

DATE OF DETERMINATION	15 December 2020
PANEL MEMBERS	Carl Scully (Chair), Jan Murrell, Roberta Ryan, Michael Nagi, Ed McDougall
APOLOGIES	None
DECLARATIONS OF INTEREST	None

Public meeting held by videoconference on 15 December 2020, opened at 1.35pm and closed at 3pm.

MATTER DETERMINED

PPSSEC-19– Bayside – DA2019/359 at 16 John Street/23 Church Avenue Mascot (as described in Schedule 1)

PANEL CONSIDERATION AND DECISION

The Panel considered: the matters listed at item 6; the material listed at item 7 and the presented at meetings and briefings; and the matters observed at site inspections listed at item 8 in Schedule 1.

Application to vary a development standard

Following consideration of a written request from the applicant, made under cl 4.6 (3) of the Botany Bay Local Environmental Plan 2013 (LEP), that has demonstrated that:

- a) compliance with cl. 4.3 and cl.4.4 is unreasonable or unnecessary in the circumstances; and
- b) there are sufficient environmental planning grounds to justify contravening the development standard

the Panel is satisfied that:

- a) the applicant’s written requests adequately address the matters required to be addressed under cl 4.6 (3) of the LEP; and
- b) the development is in the public interest because it is consistent with the objectives of cl. 4.3 and cl. 4.4 of the LEP and the objectives for development in the B4 zone; and
- c) the concurrence of the Secretary has been assumed.

The Panel is also satisfied that the development exhibits design excellence in accordance with cl. 6.16.

Development application

Pursuant to section 4.16 of the *Environmental Planning and Assessment Act 1979*, the Panel determined to approve the development application subject to a ‘deferred commencement consent’ requiring the deletion of the brick façade and elements on Church Avenue and for elements to reflect the history of the site to be incorporated into the building itself without encroaching on the public domain. This design change will also allow for a continuation of the street trees in the Avenue.

The decision was 3:2.

REASONS FOR THE DECISION

The Panel determined to uphold the Clause 4.6 variations to building height and floor space ratio; and approve the application.

- The majority of the Panel is satisfied the proposed development with the removal of the brick façade wall of the previous engineering business allows the appropriate urban design outcome for the public domain objective for an avenue of trees and wide footpaths. The Panel endorses the

Officer's deferred commencement condition to achieve this while still acknowledges the former use of the site.

- The majority of the Panel did not agree with the other recommended deferred commencement condition to delete the two upper most units adjoining the lift well but rather was persuaded by the architect that this would not result in a good design outcome. Furthermore, these upper units will not impose on the street due to the setback and the retention of these units provides an appropriate design resolution for the lift overrun. The opinion of the majority is this also provides certainty and removal of the two units would interfere with the integrity of the design. The Panel notes since the matter was deferred there have been a number of improvements to the design, including the vehicular access and functioning of the through site link, and information to support the construction and structural engineering methodology.

Members Michael Nagi and Ed McDougall were of the opinion that the Council's recommended deferred commencement conditions, including the removal of the brick facade wall, produced a better outcome and as such disagreed with the majority decision.

CONDITIONS

The development application is approved subject to the Council Officer's recommended conditions with the following changes.

Deferred Commencement Conditions be amended to read as follows:

Deferred Commencement

The consent shall not operate until you satisfy Council about the following matters:

Amended architectural plans and amended landscape plan shall be submitted to the Manager – Development Services for approval to demonstrate the following:

1. The existing warehouse façade identified for retention along the Church Avenue frontage shall be deleted. Elements of the facade are to be incorporated into the ground floor of the building to acknowledge the former industrial use and history of the site.
2. The landscape plan is to be amended accordingly and to provide street trees in accordance with species and size nominated by Council.

The period of the deferred commencement is 12 months from the date of determination.

Upon receiving written notification from Council that the above requirements have been satisfied, the consent will become operable subject to: reference to the approved plans to satisfy the deferred commencement conditions; and the recommended operational conditions with the following amendments.

Other Condition changes






- Delete Condition 47
- Delete Condition 116(h)
- Delete Condition 129(c)
- Delete Condition 148

CONSIDERATION OF COMMUNITY VIEWS

In coming to its decision, the Panel considered both the written submissions made during public exhibition and submissions heard at the public meeting from those wishing to address the Panel. The Panel notes that issues of concern included:

- Floor space ratio
- Building setbacks
- Streetscape
- Vibration and noise
- safety and construction

The Panel notes the issues raised by the community and where appropriate conditions of consent are imposed to manage impacts.

PANEL MEMBERS	
 Carl Scully (Chair)	 Jan Murrell
 Roberta Ryan	 Ed McDougall
 Michael Nagi	

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPSSEC-19 – Bayside – DA2019/359
2	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.
3	STREET ADDRESS	16-18 John Street and 23 Church Street, Mascot
4	APPLICANT/OWNER	Da Vito Ferro Apartments Pty Ltd
5	TYPE OF REGIONAL DEVELOPMENT	General development over \$30 million
6	RELEVANT MANDATORY CONSIDERATIONS	<ul style="list-style-type: none"> • Environmental planning instruments: <ul style="list-style-type: none"> ○ 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 ○ Draft Bayside Local Environmental Plan 2020 • Draft environmental planning instruments: Nil • Development control plans: <ul style="list-style-type: none"> ○ Botany Development Control Plan 2013 • Planning agreements: Nil • Provisions of the <i>Environmental Planning and Assessment Regulation 2000</i>: Nil • Coastal zone management plan: Nil • The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality • The suitability of the site for the development • Any submissions made in accordance with the <i>Environmental Planning and Assessment Act 1979</i> or regulations • The public interest, including the principles of ecologically sustainable development
7	MATERIAL CONSIDERED BY THE PANEL	<ul style="list-style-type: none"> • Council assessment report: 3 December 2020 • Clause 4.6 variation request - Height • Clause 4.6 variation request - Floor Space Ratio • Draft without prejudice conditions of consent: 14 December 2020 • Additional information received from the applicant: 15 December 2020 • Written submissions during public exhibition: 26 • Verbal submissions at the public meeting: <ul style="list-style-type: none"> ○ Brenda Baca, Justina Brock, Jonathan Hapke ○ Council assessment officer – Patrick Nash, Marta Gonzalez-Valdes

		<ul style="list-style-type: none"> ○ On behalf of the applicant – Mario Pizzolato, Vince Squillance, Stephen Kerr, Scott Choi, Fernando Orive, Theo Wilkinson, Antonella Pizzolato ● Total number of unique submissions received by way of objection: 26
8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> ● Briefing: 27 February 2020 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Carl Scully (Chair), Jan Murrell, Michael Nagi ○ <u>Council assessment staff</u>: Patrick Nash, Luis Melim, Marta Gonzalez-Valdes ● Site inspection: Due to Corona virus precautions, the Panel visited the site independently, prior to 16 July 2020 ● Public determination meeting (decision deferred) 16 July 2020 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Carl Scully (Chair), Jan Murrell, Roberta Ryan, Ed McDougall ○ <u>Council assessment staff</u>: Patrick Nash, Luis Melim, Marta Gonzalez-Valdes ● Final briefing to discuss council’s recommendation: 15 December 2020 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Carl Scully (Chair), Roberta Ryan, Jan Murrell, Michael Nagi, Ed McDougall ○ <u>Council assessment staff</u>: Patrick Nash, Marta Gonzalez-Valdes
9	COUNCIL RECOMMENDATION	Refusal
10	DRAFT CONDITIONS	Draft without prejudice Conditions supplied 14 December 2020