

SYDNEY EASTERN CITY PLANNING PANEL SUPPLEMENTARY REPORT

RESPONSE TO THE PANEL'S DEFERRAL

On 16 July 2020, the Panel resolved to defer the determination of the proposal for the following reasons:

"The Panel notes that the Water NSW for General Terms of Agreement are required before a determination can be made, these are currently outstanding. The deferral of this application provides time for Council to seek a response from Water NSW, the Panel has offered to assist in this by writing to the relevant persons seeking the provision of General Terms of Agreement.

At the request of the applicant, the Panel agreed to defer the determination of the matter to provide the Applicant a further opportunity to amend the plans and provide further information to Council within one month. The applicant is to submit additional information and amended plans, to include addressing the following:

- *Compliance with Council's Flood Planning Levels*
- *Further documentation of the methodology from the structural engineer to confirm, or otherwise, that the project can be constructed without the requirement to underpin adjoining properties. The Panel notes the sensitivities in the area and the need for this matter to be comprehensively addressed with best practice, prior to determination of the application.*
- *The amended plans submitted to Council must address:*
 - *The pedestrian through link;*
 - *Greater compliance with the floor space ratio; and*
 - *More detail with respect to the treatment of the façade and existing single storey element to be retained.*
- *The Panel is not persuaded that the Clause 4.6 written requests for variations to the floor space ratio and height are justified at this point in time.*
- *The panel is generally supportive of the pedestrian through link to exclude interaction with traffic and was generally supportive of retaining the existing fabric of the single storey element forward of the building line, subject to further details being provided as to how this could be integrated within the public domain.*
- *The applicant is also afforded the opportunity to make final amendments to resolve other issues in response to the Council Officer's concerns and issues raised in the assessment report including an updated BASIX Certificate.*

The Panel is supportive of the amended plans being referred in a timely manner to the Council's Design Review Panel (DRP), with the same members as at the last meeting, for advice on the amended plans with the exception of: the pedestrian through link; the retention of the existing single storey element; and the voids. The Panel finds these elements are satisfactory in the circumstances.

On 8 September 2020 the applicant has provided an amended plan submission in response to the Panel's deferral. Various other supporting material has also been provided. The key design changes made to the proposal are identified below (taken from updated Statement of Environmental Effects):

Level	Amendment to Floor Plans
General	- Tower A has been reduced in depth at the south eastern corner to reduce the apparent building bulk. - The lobbies, fire stairs and lift cores have been relocated to improve visual and physical connection to both Church Avenue and John Street.
Basement 4	Ramps and turning areas have been adjusted to improve traffic flow and passing.
Basement 3	Ramps and turning areas have been adjusted to improve traffic flow and passing.
Basement 2	- Ramps and turning areas have been adjusted to improve traffic flow and passing. - Residential waste rooms have been relocated from the Ground Floor to Basement 2 as recommended by the Panel. A bin lift has been provided for transportation of bins for collection from the loading dock.
Basement 1	Ramps and turning areas have been adjusted to improve traffic flow and passing.
Ground Floor Level	- Ramps and turning areas have been adjusted to improve traffic flow and passing. - Vehicular access has been removed from Church Avenue. Vehicular access to the site is now via John Street to reduce noise impacts and separate vehicle and pedestrian movements. - Wider pedestrian walkways and additional planter beds have been provided to improve amenity. - The depth of the ground floor commercial premises has been decreased, and additional retail spaces have been introduced along the pedestrian through-site link to create activity and promote safety. - The loading dock has been relocated to John Street and physically separated from the pedestrian through-site link. - The voids to the through link have been increased from approximately 45% to 54% of the total site length.
Level 2	- Units A201 and A202 on the Church Street façade have been recessed to provide a visual termination between the brick warehouse and the residential tower above. - The layout of Unit A205 has been adjusted to improve privacy from buildings located at 19-21 Church Avenue. - Minor adjustments to the Communal Open Space and Landscaped Area. - The voids to the through link have been increased from approximately 45% to 54% of the total site length.
Level 3 - 6	Apartments on Tower A have been adjusted to improve privacy with the buildings located at 19-21 Church Avenue.

Level	Amendment to Floor Plans
Level 10 - 13	The setback to John Street has been increased to align with the neighbouring development at 18A John Street.
Roof Level	The setback to John Street has been increased to align with the neighbouring development at 18A John Street.

On 23 September 2020 the amended scheme was reviewed by the Design Review Panel.

On 1 October 2020 Council provided a letter to the applicant identifying inconsistencies with the FSR calculation method when compared to the original scheme, compliance with Council's flood planning levels and requested that a hydrogeologist, geotechnical and structural engineer collaborate to address a series of matters. An updated survey plan was also requested.

On 27 November 2020, the applicant provided further information in the form of: Additional geotechnical report, groundwater well installation report, hydrogeological assessment, implementation plan, structural drawings, structural report, updated landscape plan, updated survey plan and correspondence from traffic engineering concerning site access for an SRV. An updated clause 4.6 exception (FSR) followed on 1 December 2020.

There were some further changes made to the architectural plans which can be summarised as follows:

- Substation and services room adjusted on the ground floor
- John Street retail area increased from 45.3m² to 51.7m²
- Lobby A and B widths increased from 1.6m to 2m
- Dimensions shown on ground floor retail areas
- Planter boxes location within through site link adjusted
- Changes to ground floor levels due to flood planning requirements
- Warehouse entry amended
- Gross floor area calculations adjusted
- Additional site levels shown
- New door connecting the through site link and the loading dock
- Transport information plan to show pedestrian link in the locality
- Replacements of 2 MRV's with 2 SRV's for the ground floor loading dock

The deferral reasons are addressed as follows:

1. Water NSW General Terms of Approval

Comment: General Terms of Approval (GTAs) have been issued by Water NSW in correspondence dated 20 August 2020. This issue is resolved.

2. Compliance with Council's Flood Planning Levels

Comment: The proposed finished floor levels on the ground floor of the development have been altered to achieve compliance with the required flood planning levels. In doing so, the internal clearance on the ground floor has been reduced but still permits access for a small rigid vehicle (SRV) into the loading dock off John Street. Council's Development Engineer has reviewed the proposed arrangement and considers it to be satisfactory in the circumstances. The floor to floor heights on the ground to first floor are approximately 6m (Church Avenue) and 4m to 5.3m (John Street) which is consistent with the ADG requirements. The residential floor to ceiling heights are unaltered.

3. Further documentation of the methodology from the structural engineer to confirm, or otherwise, that the project can be constructed without the requirement to underpin adjoining properties. The Panel notes the sensitivities in the area and the need for this matter to be comprehensively addressed with best practice, prior to determination of the application.

Comment: A report prepared by *Northrop Structural Engineers* has been prepared and provided. In addition, structural drawings have been provided. This report stipulates that underpinning is not required, nor it is recommended. The report establishes the proposed construction methodology and makes a series of mitigation measure recommendations with regards to:

- Dewatering and subsequent groundwater draw down;
- Impacts to adjacent shoring walls and building foundations; and
- Quality of Design and Construction.

In addition to the above, and at the request of Council, the following additional information was provided to ensure that this matter is comprehensively addressed:

- Hydrogeological assessment;
- Groundwater well installation report;
- Additional geotechnical report; and
- Implementation Plan to satisfy geotechnical and hydrogeological requirements.

The level of detail provided in the amended submission is considered to be acceptable for DA stage. Should the application be approved, the reports and their content/recommendations would form the basis of conditions of consent.

4. The amended plans submitted to Council must address:

- ***The pedestrian through link;***
- ***Greater compliance with the FSR; and***
- ***More detail with respect to the treatment of the façade and existing single storey element to be retained***

The panel is generally supportive of the pedestrian through link to exclude interaction with traffic and was generally supportive of retaining the existing fabric of the single storey element forward of the building line, subject to further details being provided as to how this could be integrated within the public domain.

Comment:

Pedestrian through link

The following design changes have been made with respect to the pedestrian through link:

- Additional retail tenancies provided to increase activity;
- Vehicular access has been removed so that the through link is only accessible to pedestrian. Vehicular access is now provided through a consolidated entry/exit point on John Street;
- Lobbies/fire stairs/lift cores relocation closer to Church Avenue and John Street;
- Voids have been increased in size from 45% to 54% of the length of the through link to maximise the availability of light; and
- Wider pedestrian areas and additional planter beds.

Floor Space Ratio

The FSR has been reduced from 3.77:1 to 3.71:1. It is noted that the covered sections of the through site link (contributing 359.6m²) are included as gross floor area, as are some portions of the common corridors. The extent of the non-compliance is 1513.7m² or 16%. The applicant has provided an updated clause 4.6 exception.

The reduction in FSR has been achieved through a reduction in the depth of Tower A in the southern eastern corner, reduction in the massing on the upper levels to John Street and relocating garbage rooms into the basement.

Council does not support the contravention to the FSR development standard on the basis of the current design. The proposed amended development would not be compatible with the bulk and scale of the adjoining development 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). Particular concern is raised with the proposed top 2 storeys (levels 12 and 13) of the development have not matched the setback established by the development at 27 Church Avenue & 18A John Street.

Immediately adjoining to the east, at No.12 John Street, is a 7 storey form. 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).

In light of the above, this aspect of the proposed development does not satisfy the following objectives of clause 4.4 – FSR within 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) to 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

(f) to provide an appropriate correlation between the size of a site and the extent of any development on that site

Consequently, the proposed variation would not be in the public interest in accordance with clause 4.6(4)(a)(ii) of BBLEP 2013.

Retention of existing building fabric

The Panel indicated that they were supportive of retaining the existing single storey element along Church Avenue, subject to further details as to how it could be integrated within the public domain. The applicant has provided additional information to better understand this relationship. The DCP land dedication requirement is 12m from the centre of the road. This is shown in blue in the diagram below:



Figure 1: Plan extract of retained façade – aerial view

The existing landscaping at the front of the neighbouring building to the east that is not shown in the amended material. This would inhibit the ability to walk directly through the retained portion of the building which sits within the land dedication area identified, unless the landscaping is removed. What is also evident from the diagram above is that the portions of existing fabric retained are within the identified public domain area. Council maintains its position expressed in the original assessment report (included as attachment) on this issue and does not support the structures retention. It is also noted that details would be required (i.e. – construction methodology/structural engineer review) to demonstrate how the retained portions of building would occur in light of the basement excavation works plus any necessary site remediation works.

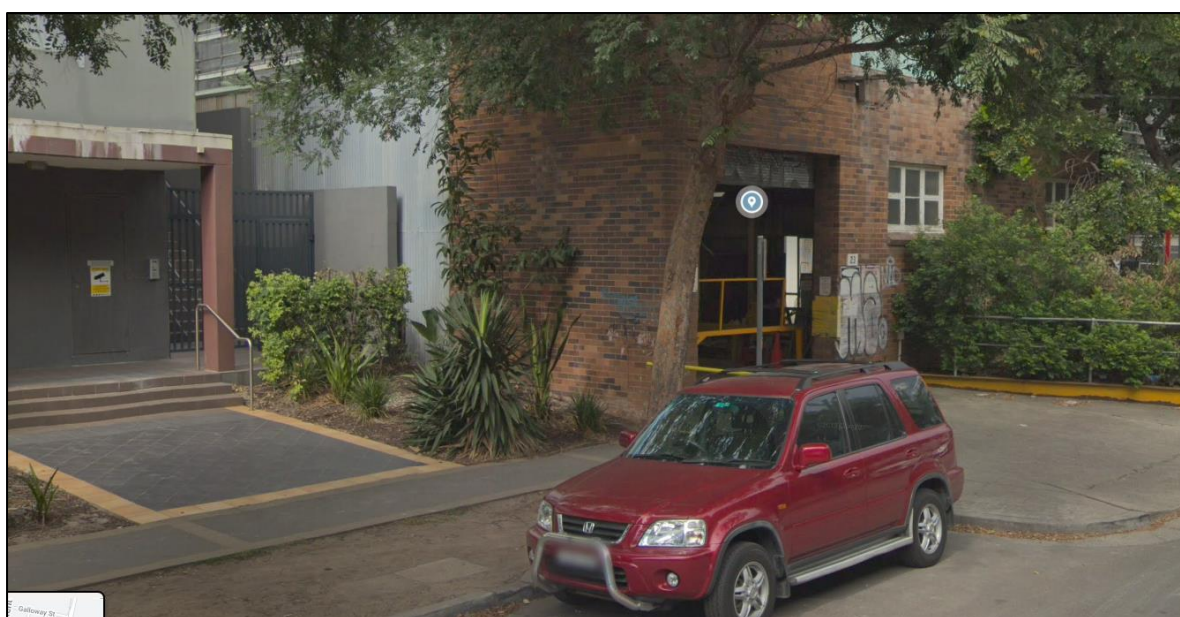


Figure 2: Existing landscaping adjacent to the brick facade

5. ***The Panel is not persuaded that the Clause 4.6 written requests for variations to the floor space ratio and height are justified at this point in time.***

Floor Space Ratio

The matter of FSR has been previously addressed in this report.

Height

Council's original assessment report made the following remarks with respect to building height:

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:



Figure 3: Height diagram

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.

Comment: The applicant has provided an updated survey plan which contains details of the heights of the adjacent building to the west and confirms that the height and scale of the development would be generally consistent with the existing adjoining building to the west, as it relates along the Church Avenue frontage. Compliance with the flood planning requirements has been achieved in consultation with the applicant and Council's Engineer. This has occurred in a manner whereby it has not impacted upon the overall height of the development. The applicant's original clause 4.6 exception concerning building height therefore remains valid.

6. The applicant is also afforded the opportunity to make final amendments to resolve other issues in response to the Council Officer's concerns and issues raised in the assessment report including an updated BASIX Certificate.

An updated BASIX Certificate has been provided. The extent of the floor space ratio exceedance remains an unresolved issue for reasons previously identified in this report.

7. The Panel is supportive of the amended plans being referred in a timely manner to the Council's Design Review Panel (DRP), with the same members as at the last meeting, for advice on the amended plans with the exception of: the pedestrian through link; the retention of the existing single storey element; and the voids. The Panel finds these elements are satisfactory in the circumstances.

The amended proposal was reviewed by the DRP at its meeting on 23 September 2020 who concluded that the proposal fails to meet the standards of design excellence for this site. A copy of the DRP minutes are provided as an attachment.

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.
- 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. 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 and would be inconsistent with the objectives of that clause.
2. 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.
3. Pursuant to the provisions of Section 4.15(1)(b), the proposed development, insofar as it relates to the massing on the John Street frontage, does not demonstrate that adequate regard has been given to the Design Quality Principles (Principle 2 – Built form and scale) contrary to clause 30(2) of State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development.
4. Having regard to the design issues raised and pursuant to the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development does not satisfy the clause 6.14(4) concerning design excellence within Botany Bay Local Environmental Plan 2013.

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 requirements of SEPP 65 and does not exhibit design excellence contrary to clause 6.16 of Botany Bay Local Environmental Plan 2013.
- c) The proposal provides a built form response that will result in unreasonable impacts upon neighbouring properties and/or the streetscape along John Street.