

Monday, 14 December 2020

**Planning Panels Secretariat**

320 Pitt Street,  
SYDNEY 2000

**Att: Ms Brianna Cheeseman**

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

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

Dear Hon Carl Scully and The Panel,

In reference to the regional panel meeting held via tele-conference held on 16 July 2020;

Firstly, we are grateful for the Panel's positive feedback and support for the retention of the existing building façade and the through site link

On 1 October 2020, Council issued a request for information and requested the following;

- GFA to include portions of common areas and under covered sections of the through site link,
- Compliance with flood planning levels,
- Additional geotechnical requirements, very detailed request,
- Hydrogeological requirements, also very detailed request,
- Structural design of basement and structural analysis of adjoining buildings, and
- Updated survey of the neighbouring building

Council's supplementary assessment and response to the Panel's deferral confirms the positive resolutions to numerous issues previously raised by Council including recent request for information.

Council have now limited their issues to 3 (which didn't form part for the recent RFI), being;

- FSR,
- Building Setbacks,
- Streetscape, and

form the basis for the Council's recommendation to refuse the application.

A recommendation to refuse is very disappointing and disheartening, particularly in circumstances where the applicant has incurred *significant* costs in responding to Councils

request for additional information which would all sit outside a DA environment and be dealt with at CC stage.

Putting aside the disappointments, the Mascot Towers incident has created concern amongst the local community, and rightly so. If we turn our attention to the hand full of objections the majority of the objectors have all raised concerns with potential damage to their buildings; in short they do not want a repeat of Mascot Towers. (Rest assured nor does the applicant).

As Council's supplementary report confirms the applicant has demonstrated through geotechnical investigations, hydrogeological studies and structural engineering design that the applicant's development will not have adverse effects to adjoining developments – this will comfort the local community

At our recent S34 conference, while we are unable to discuss what was discussed on a without prejudice basis, we can advise the objectors had the opportunity to voice their concerns. Once again the Mascot Towers incident was raised but **the objectors were in favor of the applicant's intentions and supported the retail/provedore concept**. These positive words of support confirm the local community welcome designs which have the community in mind – this has been the applicant's emphasis with this application

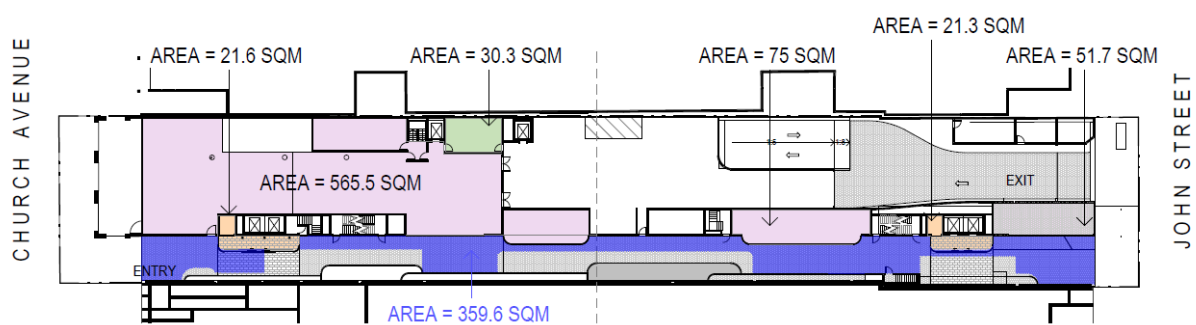
Moving to the 3 issues raised by Council

### Floor Space Ratio

Council have misstated, or misrepresented, the variation as being reduced from 3.77:1 to 3.71:1, the extent of the non-compliance equating to 1513.7m<sup>2</sup> or 16%. This is inaccurate because the extent of non-compliance in the revised scheme includes areas which do not fall within the definition of GFA

For example

Council have requested the 'covered' sections of the through site link be included in the GFA calculation, contributing 359.6m<sup>2</sup> (Noted in blue in the below image)

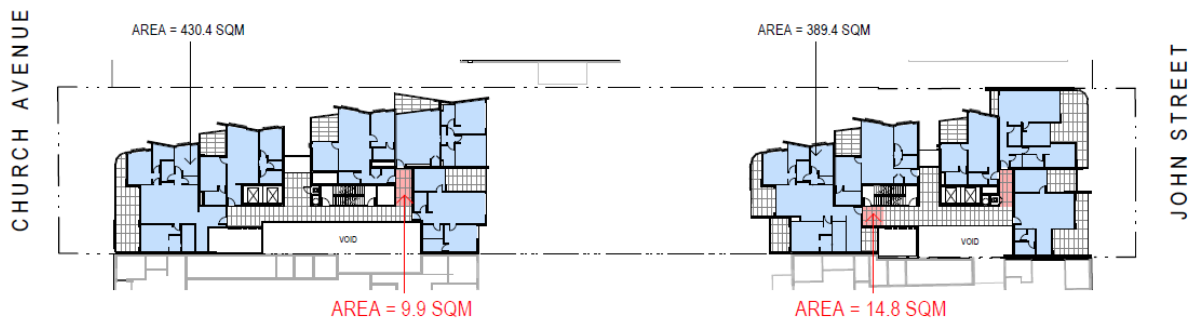


The above image is detail 1 on drawing DA-551/B and relates to the ground floor plan GFA calculation

This area should **not** be included in the GFA calculations, as it is defined as an 'external' area. All walls that surround the through-link are external walls with openings at both street ends. The through-link also has openings to the sky to more than 50% of its length. It has not been included in the previous submission before the panel where the FSR was 3.77:1; in short its not an accurate comparison

If 359.6m<sup>2</sup> is subtracted from the GFA calculation, the extent of non-compliance reduces to 1154.1m<sup>2</sup> or 12.2%

The applicant was also requested to include portions of the common corridors which are outside of the external walls of the building and, as confirmed in numerous L&E court decisions, should not be included in the GFA calculations, contributing 391.2m<sup>2</sup> (Noted in red in the below image)

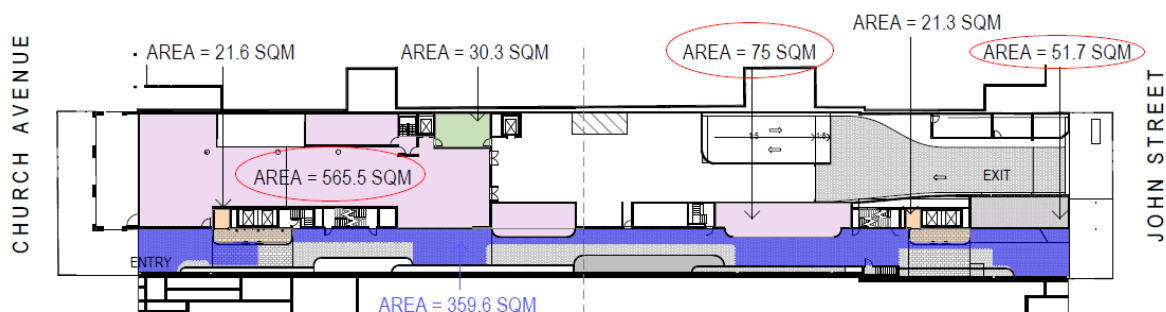


The above image is detail 5 on drawing DA-551/B and relates to the portions of common areas to be included in GFA calculation

If 391.2m<sup>2</sup> is subtracted from the revised GFA calculation, the extent of non-compliance further reduces to 794.5m<sup>2</sup> or 8.4% or 3.46:1.

As noted within the clause 4.6 FSR variation request there have been 15 other DA's approved with non-compliant FSR; breaches ranging from 3.43:1 to 4.24:1. In comparison to the applicant's non-compliance this would be considered minor, particularly when it places the applicant at the lower end of approved FSR breaches.

As for the whereabouts of the 794.5m<sup>2</sup>, the majority of that GFA is in the ground floor retail, contributing 692.2m<sup>2</sup> as noted in the below image (Retail GFA circled below)

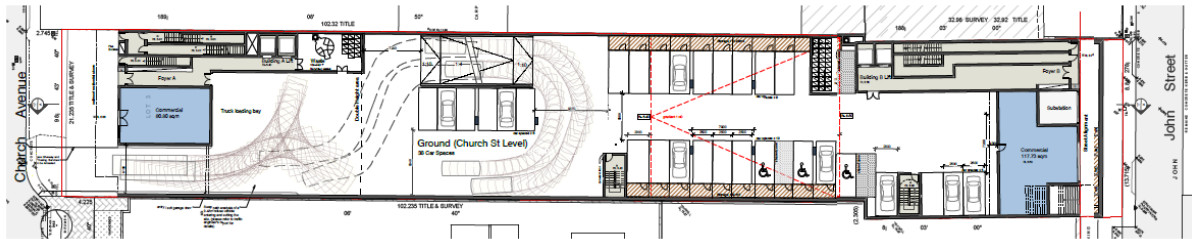


The above image is detail 1 on drawing DA-551/B and relates to the ground floor plan GFA calculation

At the request of Council's DRP, the garbage rooms previously on ground floor (which are excluded from GFA calculations) have been relocated to the basement and those areas being activated with additional retail (which form part of GFA calculations) being added to complement the site through link

It is important to note that ground floors are typically used as loading docks and entry/exit to basement carpark which fall under non-calculatable GFA. A prime example is the neighbouring development at 27 Church Ave (DA13/271). In comparison to the Applicants land size, the neighbouring land size is near identical however was only able to provide 198.53m<sup>2</sup> of retail, whilst still contributing similar bulk. The Applicant (before the Panel) has provided 3.5 times more retail than the neighbour (see below ground floor plan from DA13/271, the 2 areas

coloured light blue relate to the retail spaces) whilst remaining within the building envelopes as established by the neighbouring development



The above image is the combination of drawing DA04/M & DA05/M and relates to the ground floor plan of Church Ave (DA04/M) & John St (DA05/M)

If 692.2m<sup>2</sup> (being the retail on ground floor) is subtracted from 794.5m<sup>2</sup> (being the extent of GFA non-compliance when deducting the site through link and portions of common corridors), the difference is 102.3m<sup>2</sup>. This small difference is due to a few apartments being over the minimum sizes due to shaping the building to assist with solar amenity, please see below floor plan



The above image is a typical floor plan relating to Levels 3-6 as illustrated on drawing DA-103/F

By way of example, the table below illustrates that shaping of the building has contributed to the GFA exceedance of 102.3m<sup>2</sup>. In this case by focusing our attention to the above typical floors level, 3-6, the applicant has demonstrated that 64m<sup>2</sup> is used up within these 28 apartments

Tower A		Tower B	
Unit No No. of Bedroom	Over minimum size (Total)	Unit No No. of Bedroom	Over minimum size (Total)
A301-A601 1BR	2m <sup>2</sup> (8m <sup>2</sup> )	B301-B601 1BR	1m <sup>2</sup> (4m <sup>2</sup> )
A302-A602 2BR	2m <sup>2</sup> (8m <sup>2</sup> )	B302-B602 2BR	2m <sup>2</sup> (8m <sup>2</sup> )
A305-A605 2BR	4m <sup>2</sup> (16m <sup>2</sup> )	B304-B604 1BR	1m <sup>2</sup> (4m <sup>2</sup> )
		B305-B605 2BR	4m <sup>2</sup> (16m <sup>2</sup> )
<b>Total m<sup>2</sup></b>	<b>32</b>		<b>32</b>

Therefore as demonstrated within *Floor Space Ratio* the setback to John Street frontage has not contributed any additional bulk as assumed by Council

As noted within the clause 4.6 FSR variation, to ensure there was no doubt about whether the Panel has the power to approve the development application, trading on the side of caution,

the applicant included both figures in the amended clause 4.6 request, that being with and without areas not classified as GFA

Council quoting the 3.71:1 figure in the supplementary assessment report, downplays the applicants efforts by not acknowledging the reduction of 4 apartments, from 126 to 122 and further substantial reduction in building bulk that has been achieved in the amended scheme, particularly on John Street, as will be discussed below

### Building Setbacks

Council have indicated that the FSR variation is not supported because the proposal would not be compatible with the bulk and scale of adjoining development as it appears on John Street.

Particular concern is raised with the proposed top 2 stories (levels 12 and 13) of the John Street tower whereby Council have indicated they do not match the setback established by the development at 18A John Street.

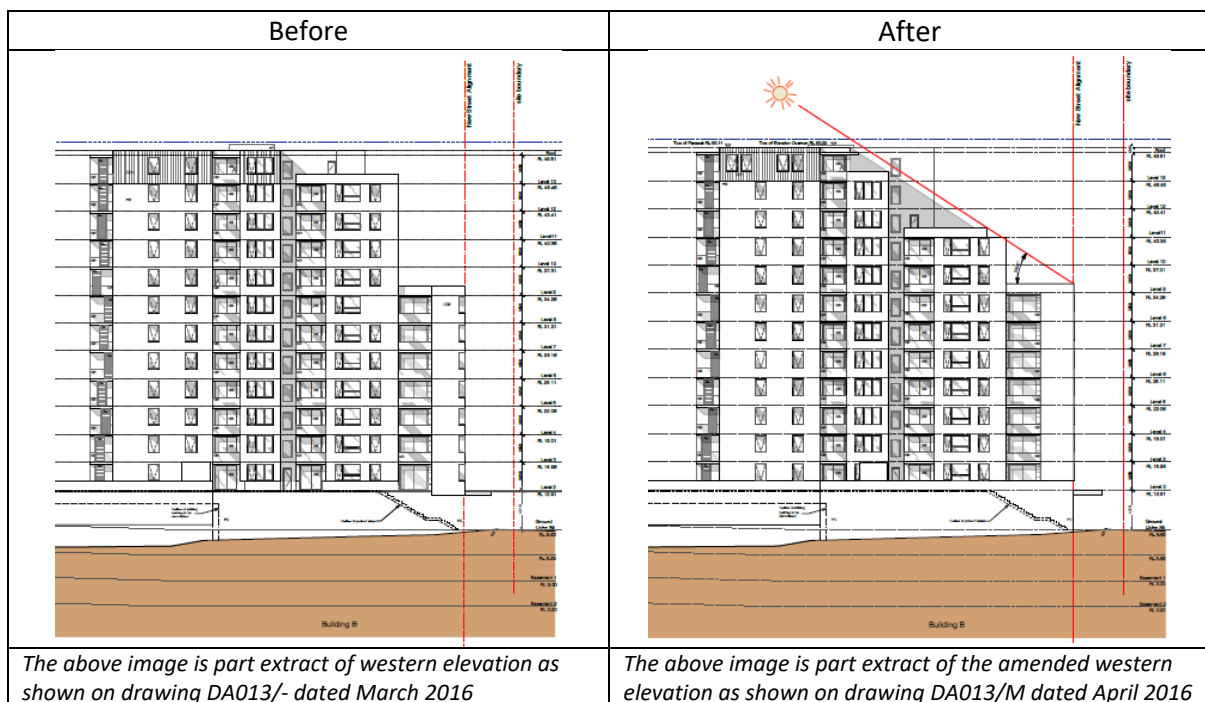
The Applicant refers to their previous submission to the Panel of 16 July 2020, which addressed the John St setback. As previously indicated the applicant for that DA (DA13/271) wrote to council on 18 May 2016 addressing, amongst other things, view corridors. Below is an extract from that correspondence which outlines their reason for the substantial setback;

#### 1.4 View Corridors

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

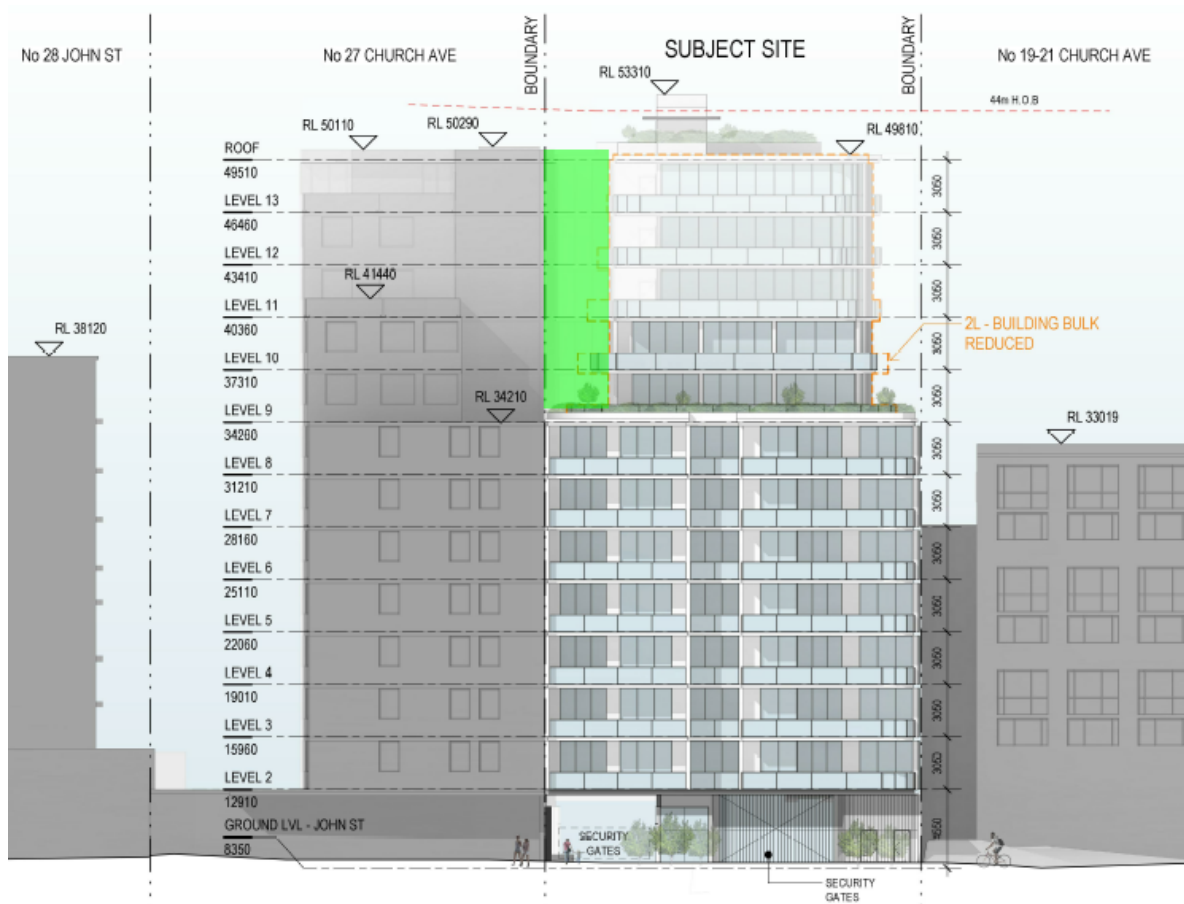
***The view from the public domain of Laycock Walk towards the north has been maximised by creating a substantial setback*** between the proposed buildings and the existing buildings at No. 24-26 John Street and Mascot Towers. [Emphasis added]

To assist the panel with the extent of the above change, please refer to the below extracts which relate to western elevation of DA13/271, particularly the John St tower which illustrate the *Before & After* design changes

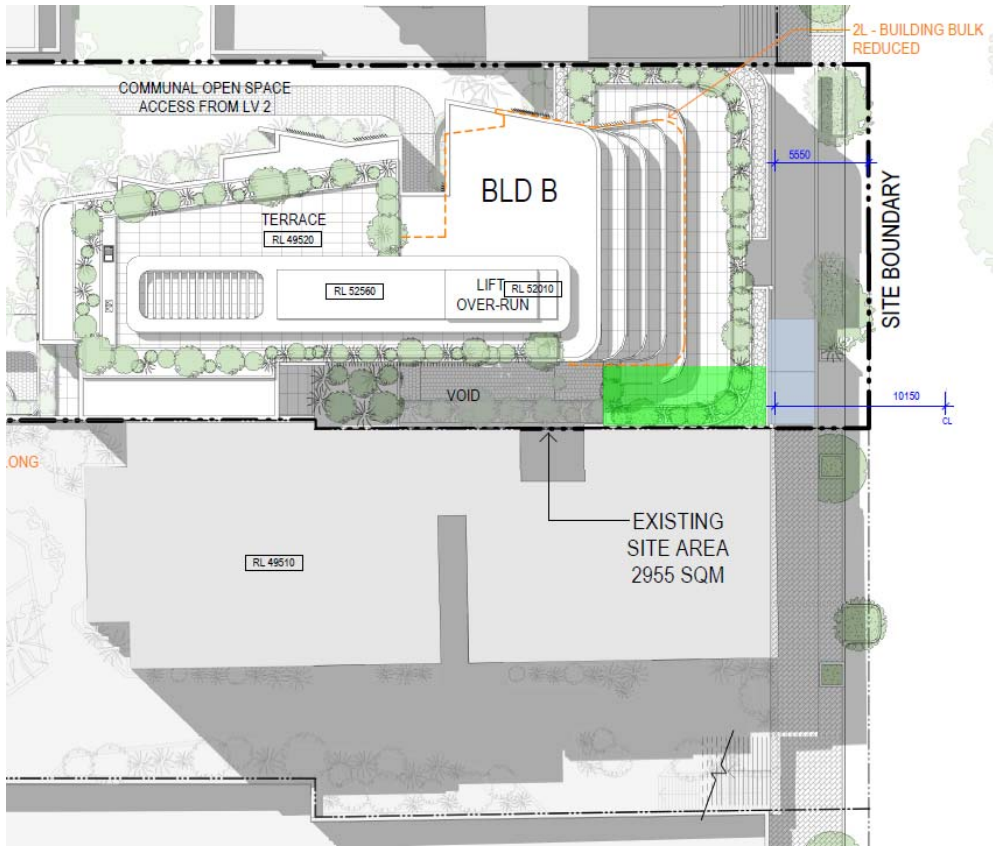


As previously advised, through rigorous solar analysis studies Squillace Architects have confirmed the applicants proposed John St tower design does not impact on council’s Laycock Walk. The setback has been designed to respond and complement surrounding tower heights, as illustrated below

Further, the top section of John Street tower provides a large 4 metre separation from the western boundary to the tower. Please refer to below Southern Elevation and Roof plan of the John St tower, the area highlighted green represents the 4 metre separation from the adjoining tower



The above image relates to the South Elevation – Building B (John Street Elevation) as noted on drawing DA-202 revision E



The above image relates to a part Plan view indicating the relationship between the Applicant's John Street Tower and Neighbouring building. Please refer to drawing DA-012 revision E

While the Applicant has demonstrated there are no adverse impacts, the scheme was amended whereby the tower was moved forward. The images below illustrate the reduced building mass on the upper levels on John Street as result of the amended plans now before the Panel. 18A John Street is shown in the foreground.

**Proposal considered by Panel on 16 July.**



**Amended proposal.**







*The above image relates to the amended roof top communal space after incorporating a reduction to the John St Tower*



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

## Retention of Existing Building Fabric

Council have indicated that the existing landscaping at the front of the neighbouring building to the east would inhibit the ability to walk directly through the retained portion of the building, this assumption is inaccurate

In order to enhance the colonnade experience, it was envisaged that the landscaping would be modified, at the applicant's expense, and the area reinstated as footpath, consistent with the wider precinct.

The existing landscaping is located partly within the land dedication and partly within the neighbouring property.

At a minimum, the landscaping within the land dedication area could be reinstated as a footpath allowing movement through the retained industrial façade



*The above image relates to the retained brick façade when positioned on the eastern side facing west*

Within the Panels deferral, at 5<sup>th</sup> dot point the Panel stated the following

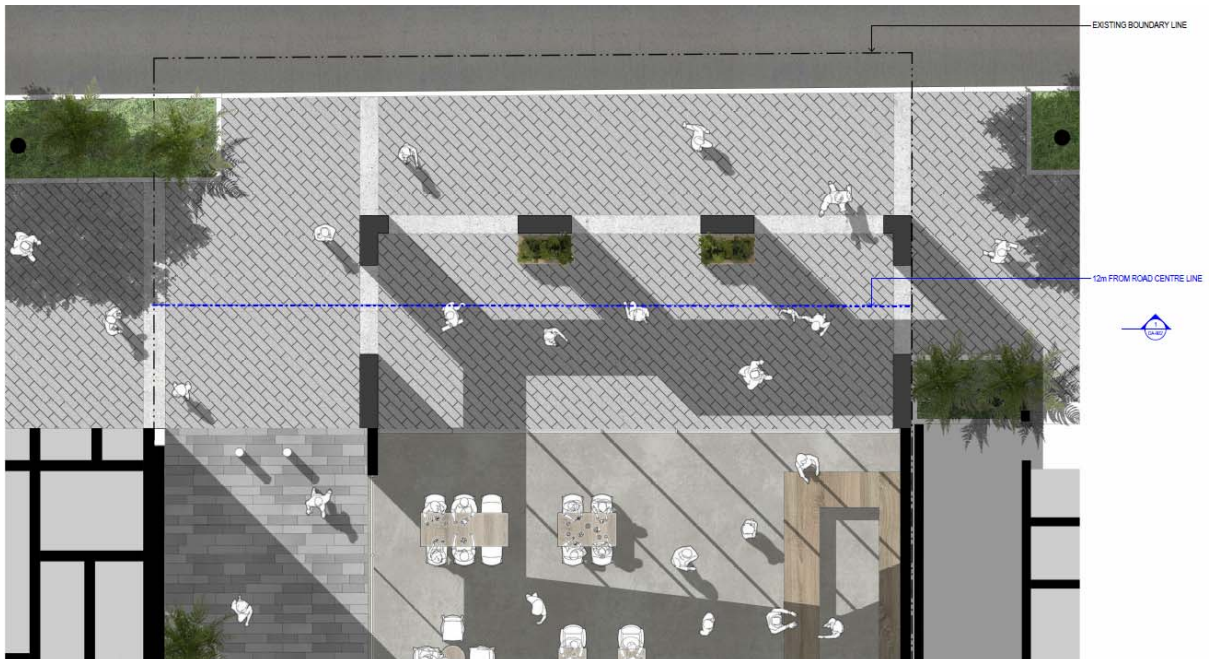
***“The Panel is generally supportive of the pedestrian through link to exclude interaction with traffic and was generally supportive of retaining the existing fabric of the single storey element forward of the building line, subject to further details being provided as to how this could be integrated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

During the 16 July 2020 Panel meeting, the Applicant was requested to demonstrate the retained façade did not impact future road widening to Church Ave. As illustrated within the above image, the kerb has been realigned to accommodate future road widening and confirms there is no impact to the road

The below 3D image also demonstrates there is ample footpath in front of the façade



The Applicant also provided further information to Council, clarifying the extent of road widening which is measured 12 metres from the centre of the road, please see blue line noted within below image. This image also demonstrates the retained façade sits on the Applicants land, noted by the black boundary lines, meaning the façade is not protruding or occupying council land



By way of further clarification, the below image indicates the retention of the façade would not inhibit the widening of Church Avenue. It is worth observing that being one of the last DA's in the Mascot precinct area this would not create a precedent in the area.

The full extent of the road widening was not dedicated on the adjoining site at 27 Church Avenue, where the basement of the building extends beneath the newly widened footpath; please refer to below image



The above image is explained as follows;

- The blue shaded window along the front of the new building indicates alignment with adjoining development, specifically 27 Church Ave
- The Red outlines indicates property boundaries
- The orange shaded window located on the neighbouring property relates to the extent of their basement. (Note the neighbouring basement extends well past the Applicants retained façade)

In summary this illustrates that the existing brick façade has a small protrusion past the blue window and illustrates no impact on pedestrian traffic or road widening

Council have indicated within their supplementary report that details would be required to demonstrate how the retained portions of the building would occur in light of the basement excavation works plus any necessary site remediation works.

The Applicant advises Council's recent request for information did not request the above details. Given Northrop Engineers had been engaged by the applicant to respond to Councils RFI relating to the basement, to include further information as to the retention of the façade would have been negligible in the scheme of things. However, in circumstances where Northrop have provided design report and structural design relating to the construction of the basement with no adverse effects to neighbouring buildings, we do not envisage any issues in retaining the façade. Therefore, this further information could be dealt with by a condition of development consent and be attended to by the Applicant when the detailed construction methodology is prepared.

## Design Excellence

On 23 September 2020, the Applicant attended a Design Review Panel (DRP) meeting to discuss the design amendments.

Those amendments included, but not limited to, the following;

- removal of vehicles from the pedestrian through site link,
- greater compliance with the floor space ratio, and
- more detail with respect to the treatment of the façade and the existing single storey element to be retained.

Squillace Architects gave a presentation and walked the DRP through all the changes that had occurred. Upon completion of the presentation the DRP were afforded the opportunity to ask questions, to which all DRP members remained silent – that’s right, not a word

In reference to the Panel’s Deferral, the Panel expressly stated

*“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 exiting single storey element, and the voids. The Panel finds these elements are satisfactory”*

Despite being instructed not to comment on the 3 elements the Panel found satisfactory, the DRP’s focal point were regarding those elements

Please refer to the attached DRP minutes which include responses by Squillace Architects.

The following render relates to the pedestrian only through site link which indicates the removal of all vehicles



*While the lobby widths have since been increased and landscape opposite the lobby remove, the above image relates to the pedestrian only through site link when positioned at Church Ave end and heading towards John Street*

The below image provides greater detail with respect to the treatment of the façade and the existing single storey element to be retained



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

Thank you, we welcome any questions

Regards,  
**Da Vito Ferro Apartments**

**Mario Pizzolato**  
Project Director

