan

- Communal open space on both buildings

There are a total of 122 apartments, comprised of 27x1 bed, 78x2 bed and 17x3 bed.

SECTION 4.15 CONSIDERATIONS

In considering the Development Application, the matters listed in Section 4.15 of the *Environmental Planning and Assessment Act 1979* have been taken into consideration in the preparation of this report and are as follows:

S.4.15(1)(a)(i) - Provisions of Environmental Planning Instruments

The following Environmental Planning Instruments are relevant to this application:

Environmental Planning and Assessment Act 1979 – Part 4, Division 5 – Special Procedures for Integrated Development and Environmental Planning and Assessment Regulations 2000 – Part 6, Division 3 – Integrated Development

The relevant requirements under Division 5 of the EP&A Act and Part 6, Division 3 of the EP&A Regulations have been considered in the assessment of the development applications. The development application is Integrated Development in accordance with the *Water Management Act 2000* as the development involves a temporary construction dewatering activity. In this regard, the development application was referred to Water NSW. At the time of writing this report, Water NSW has not provided its General Terms of Approval (GTA) for the proposed development. As such, the consent authority has no statutory power to consent to the application.

State Environmental Planning Policy No. 55- Remediation of Land

The provisions of SEPP No. 55 have been considered in the assessment of the development application. Clause 7 of State Environmental Planning Policy 55 requires Council to be satisfied that the site is or can be made suitable for its intended use at the time of determination of an application.

Council's Environmental Scientist reviewed the below reports in their assessment of contamination and geotechnical measures:

The following reports were received and reviewed on 29 October 2019:

1. *'Remediation Action Plan, 23-25 Church Avenue & 16-18 John Street, Mascot NSW', (Report E24340.E06_Rev0), by EI Australia, dated 8 October 2019.*
2. *'Acid Sulfate Soils Assessment, 23-25 Church Avenue & 16-18 John Street, Mascot NSW', (Report E24340.E14_Rev0), by EI Australia, dated 27 September 2019.*
3. *'Geotechnical Review, 23-25 Church Avenue & 16-18 John Street, Mascot NSW', (Report E24340.G01_Rev1), by EI Australia, dated 26 September 2019.*

Following a request by Council, the following report was subsequently provided and reviewed:

1. *'Detailed Site Investigation, 23-25 Church Avenue & 16-18 John Street, Mascot NSW', (Report E24340.E02_Rev0), by EI Australia, dated 27 September 2019.*

Contamination

The Detailed Site Investigation (DSI) summarised previous contamination investigations and comprised additional soil and groundwater investigation program. The laboratory results were generally reported below the respective site criteria with some minor exceptions. Contamination issues that need to be further addressed include the presence of two underground storage tanks (UST), heavy metals in fill at BH4, asbestos impact at BH6 and potential data gaps (PFAS). Minor heavy metals, benzo(a)pyrene and TRH F2 were also identified in groundwater.

The RAP presented a reasonable approach to address the above contamination issues, mainly involving UST removal, soil hotspot removal, validation following remediation, additional investigation to address data gaps and supplementary groundwater monitoring. The RAP concluded that the site can be made suitable for the proposed use through the implementation of remediation works described in the RAP.

My Comments: Despite data gaps have been identified (addressed in the RAP), I consider that the overall risk is relatively low given that (1) known contamination has been addressed in the RAP; (2) bulk excavation for the proposed basement covers the majority of the site footprint, which effectively will remove other residual contamination on site; and (3) site auditing process by an accredited Site Auditor, as a consent condition, will provide further assurance. I do not currently have an objection to the application with respect to contamination.

Acid Sulfate Soils

The Acid Sulfate Soils Assessment comprised testing of soil samples from two boreholes (BH103 and BH107). Potential acid sulfate soils (PASS) have been detected in a number of soil samples at depth. The report concluded that PASS are present below 8m depth and preparation of an Acid Sulfate Soils Management Plan would be required.

My Comments: Preparation and implementation of an Acid Sulfate Soils Management Plan including groundwater controls will be required as a consent condition.

Groundwater

The Geotechnical Review comprised a review of a geotechnical investigation report prepared by JK (2008) and other available data. Given the shallow groundwater table, a watertight tanked basement was recommended.

My Comments: I support tanking of the proposed basement to reduce the need for permanent discharge of groundwater.

In view of the above, it is considered that SEPP 55 has been satisfied.

State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development

The provisions of State Environmental Planning Policy No. 65 ‘Design Quality of Residential Apartment Building’ have been considered in the assessment of the Development Application.

The initial application was reviewed by the Design Review Panel (DRP) on 12 December 2019. The amended submission was reviewed by the Design Review Panel on 2 April 2020. It is also noted that a Pre-DA application was submitted to the Design Review Panel on 20 June 2019. On each occasion, the Panel has raised significant concerns with the design of the development and has not supported the proposal.

Design Quality Principles

A Design Verification Statement has been prepared by *squillace Architects* and was submitted with the amended development application.

The proposed amended development is considered to be inconsistent with the following Design Quality Principles for reasons identified by the Design Review Panel. A summary of the issues identified is provided below (also refer to attached DRP reports):

- *Context and Neighbourhood Character;*

The retention of the existing brick frontage in Church Street cannot be justified.

The site link is not well resolved. 'Significant issues such as security, pedestrian safety, open space amenity, landscape, access to light, integration with built form above, etc. severely constrain both the new link and adjacent retail space from achieving an acceptable level of amenity'.

'Lobbies are located at a considerable distance from the street, requiring all residents at day and night to traverse this space'.

- *Built Form and Scale;*

The residential towers should be designed as more compact forms 'elevated off the podium to reduce excessive circulation and building length and to increase light and air to the cross site link.

The site link 'does not appear to be sufficiently contiguous with the public domain to attract pedestrians, is not continuously activated along its length and is closed in the evening to provide safe passage to residential lobbies.'

'The retail space is irregularly shaped, very deep and facing into a marginalized link [...]. Therefore, it is difficult to envisage how this space could be successfully subdivided into autonomous high quality retail tenancies.'

'The cross link does not provide sufficient visual and physical continuity between Church Avenue and John Street to ensure that an amenable and vibrant public pedestrian space will result. While the Panel support the proposed 6m. width, all cars and loading must be completely removed, activation, light and air significantly increased and the public nature of the link more clearly expressed.'

The courtyard 'falls well short of what is required for a residential population of this size, in terms of use, outdoor amenity and landscape quality. It is heavily overshadowed and limited in spatial definition.'

- *Density;*

Given the unresolved issues, the proposed density is not supported.

- *Sustainability;*

Additional sustainability measures beyond BASIX are to be explored. However this was not discussed in detail at the last meetings.

- *Landscape;*

The recommended changes to the built form would improve the landscaping within the site.

- *Amenity;*

'The Panel recommends that residential towers are redesigned as more compact forms with greatly reduced lobby and circulation spaces and all light wells removed.'

- *Safety;*

'The Panel believes that many of the failings at ground floor level are the result of poor massing at the upper tower levels; redesigned built form layouts will facilitate improvements to the ground floor level amenity.'

- *Housing Diversity & Social Interaction; and*

‘The Panel believes that with so apartments oriented to the eastern boundary, their internal amenity, outlook, separation compliance and privacy are compromised.’

‘The Panel is also concerned that excessive circulation space introduces management issues at each level, with likely adverse impacts on the visual and physical amenity and safety of lobbies and circulation spaces throughout the building. As excessive circulation creates an over sized built form - impacting adversely on lower levels especially - the towers are also liable to constrain social interaction at ground levels. It is therefore recommended that residential towers are completely redesigned as described above.’

- *Aesthetics.*

‘The Panel was supportive of the design ethos and intent to interpret the historical use and materials into a new design concept for the site. The Panel is seeking a more consistent design expression across the whole of development including the following:

- The retention of the existing façade is not supported, an interpretation of this into a new façade would be a more appropriate design outcome
- The use and expression of steel within the façade is encouraged to be further explored and expressed both in form and colour
- The juxtaposition of square and curved forms, in the current iteration, is not supported
- The current arrangement, expression and wayfinding to residential lobby entries should be further explored.’

Additional discussion in regards to the Design Excellence assessment is re-produced in this report below the LEP compliance table under the heading of *Design Excellence (Clause 6.16 of the BBLEP 2013)*.

Apartment Design Guide

An assessment of the proposed development against Part 3 and 4 of the ADG has been undertaken. The key ADG design requirements are detailed in the table below.

Clause 30(1) of SEPP 65 states that if a development application satisfies the following design criteria, the consent authority cannot refuse an application because of those matters. These are deep soil, ceiling heights and building separation.

SEPP 65 – ADG			
Control	Requirement	Proposed	Complies
Dwelling Size	Minimum internal areas as follows: 1 bed unit: 50sqm 2 bed unit: 70sqm 2 bed unit with 2 nd bathroom: 75sqm 3 bed unit: 90sqm 3 bed unit with 2 nd bathroom: 95sqm	All apartment sizes achieve the minimum internal area requirements set out within the ADG.	Yes
Ceiling Height	Habitable Rooms: 2.7m Non-habitable: 2.4m	Floor to floor height for residential levels: 3.05 metres	Yes

	Mixed Use: 3.3m for ground and first floor	which enables a compliant floor to ceiling height to be achieved. The floor to ceiling heights on the ground floor would exceed the 3.3m guideline.	Yes
Deep Soil	Objective 3E-1 requires 7% of the site as deep soil area with minimum dimensions of 6m. This is equivalent to a total of 206.85sqm	No deep soil landscaping is provided	No
Communal Open Space	25% of site (738sqm)	1154sqm (44%)	Yes
Solar Access	50% direct sunlight to the principal usable part of the COS for a minimum of 2 hours during mid-winter	More than 50% of COS on the roof level receives greater than 2 hours of sun due to its location. However, the COS on Level 2 will not receive the required amount of sunlight	Yes – to the extent that it relates to the roof top areas
	Living rooms and POS for at least 70% of apartments (and in neighbouring development) to achieve 2 hours between 9am and 3pm	70% (86/122)(applicant's figures) of apartments will receive at least two hours of sunlight during June 21 st .	Yes
	A maximum of 15% of apartments in a building receive no direct sunlight between 9am and 3pm at mid-winter	15% (19/122) of apartments are south facing and do not receive direct sunlight between 9am and 3pm in mid-winter.	Yes
Balcony Sizes	1 bed: 8sqm 2 bed: 10sqm 3 bed: 12sqm	All balcony sizes comply with the area requirements.	Yes
Cross Ventilation	At least 60% of apartments are naturally cross ventilated in the first 9 storeys of the building.	The applicant's diagrams state that 100% of apartments are naturally cross ventilated. However, this is not concurred with. Refer to discussion below.	No
Storage	1 bed: 6m ³ 2 bed: 8m ³ 3 bed: 10m ³	Storage spaces within the units and in the basement area has been identified on the plans. The submitted apartment storage schedule indicates compliance.	Yes

4A – Solar and Daylight Access

As highlighted by the Design Review Panel, light wells cannot be the primary source of light and air to bedrooms. Habitable rooms are only to have secondary windows onto light wells rather than relying for primary outlook, light and ventilation. The design of the proposed development does not accord with these ADG requirements because there are a number of habitable rooms on the western side of Building A and B which face a light well. This outcome results in poor residential amenity which is not supported.

4B – Natural Ventilation

The Design Guidance principles within the ADG state that *light well are not the primary air source for habitable rooms*. As identified above, there are a number of windows to habitable rooms (bedrooms) which rely on a light well on the western side of Building A and B for its primary air source. This outcome results in poor residential amenity and is not supported.

Overshadowing assessment

Part 3B of the ADG states that *where an adjoining property does not currently receive the required hours of solar access, the proposed building ensures solar access to neighbouring properties is not reduced by more than 20%*. The information provided by the applicant has identified that 65% of units (40/61 units) at the existing development at 222-228 Coward Street (direct south of the subject site on the opposite side of John Street) currently receive 2 hours of solar access. The proposed development would affect a further 3 units of 14%, thereby achieving the 20% maximum set out in the ADG. The ADG guideline is thus met.

The existing development at 19-21 Church Avenue and 10-12 John Street will experience some additional overshadowing as a result of the proposed development, however, it remains compliant with the ADG guidelines.

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 ("BASIX") applies to the proposed development. The amended plans were not accompanied by an updated BASIX Certificate. As a result, the application does not satisfy the requirements of SEPP (BASIX) 2004.

State Environmental Planning Policy (Vegetation in Non- Rural Areas) 2017

The State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 (Vegetation SEPP) regulates the clearing of native vegetation on urban land and land zoned for environmental conservation/management that does not require development consent and applies to the Sydney and Newcastle metropolitan areas. The aims of the policy are (a) to protect the biodiversity values of trees and other vegetation in non-rural areas of the State, and (b) to preserve the amenity of non-rural areas of the State through the preservation of trees and other vegetation.

The application was reviewed by Council's Tree Management Officer who does not support the proposed removal of the existing Tuckeroo tree along the Church Avenue frontage. In addition, the survey plan does not depict the location of this tree. Therefore, an accurate assessment of the distance between the tree and any new proposed structures cannot be undertaken.

In view of the above, the application does not satisfy SEPP (Vegetation in Non-Rural Areas) 2017.

Botany Bay Local Environmental Plan 2013

The provisions of the Botany Bay Local Environmental Plan 2013 (BBLEP 2013) have been considered in the assessment of the Development Application and the following information is provided:

Relevant Clauses Principal Provisions of Botany Bay Local Environmental Plan 2013	Compliance Yes/No	Comment
Demolition of a building or work may be carried only with development consent (clause 2.7)	Yes	The proposal seeks development consent to demolish the existing structures (with the exception of a portion of the building façade to Church Avenue).
Land use Zone (clause 2.1)	Yes	The site is zoned B4 Mixed Use zone under the Botany Bay Local Environmental Plan 2013.
Is the proposed use/works permitted with development consent?	Yes	Residential flat buildings and commercial premises are permissible forms of development with consent. The proposed development is permissible.
Does the proposed use/works meet the objectives of the zone? (clause 2.3)	Yes	The proposed development is consistent with the objectives of the B4 Mixed Use Zone which are as follows: <ul style="list-style-type: none"> • <i>To provide a mixture of compatible land uses.</i> • <i>To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.</i>
What is the proposed height? Does the height of the building comply the maximum height? (clause 4.3)	No	The maximum height allowed on the site is 44 metres. The proposed height is 46.5m (Building A) and 45.8m (Building B). The proposal height does not comply with Clause 4.3 of the Botany Bay Local Environmental Plan 2013. The applicant has submitted a clause 4.6 variation in this respect. This is addressed later in this report.
What is the proposed FSR? Does the FSR of the building comply the maximum FSR? (clause 4.4)	No	The maximum FSR allowed on the site is 3.2:1 (9456sqm). The proposed development has an FSR of 3.77:1 (applicant's figures) (11,139sqm).

Relevant Clauses Principal Provisions of Botany Bay Local Environmental Plan 2013	Compliance Yes/No	Comment
		The proposed FSR does not comply, being 1683sqm or 17.7% above the maximum. The applicant has submitted a clause 4.6 variation in this respect. This is addressed later in this report.
Is the land affected by road widening? (clause 5.1)	N/A	The site is affected by road widening along John Street and Church Avenue. This is required in the DCP rather than in the LEP therefore an assessment against this clause is not warranted.
Is the site listed in Schedule 5 as a heritage item or within a Heritage Conservation Area? (clause 5.10)	N/A	The site is not a heritage item, is not located within a heritage conservation area or is within the vicinity of a heritage item.
<p>The following provisions in Part 6 of Botany Bay Local Environmental Plan apply–</p> <ul style="list-style-type: none"> • 6.1 – Acid Sulfate Soils • 6.2 – Earthworks • 6.3 – Stormwater Management • 6.8 – Airspace Operations • 6.9 – Development in areas subject to aircraft noise 	<p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p>	<p>The site is located within a Class 2 zone. The proposal was accompanied by an Acid Sulfate Soils Assessment which was reviewed by Council’s Environmental Scientist and was supported.</p> <p>The proposed work may necessitate to earthworks on site. A geotechnical report has been submitted which makes various recommendations.</p> <p>Refer to BBDCP 2013 discussion under Part 3G.</p> <p>The site is subject to a maximum height of 51 metres AHD. The proposal extends to RL53.3m ADH and therefore breaches the OLS. The Commonwealth have provided their approval (in correspondence dated 5 December 2019) for the building to be constructed at this height.</p> <p>The subject site lies within the 20-25 ANEF contour. An Acoustic report has been provided which indicates that the development has been designed to comply with the requirements of AS2021-2000. The development is considered to be consistent with Clause 6.9 of BBLEP 2013.</p>

Relevant Clauses Principal Provisions of Botany Bay Local Environmental Plan 2013	Compliance Yes/No	Comment
<ul style="list-style-type: none"> • 6.15 – Active Street Frontage • 6.16 – Design Excellence 	<p style="text-align: center;">Yes</p> <p style="text-align: center;">No</p>	<p>Church Avenue has been identified as an active street frontage area in the LEP maps. The design of the development provides a retail tenancy along the Church Avenue frontage which satisfies this clause.</p> <p>The site is located in the Mascot Station Key Precinct area therefore the proposal is to be assessed against Design Excellence. The proposal was presented to the design review panel in which greater detail is provided below.</p>

Design Excellence (Clause 6.16 of the BBLEP 2013)

The site is located within the Mascot Station Precinct as identified within the Key Areas Map within the BBLEP 2013. Therefore the site is subject to design excellence. The proposal was presented to the Design Excellence Panel on 12 December 2019 and again on 2 April 2020. A Pre-DA proposed was reviewed by the DRP on 20 June 2019. On each occasion, the Panel were not satisfied that the proposal exhibits design excellence. Comments from each Panel against the criteria under Cl 6.16 are reproduced below.

Design Excellence – Clause 6.14(4) of RLEP 2011	
In considering whether the development exhibits design excellence, the consent authority must have regard to the following matters:	
(a) whether a high standard of architectural design, materials and detailing appropriate to the building type and location will be achieved,	<p>(a) The Panel is seeking more consistent design expression across the whole of development but is supportive of the concept of heritage interpretation within the material and architectural expression of the proposal.</p> <p>(a) For the reasons stated above, the proposal does not achieve a high standard of architectural design, materials and detailing appropriate to the building type and location. The Panel recommends that the proposal be redesigned as described above.</p> <p>(a) Unchanged</p>
(b) whether the form, arrangement and external appearance of the development will improve the quality and amenity of the public domain,	<p>(b) The partial retention of the factory building and its intrusion into the developing street alignment of new buildings was of concern and not supported. The Panel does not support the intrusion or retention of the existing warehouse into the public domain.</p>

	<p>(b) No – the form, arrangement and external appearance require substantial change if the proposal is to improve the quality and amenity of the public domain</p> <p>(b) Unchanged</p>
<p>(c) whether the development detrimentally impacts on view corridors,</p>	<p>(c) A view analysis of the potential impacts of the upper storeys should accompany the submission. The view corridor along Church Avenue is impacted by the intrusion and retention of the existing warehouse and is not supported.</p> <p>(c) While the Panel does not support the current massing and arrangement of built forms within the site, it is an infill site with a substantial height limit – not a view corridor.</p> <p>(c) Unchanged</p>
<p>(d) the requirements of any development control plan made by the Council and as in force at the commencement of this clause,</p>	<p>(d) The Panel has considered relevant DCPs when commenting on the design.</p> <p>(d) There needs to be a much more detailed explanation of how the proposal is achieving the principles of ecologically sustainable design – within an amenable built form.</p> <p>(d) Unchanged</p>
<p>(e) how the development addresses the following matters:</p> <p>(i) the suitability of the land for development,</p> <p>(ii) existing and proposed uses and use mix,</p> <p>(iii) heritage issues and streetscape constraints,</p> <p>(iv) the relationship of the development with other development (existing or proposed) on the same site or on neighbouring sites in terms of separation, setbacks, amenity and urban form,</p> <p>(v) bulk, massing and modulation of buildings,</p> <p>(vi) street frontage heights,</p> <p>(vii) environmental impacts such as sustainable design, overshadowing, wind and reflectivity,</p>	<p>(e)</p> <p>(i) The suitability of the land has been satisfactorily addressed.</p> <p>(ii) The proposal does not clearly address the ground floor retail uses and mix and does not outline how the residential tower above impacts on the proposed space.</p> <p>(iii) The heritage issues and streetscape constraints have been satisfactorily addressed subject to achieving a consistent street wall frontage and consistent setback in keeping with the adjoining properties</p> <p>(iv) The relationship of the development with other development is unsatisfactory, subject to addressing the comments made in relation to Built Form and Scale and Amenity sections of this report</p> <p>(v) The design should be amended so that the bulk, massing and modulation of the building better responds to the adjoining sites</p> <p>(vi) The street frontage heights have been satisfactorily addressed subject to the repositioning of the Church Street Frontage to be consistent with the adjoining site to the West</p> <p>(vii) The applicant should provide further consideration to environmental impacts both internally and externally</p>

<p>(viii) the achievement of the principles of ecologically sustainable development,</p> <p>(ix) pedestrian, cycle, vehicular and service access, circulation and requirements,</p> <p>(x) the impact on, and any proposed improvements to, the public domain,</p> <p>(xi) achieving appropriate interfaces at ground level between the building and the public domain,</p> <p>(xii) excellence and integration of landscape design.</p>	<p>(viii) The design should achieve a greater level of sustainable development than it does currently, with at least the addition of PV panels and rainwater capture and reuse, and potentially the use of rooftop productive gardens</p> <p>(ix) The proposal does not provide a positive relationship and layout to pedestrian and vehicular circulation and interfaces and should be revised subject to the comments made above</p> <p>(x) The Public domain treatment is to reflect the changes made to the built form and should be in harmony with the surrounding public domain. Retention of the existing tree to Church Avenue is to be clarified within the documentation and further explored</p> <p>(xi) The interfaces of the building and the public domain appear to be able to be achieved, subject to a revised proposal as per comments above.</p> <p>(xii) The Landscape Design, particularly in relation to the internal courtyard, site through link and exploration and use of rooftop communal open spaces needs to be further explored. No Landscape plan was provided to enable further assessment at this stage</p> <p>(e) Largely unchanged. It does appear that the Proponent is willing to or able to agree with the Panel's comments.</p>
--	---

COMMENTS: In view of the above, it is considered that the development does not exhibit design excellence and fails to satisfy clause 6.16 of BBLEP 2013.

Building Height (Clause 4.3 of BBLEP 2013)

The applicant has provided a Clause 4.6 variation to the maximum permissible building height of 44 metres under Clause 4.3 of the BBLEP 2013. The applicant has provided a Clause 4.6 variation to the maximum allowable building height of 44m under clause 4.3 of BBLEP 2013. The proposal has a maximum building height of 46.5m, a breach of 2.5m or 5.6% at the worst point. The following diagram illustrates the non-compliant portions of the building:



Clause 4.6 provides flexibility to vary the development standards specified within the LEP where it can be demonstrated that the development standard is unreasonable or unnecessary in the circumstances of the case and where there are sufficient environmental grounds to justify the departure.

The applicant provided a clause 4.6 variation addressing the building height non-compliance which has been provided to the Panel for reference. It is considered that the clause 4.6 provided and height breach associated with such cannot be properly assessed as the survey plan does not provide information relating to the heights of the adjacent building to the west. This is required to understand the built form relationship between the buildings and assess the likely impacts of the elements in breach of the height. Further, the required flood planning levels on the ground floor have not been complied with. Compliance would require parts of the ground floor levels to be elevated, consequently resulting in a higher overall building height and increasing the extent of the height non-compliance.

Floor Space Ratio (Clause 4.4 of BBLEP 2013)

The maximum FSR allowed on the site is 3.2:1 (9456sqm). The proposed development has an FSR of 3.77:1 (applicant's figures) (11,139sqm). The proposed FSR does not comply, being 1683sqm or 17.7% above the maximum allowable.

The applicant has provided a Clause 4.6 variation to the maximum allowable FSR of 3.2:1 which has been provided to the Panel for reference.

Council does not support the contravention to the FSR development standard, noting the following:

The written 4.6 request alludes to the development providing a public benefit through the provision of a through site link. The focus must be on the aspect or element of the development that contravenes the development standard (*Initial Action Pty Ltd v Woollahra Council* [2018] NSWLEC 2018), as the submitted clause 4.6 exception identifies. However, the through site link has not been counted as gross floor area and therefore does not contribute to the FSR. It is not an aspect or elements of the development that contravenes the FSR development standard. Accordingly, this is not considered to be a sufficient environmental planning ground.

The Design Review Panel assessment has indicated that a number of the design concerns raised are a consequence of excessive density.

The proposed development would not be compatible with the bulk and scale of the adjoining developments as it presents to the John Street frontage.

The presentation of the development and number of storeys to John Street is inconsistent with the existing massing arrangement of the neighbouring building to the west (27 Church Avenue & 18A John Street). Immediately adjoining to the east, at No.12 John Street, is a 7 storey form. The proposed top 3 storeys of the development have not matched the setback established by the development at 27 Church Avenue & 18A John Street.

Consequently, the proposed development will present a discordant bulk and scale and will not maintain an appropriate visual relationship with neighbouring development(s). The resultant development will present blank walls with long term side wall exposure on the eastern and western side boundaries (i.e. – on storeys 9 and 10 to the west and storeys 8, 9 and 10 to the east).

Noting the significant breach to the FSR that is sought and the contribution which the excess gross floor area has to the deficient setbacks, Council is not satisfied that the proposed non-compliant development achieves the following objectives within clause 4.4 of BBLEP 2013:

- (b) to ensure that buildings are compatible with the bulk and scale of the existing and desired future character of the locality*
- (c) to maintain an appropriate visual relationship between new development and the existing character of areas or locations that are not undergoing, and are not likely to undergo, a substantial transformation*
- (d) the ensure that buildings do not adversely affect the streetscape, skyline or landscape when viewed from adjoining roads and other public places such as parks, and community facilities*
- (e) to minimise adverse environmental effects on the use or enjoyment of adjoining properties and the public domain*

COMMENTS: Based on the above assessment in regard to the proposed variations to building height and floor space ratio, approval of the proposed development is not in the public interest.

S.4.15(1)(a)(ii) - Provisions of any Draft EPI's

The following draft EPIs are of relevance:

Draft Bayside Local Environmental Plan 2020

The Bayside draft LEP 2020 was on public exhibition from 8 April to 1 June 2020 and applies to the subject site. The draft LEP reviews the current planning controls under three existing LEPs into one consolidated LEP. The draft LEP generally harmonises and updates planning controls for the Bayside Local Government Area. The proposal is not consistent with the objectives and controls in the draft LEP to the extent of the non-compliances with the proposed building height and FSR development standards.

S4.15(1)(a)(iii) - Provisions of any Development Control Plan

Botany Bay Development Control Plan (BBDCP) 2013

The development proposal has been assessed against the controls contained in the Botany Bay Development Control Plan 2013. Comments have been provided where there is a concern raised and/or departure from the DCP provisions.

Part 3A – Parking and Access

Council's Development Engineer has raised the following concerns with respect to parking and access:

The design of the vehicular access which essentially forms a vehicular link from Church Avenue to John Street is not supported, particularly with regard to the following:

- i. The excessive retail parking which services no other purpose other than to service the public attending the restaurant, which could result in the use of the site as a public vehicular through site link, is not supported. Regardless of public access to the site, the adaptability of the site to provide this vehicular movements through the site from Church Avenue to John Street is not supported.
- ii. The poorly designed unsafe interaction between vehicular movements and pedestrian movements in the required through site link.
- iii. The excessive length, narrow width and path of travel required upon entering the site to access the parking facility is not acceptable.

Oncoming passenger vehicles moving along and between the ramp and circulation aisles have unacceptable vehicular conflicts which is not supported.

The provision of two (2) MRV loading bays is acceptable, however a minimum 4.5m height clearance needs to be provided along travel path and manoeuvring areas of the MRV trucks and the loading bays. The plans must be revised to reflect this requirement. Furthermore, all waste collection must be undertaken within the site and the development must facilitate this requirement. A section(s) plotting headroom clearance along the full travel path of the service vehicles through the site and upon entering the site is to be provided, depicting compliance.

Part 3C – Access and Mobility

No issues have been identified in this respect.

Part 3G – Stormwater Management & Part 3N – Waste Minimisation and Management

The application was referred to Council's Development Engineer who has identified the following concerns:

- The design of the development needs to acknowledge the flooding implications for the site in regards to the minimum floor levels and vehicular access design crest levels on

both street frontages. All habitable/commercial floor levels are to be set at RL 7.24m AHD to Church Avenue and RL 9.03m AHD to John Street. The design of the vehicular access from Church Avenue needs to include a crest level of 7.04m AHD and the design of the vehicular access from John Street needs to include a crest level at RL 8.83m AHD. The proposed development does not fully comply with these flooding requirements.

- The flood gates proposed at the John Street frontage are not a supported method by Bayside Council to manage flooding and are not a reason to permit floor levels below the required flood planning level.

Part 3H – Sustainable Design

The amended DA was not accompanied by an updated BASIX Certificate. In addition, there are insufficient initiatives with respect to the achievement of the principles of ecologically sustainable development.

Part 3I – Crime Prevention, Safety and Security

The proposal results in an unsatisfactory conflict between vehicle and pedestrian movements on the ground floor which raises safety and security concerns.

Part 3J – Aircraft Noise and OLS

The provisions of Australian Standard AS2021-2000 have been considered in the assessment of the development application, as the subject site is located within the 20-25 ANEF contour. Residential/commercial in these areas is considered acceptable under Table 2.1 of Australian Standard AS2021-2000 unless an acoustic report is submitted to Council, which demonstrates that the proposed dwelling can achieve the requirements under Table 3.3 of AS2021-2000.

An acoustic report accompanies the development application. The report demonstrates that the proposed development (when complete) will conform with the relevant requirements of AS2021-2000 provided the recommendations contained in the acoustic report are undertaken.

Part 3K – Contamination

Refer to SEPP No. 55 – Remediation of Land above in the report for discussion.

Part 3L – Landscaping and Tree Management

The application was reviewed by Council's Landscape Architect who has identified the following concerns with respect to landscaping and tree management:

- The proposal still seeks to retain the existing warehouse façade. This impacts in the public domain treatment and the landscape setback along Church Avenue. The aim of the public domain treatment is to provide amenity to the streetscape, and the retention of the façade results in an arid treatment with no canopy cover. All proposed canopy trees on slab will not provide any streetscape or environmental benefit, to offset the required canopy and soft landscape treatment along Church Avenue. The proposed development is not only not supplying any deep soil, but by retaining the frontage brickwork is not providing the required public domain treatment with canopy trees along Church Street. This is not supported.
- In the absence of a compliant amount of deep soil landscaping, the proposal does not provide further alternative ecologically sustainable measures/initiatives.

Part 4C – High Density Residential

The proposed development is inconsistent with the following sections within Part 4C of BBDCP 2013:

- Part 4C1.2 – General Objectives and Controls. The proposal is not complementary to the streetscape and departs from SEPP 65 and the ADG.
- Part 4C.2 – Site Design & Part 4C.2.2 – Streetscape Presentation. The proposal does not respond positively to the existing and desired future neighbourhood character and urban context.
- Part 4C.2.2 – Height.
- Part 4C.2.4 – Landscaped Area and Deep soil Planting.
- Part 4C.2.7 – Through Site Links

Part 9A – Mascot Station Town Centre Precinct

The site is located within Urban Block 4 within the Mascot Station Precinct. An assessment against the relevant controls of this section of the DCP has been carried out below.

Part 9A.3.5 - Desired Future Character – Urban Block 4

The proposed development is inconsistent with the desired future character of Urban Block 4 in that:

- Road widening is required along the southern and northern sides of Church Avenue and John Street (applies to sites that have not been redeveloped to date). For Church Avenue the land to be dedicated is calculated by measuring the appropriate distance from the centre line of the existing road. The road reserve is to be 12 metres from each side of this centre line. For John Street, the land to be dedicated is to be calculated by measuring from the centre line of the existing road. The new road reserve is to be 10 metres each side of this centre line. The partial retention of the existing building to Church Avenue does not enable the required road widening and subsequent public domain improvements to occur.
- The proposed street character and built form will not further consolidate and improve the streetscape.

Part 9A.4- General Controls

This section of the DCP does not go into detail on the subject site with regard to height and floor space. Therefore the BBLEP 2013 controls apply in this instance.

Figure 15 provides an Overview relating to heights, future layout & built form controls for urban block 4. As identified below, the DCP anticipates some form of 'mirror' development with the adjoining development to the west.



The proposed development is not reflective of this indicative layout because it does not match the internal alignment (by extending further into the centre of the site) established by the neighbouring western development. In addition, the development proposed various building elements with zero setback to the eastern side boundary, contrary to the DCP diagram. The non-compliant massing arrangement proposed is caused as a result of the breach to the FSR development standard. It is noted that the neighbouring development to the west was approved by the NSWLEC with a compliant FSR of 3.2:1.

There is no lot amalgamation pattern for the subject site, per *Figure 25 – Lot Amalgamation – Urban Block 4*. Similarly, Part 9A.4.3.4 does not specify any specific setback requirements for the site. The LEP and SEPP 65 provisions are relied upon in this respect which have already been addressed.

The streetscape and building form controls within Part 9A.4.4.2 stipulate that buildings must have a consistent street wall height (in terms of the number of storeys) and provide a continuous street frontage along all significant streets. The massing arrangement to John Street is not considered to satisfy this control because the scale and number of storeys proposed would be discordant with the immediately adjoining buildings to the east and west as well as the development immediately opposite the site on the southern side of John Street.

The proposed development does not satisfy the Building Articulation controls in Part 9A.4.4.6 which state that *blank external walls of greater than 100m² must be avoided*. The rear portion of Building A presents over 300m² of blank walls which are proposed on zero side setback to the eastern side boundary. This results in unacceptable visual bulk and scale and relates poorly to established development in the immediate area.

S.4.15(1)(a)(iia) – Planning Agreement

There is no planning agreement applicable to the proposal.

S.4.15(1)(a)(iv) - Provisions of the Regulations

The provisions of the Regulations have been considered in the assessment of this development application.

The structural letter of support prepared by Webber Design identifies that underpinning to the neighbouring property would likely be required subject to a further review of the existing structural information of the properties to complete a further assessment. Owners consent from the neighbouring property has not been provided as required by Clause 50 of the Environmental Planning and Assessment Regulation 2000.

S.4.15(1)(b) - Likely Impacts of Development

As outlined in the assessment above, the proposed development is likely to cause unreasonable impacts upon the streetscape and adjoining properties.

S.4.15(1)(c) - Suitability of the site

The site is not considered to be suitable for the development as currently proposed.

S.4.15(1)(d) - Public Submissions

The application was notified in accordance with Part 2 of the Botany Bay DCP 2013 – Notification and Advertising. The notification dates were 24 October 2019 until 25 November 2019. A total of 26 submissions were received. A summary of the issues raised in the submissions is provided below:

- *Insufficient setbacks*

Council comment: This concern is concurred with. The building setbacks to the eastern boundary and southern boundary (upper levels) is inadequate.

- *The old building façade they wish to retain is placed way too forward compared to the building on the left and right hand side. The old façade doesn't look unique and the shape are too common to be categorized as classic, let alone heritage.*

Council comment: This concern is concurred with. The façade retention is not supported.

- *The old building façade they wish to retain is placed way too forward compared to the building on the left and right hand side*

Council comment: This concern is concurred with. The façade retention is not supported.

- *Proximity to Mascot Towers. Potential damage during the construction phase. Concern that a repeat of Mascot Towers could occur.*

Council comment: The impacts of the development upon the water table and potential underpinning works of neighbouring properties remain as outstanding issues.

- *The impact of the development upon housing prices*

Council comment: This is not a planning consideration.

- *The density of buildings on Church Avenue Mascot is already high*

Council comment: The non-compliant FSR (density) proposed is not supported.

- *Additional overshadowing impacts*

Council comment: Solar access has been assessed in the main body of the report.

- *Noise, disturbance, dust etc impacts during the construction phase*

Council comment: These matters are typically dealt with through standard conditions of consent. However, the application is recommended for refusal.

- *Site contamination*

Council comment: This has been discussed under SEPP 55.

- *The building has not been designed in such a way that proposes a 'mirror' scheme with zero setback to the common western boundary, creating a continuous form.*

Council comment: This matter has been discussed in the report.

S.4.15(1)(e) - Public interest

It is considered that granting approval to the proposed development will not be in the public interest.

Conclusion

In accordance with Schedule 7 of the State Environmental Planning Policy (State and Regional Development) 2011, the application is referred to the Sydney Eastern City Planning Panel (SECPP) for determination. The proposal has been assessed in accordance with Section 4.15 of the *Environmental Planning and Assessment Act 1979* and is recommended for refusal for the reasons identified.
