|  |  |
| --- | --- |
| **\\VFILERDPI\DPI-Home\OBRIENR2\My Documents\Downloads\PP logo.jpg** | **DETERMINATION AND STATEMENT OF REASONS**  SYDNEY EASTERN CITY PLANNING PANEL |

|  |  |
| --- | --- |
| DATE OF DETERMINATION | 23 December 2022 |
| DATE OF PANEL DECISION | 23 December 2022 |
| DATE OF PUBLIC MEETING | 20 December 2022 |
| PANEL MEMBERS | Jan Murrell (Chair), Brian Kirk, Anthony Bazouni, Kevin Hoffman |
| APOLOGIES | None |
| DECLARATIONS OF INTEREST | None |

Papers circulated electronically on 7 December 2022.

Public meeting held by Public Teleconference on 20 December 2022, opened at 9am and closed at 10:40am.

**MATTER DETERMINED**

**PPSSEC-203 – Canada Bay - DA2022/0162 – 34 Walker Street, Rhodes**. Amending DA for alterations and additions to consent DA2017/0544 including:  
- Additional 21 residential levels to Tower D (Levels 20 – 40) providing 178 x residential apartments  
- Additional 11 residential levels to Tower E (Levels 35 – 45) providing 95 x residential apartments  
- Additional 218 x parking spaces, comprising 204 x residential spaces (including 41 x accessible spaces) and 14 x visitor spaces

**PANEL CONSIDERATION AND DECISION**

The Panel considered: the matters listed at item 6; the material listed at item 7; the material presented at the public meeting from submitters, the applicant’s consultants and Council’s consultant; and the matters observed at site inspections listed at item 8 in Schedule 1.

The Applicant submitted further information that was uploaded to the planning portal on 21 December 2022 and a Supplementary Report was prepared to assist the Panel in its deliberations of the matter.

**Applications to vary development standards**

1. Following consideration of the written request to vary the **maximum height** of buildings development standard 136.5m for Tower D and 151.5m for Tower E, made under cl. 4.6 (3) of the Canada Bay Local Environmental Plan 2013 (LEP), the Panel is satisfied the request for an additional 7.3m for Tower D and 5.4m for Tower E has demonstrated:

1. compliance with cl. 4.3 building height is unreasonable or unnecessary in the circumstances; and
2. there are sufficient environmental planning grounds to justify contravening the development standard.

The Panel is also satisfied that:

1. the applicant’s written request adequately addresses the matters required to be addressed under cl. 4.6 (3) and 4.6 (4) of the LEP;
2. the development is in the public interest because it is consistent with the objectives of cl. 4.3(1) of the LEP and the objectives for development in the B4 Mixed Use zone; and
3. the concurrence of the Secretary has been assumed.

2. Following consideration of the written request to vary the development standard for the **dwelling mix** of 20% to 19.8% studio and one-bedroom units made under cl. 4.6 (3) of the Canada Bay Local Environmental Plan 2013 (LEP), the Panel is satisfied the request has demonstrated that:

1. compliance with cl. 6.11 is unreasonable or unnecessary in the circumstances; and
2. there are sufficient environmental planning grounds to justify contravening the development standard.

The panel is also satisfied:

1. the applicant’s written request adequately addresses the matters required to be addressed under cl 4.6 (3) and 4.6 (4) of the LEP;
2. the development is in the public interest because it is consistent with the dwelling mix objectives of the development standard in cl. 6.11(1)(a) and (b) of the LEP and the objectives for development in the B4 Mixed Use zone; and
3. the concurrence of the Secretary has been assumed.

3. Following consideration of the written request from the applicant, to vary the development standard from 40 m minimum building separation distance for buildings above 20 storeys to 37m, made under cl 4.6 (3) of the Canada Bay Local Environmental Plan 2013 (LEP), the Panel is satisfied the request has demonstrated that:

1. compliance with cl. 7.5 is unreasonable or unnecessary in the circumstances; and
2. there are sufficient environmental planning grounds to justify contravening the development standard.

The Panel is also satisfied that:

1. the applicant’s written request adequately addresses the matters required to be addressed under cl 4.6 (3) and 4.6 (4) of the LEP;
2. the development is in the public interest because it is consistent with the objectives of the LEP for development in the B4 Mixed Use zone; and
3. the concurrence of the Secretary has been assumed

**Development application**

The Panel determined to approve the development application pursuant to section 4.16 of the *Environmental Planning and Assessment Act 1979*.

At the public meeting the Panel questioned the Applicant and Council’s independent assessment planner at length on various matters to do with an ‘amending development application’ under the Act and the Regulation as well as the merits of this application.

Subsequently the applicant submitted additional information to clarify the issues and this, together with a Supplementary Assessment Report has been considered by the Panel in its deliberations and determination. In particular, the structural ability of the currently approved building under construction to support the additional load was of great concern to the Panel. The applicant has submitted documentation from the structural engineer dated 20 June 2022 that provides the evidence that the current structures were designed in anticipation to support a building the size and scale in this application.

The Panel reconvened on the deliberation session on 21 December 2022 and requested a Supplementary Assessment Report be prepared by Council’s independent consultant. The Panel, still in its deliberations, held a further meeting on 23 December 2022 after having considered the Supplementary Assessment Report received 22 December and the material submitted by the Applicant.

The decision was unanimous.

**REASONS FOR THE DECISION**

The Panel is satisfied there are no outstanding issues and the application warrants approval. The proposed development generally complies with the relevant State and local planning policies. The Panel concurs with the Council’s independent assessment that the proposed development is satisfactory and will not have significant adverse impacts on the built or natural environmental.

The Panel notes that the proposed development is anticipated by the changes made to the Canada Bay Local Environmental Plan for the *Rhodes Peninsula* on 30 October 2021 and 18 March 2022. These amendments to the controls in the LEP and the DCP identified the area for higher-density, given its location and proximity to employment, public transport and infrastructure. The variations to the standards are minor and justified as determined above by the Panel, and the development is satisfactory on a comprehensive merits assessment under the EP&A Act.

The Panel determined to uphold the Clause 4.6 variations and approve the application, subject to conditions, for the reasons outlined in the Assessment Report and the Supplementary Assessment Report.

**CONDITIONS**

The Development Application is approved subject to the conditions in the Assessment Report with the following amendments.

* + - * Amend Condition 1 to add reference to the following documents contained in the supplementary report:
      1. Letter from structural engineers ABC Consultants Pty Ltd dated 20 June 2022;
      2. Letter from JHA Consulting Engineers dated 20 December 2022;
      3. Annotated architectural drawings;
      4. Letter from JHA Consulting Engineers dated 21 December 2022;
      5. Letter from Lehr Consultants International (Australia) Pty Ltd (LCI) dated 22 December 2022;
      6. Annotated architectural floor plans, elevations and sections received in the portal 20 December 2022; and
      7. Schedule of Changes to architectural plans prepared by SJB architects received in the portal 20 December 2022.
      * Amend Condition 16 to read:

1. The applicant is to identify space for a substation to allow the building to be provided with the capacity required to provide e-charging points for the units approved under this application.
2. Any required electricity substation must be located within the boundaries of the site.
3. Where a substation is not required the alternative would be for the applicant to demonstrate that the existing substation has the capacity to allow for electric vehicle charging of the new spaces to allow individual unit owners to readily connect their own charging points.
4. The applicant is to provide the necessary circuitry, including but not limited to conduits and cabling, to allow for electric vehicle charging of the new spaces. The circuitry is to be reticulated to the location of the relevant substation.

Documentary evidence of compliance with (a) to (d) above, including correspondence from the energy authority is to be provided to Council **prior to the issue of the relevant Construction Certificate** detailing the energy authority's requirements.

*(Reason: Access to utility and future proof the development*)

**CONSIDERATION OF COMMUNITY VIEWS**

In coming to its decision, the Panel considered written submissions made during public exhibition and heard from all those wishing to address the Panel. The Panel notes that issues of concern included: over-development/over-crowding, traffic and parking impacts, wind, overshadowing, view loss, and additional pressure on facilities, public transport, and congestion in the area.

The Panel considers that concerns raised by the community have been adequately addressed in the Assessment Report and that no new issues requiring assessment were raised during the public meeting.

|  |  |
| --- | --- |
| **PANEL MEMBERS** | |
| Jan Murrell (Chair) A close up of a logo  Description automatically generated | Brian Kirk |
| Anthony Bazouni A pair of glasses  Description automatically generated with medium confidence | Kevin Hoffman |

|  |  |  |
| --- | --- | --- |
| SCHEDULE 1 | | |
| 1 | **PANEL REF – LGA – DA NO.** | PPSSEC-203 – Canada Bay - DA2022/0162 |
| 2 | **PROPOSED DEVELOPMENT** | Amending DA for alterations and additions to consent DA2017/0544 including: - Additional 21 residential levels to Tower D (Levels 20 – 40) providing 178 x residential apartments - Additional 11 residential levels to Tower E (Levels 35 – 45) providing 95 x residential apartments - Additional 218 x parking spaces, comprising 204 x residential spaces (including 41 x accessible spaces) and 14 x visitor spaces |
| 3 | **STREET ADDRESS** | 34 Walker Street, Rhodes |
| 4 | **APPLICANT/OWNER** | Thomas Gregg (Thirty Four Walker Street Pty Ltd)/ Thirty Four Walker Street Pty Ltd |
| 5 | **TYPE OF REGIONAL DEVELOPMENT** | General development over $30 million |
| 6 | **RELEVANT MANDATORY CONSIDERATIONS** | * Environmental planning instruments:   + State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development   + State Environmental Planning Policy (Building Sustainability Index – BASIX) 2004   + State Environmental Planning Policy (Resilience and Hazards) 2021   + State Environmental Planning Policy (Transport and Infrastructure) 2021   + State Environmental Planning Policy (Planning Systems) 2021   + Canada Bay Local Environmental Plan 2013 * Draft environmental planning instruments: Nil * Development control plans:   + City of Canada Bay Development Control Plan 2022 * Planning agreements: Yes, in pursuant to Section 93F of the EP&A Act (now s7.4) which applies to the Site and adjoining land owned or controlled by the Applicant. * Provisions of the *Environmental Planning and Assessment Regulation 2021* * 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 *Environmental Planning and Assessment Act 1979* or regulations * The public interest, including the principles of ecologically sustainable development |
| 7 | **MATERIAL CONSIDERED BY THE PANEL** | * Council assessment report: 7 December 2022 * Additional information provided by the applicant: 20-22 December 2022 * Supplementary Assessment Report and attachments numbered 1 to 8: 22 December 2022 * Clause 4.6 variation: * Section 4.6 Variation- Height of Buildings * Section 4.6 Variation Request – Mix of Dwellings * Section 4.6 Variation Request – Building Separation * Written submissions during public exhibition: 59 * Verbal submissions at the public meeting: * Fadi Gurgis * Ke Tsun   + Council’s Manager of Statutory Planning- Shannon Anderson and Kendal Mackay (DFP Planning)   + On behalf of the applicant – Murray Donaldson, John Pradel, Noel Roche, Thomas Gregg, Paul Addison, Saul Moran and Rob Battersby * Total number of unique submissions received by way of objection: 59 |
| 8 | **MEETINGS AND SITE INSPECTIONS BY THE PANEL** | * Final briefing to discuss council’s recommendation: 19 December 2022   + Panel members: Jan Murrell (Chair), Brian Kirk, Anthony Bazouni, Kevin Hoffman   + Council assessment staff: Shannon Anderson and Kendal Mackay (DFP Planning)   + Applicant representatives: Murray Donaldson, John Pradel, Noel Roche, Thomas Gregg, Paul Addison, Saul Moran and Rob Battersby |
| 9 | **COUNCIL RECOMMENDATION** | Approval |
| 10 | **DRAFT CONDITIONS** | Attached to the council assessment report |