

DETERMINATION AND STATEMENT OF REASONS

SYDNEY EASTERN CITY PLANNING PANEL

DATE OF DETERMINATION	25 February 2025
DATE OF PANEL DECISION	24 February 2025
DATE OF PANEL BRIEFING	20 February 2025
PANEL MEMBERS	Carl Scully (Chair), Alice Spizzo, Susan Budd and Joe Awada
APOLOGIES	Michael Nagi
DECLARATIONS OF INTEREST	None

Papers circulated electronically on 22 January 2025.

MATTER DETERMINED

PPSSEC-301 - Bayside - DA-2023/345 - 125, 127 & 131 Baxter Road, Mascot - Demolition of existing structures and construction of an eleven (11) storey building comprising tourist and visitor accommodation, single level of above ground car parking incorporating car stackers, associated landscaping and signage zones (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 material presented at meetings and briefings 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 Bayside Local Environmental Plan 2021 (LEP), the Panel is satisfied that the applicant has demonstrated that:

- compliance with cl. 4.4 (Floor Space Ratio) is unreasonable or unnecessary in the circumstances because the development is appropriately designed, consistent with the existing and future desired built form context surrounding the site; and
- there are sufficient environmental planning grounds to justify contravening the development standard as the bulk, scale and massing of the proposed development is consistent within the existing and future desired context of the locality, with reduction in the overall gross floor area resulting in a built form which is incongruent with existing, approved and emerging building forms.

Development application

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

The decision was unanimous.

REASONS FOR THE DECISION

The Panel determined to uphold the Clause 4.6 variation to floor space ratio and approve the application for the reasons outlined in the Council Assessment Report.

CONDITIONS

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

- Insert the following deferred commencement condition –
This Development Application has been determined under Section 4.16(3) of the Environmental Planning and Assessment Act, 1979 by granting Deferred Commencement consent.

The following condition shall be satisfied prior to the operation of the consent:

- A. This consent requires the modification of development consent DA-2021/450 approved on 15 September 2022 for *'Integrated Development - Demolition of existing structures and construction of a twelve (12) storey hotel comprising of parking, signage and specialised retail on the ground floor and associated restaurant and bar.'*

Development consent number DA-2021/450 is to be modified to amend the design of the ground level of development DA-2021/450 to remove the one-way driveway connection connecting 133-137 Baxter Road to 125-131 Baxter Road and replace it with a pedestrian access footpath connected with the ground level access pathway to the hotel lounge approved in this consent. This is to ensure both hotels appropriately connect and are capable of sharing the porte-cochere within 133-137 Baxter Road.

A modification application is to be submitted to and approved by the Consent Authority prior to the activation of this consent.

Evidence of compliance with the above condition, sufficient to satisfy the Council as to those matters, must be provided within Twenty-Four (24) months of this notice. If satisfactory evidence is produced in accordance with this requirement, the Council shall give notice to the applicant of the date from which this consent operates.

If Council has not notified the applicant within a period of 28 days after the applicant's evidence is produced to it, the Council is, for the purposes only of section 8.7 of the Environmental Planning and Assessment Act 1979, taken to have notified the applicant that Council is not satisfied as to those matters on the date on which that 28 day period expires.

- Insert new Condition 5A:

5A. Remediation Works - General

All remediation work nominated within the Remediation Action Plan prepared by EI Australia and dated 29 October 2024 shall be carried out onsite, in accordance with:

- a) NSW EPA 'Consultants reporting on contaminated land' (2020);
- b) NSW EPA guidelines under the Contaminated Land Management Act 1997;
- c) Chapter 4 of the State Environmental Planning Policy (Resilience and Hazards) 2021; and
- d) 'Remediation Action Plan' (RAP), reference E26564.E06_Rev1, by EI Australia, dated 29 October 2024.

Reason: *To protect human health and the environment in accordance with legislative requirements.*

- Delete Condition 16
- Amend Condition 31 to read as follows:

31. HRV Coach Porte-Cochere on neighbouring land

Prior to the issue of the relevant Construction Certificate, a right of carriageway and right of footway easement shall be registered on the neighbouring site of 133-137 Baxter Road & 118 Robey Street MASCOT NSW 2020 (also known as 210 O'Riordan Street Mascot) (PT 1 DP 1190559) over the extent of the porte-cochere approved in development consent number DA-2021/450.

The easement shall cover the entire extent of the porte-cochere, coach parking and driveway extending from Baxter Road to Robey Street. The easement extents shall also connect to the ground level western pedestrian entry to the hotel lounge proposed in this development. The

extent of the easement is to be approved by the Bayside Council Director of City Futures (or delegate).

The easements shall be covered by an 88B instrument, which shall only be varied or extinguished with the consent of Bayside Council. Bayside Council requires proof of lodgement of the signed Subdivision Certificate and 88B Instrument with the NSW Land Registry Services. Evidence of the registered easements shall be submitted to the Principal Certifier.


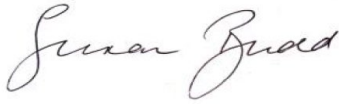


REASON

This development has been approved on the basis that a porte-cochere for HRV coaches is provided via the approved hotel development on the neighbouring site (development consent number DA-2021/450). To ensure legal access to that porte-cochere for this development, suitable easements shall be registered on the neighbouring land

- Delete Condition 32 as it has been incorporated into the deferred commencement condition
- Delete Condition 56 as it is a duplication
- Delete Condition 137 as it is a duplication

CONSIDERATION OF COMMUNITY VIEWS

In coming to its decision, the panel notes that no written submissions were made during public exhibition and therefore no issues of concern were raised

PANEL MEMBERS	
 Carl Scully (Chair)	 Susan Budd
 Alice Spizzo	 Joe Awada

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPSSEC-301 - Bayside - DA-2023/345
2	PROPOSED DEVELOPMENT	Demolition of existing structures and construction of an eleven (11) storey building comprising tourist and visitor accommodation, single level of above ground car parking incorporating car stackers, associated landscaping and signage zones
3	STREET ADDRESS	125, 127 & 131 Baxter Road, Mascot
4	APPLICANT/OWNER	Applicant: The Trustee for Boston Atlas Hotels Trust Owners: The Debatry Pty Ltd (125 Baxter Road, Mascot), Isak Nominees Pty Ltd (127 Baxter Road, Mascot) and Mr Theo Isak (131 Baxter Road, Mascot)
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"> State Environmental Planning Policy (Resilience and Hazards) 2021 State Environmental Planning Policy (Planning Systems) 2021 State Environmental Planning Policy (Sustainable Buildings) 2022 State Environmental Planning Policy (Transport and Infrastructure) 2021 State Environmental Planning Policy (Industry and Employment) 2021 Bayside Local Environmental Plan 2021 Draft environmental planning instruments: Nil Development control plans: <ul style="list-style-type: none"> Bayside Development Control Plan 2022 Planning agreements: Nil Relevant provisions of the <i>Environmental Planning and Assessment Regulation 2021</i> 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: December 2024 Clause 4.6 variation request: S.4.4 (Floor Space Ratio) Written submissions during public exhibition: 0 Total number of unique submissions received by way of objection: 0
8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> Preliminary Briefing: 6 February 2024 <ul style="list-style-type: none"> <u>Panel members</u>: Carl Scully (Chair) <u>Council assessment staff</u>: Marta Gonzalez-Valdes <u>Applicant representatives</u>: Alex Rodakis, Jason Shepherd, Ian Cady, Stephanie Wu and Ben Pomroy <u>Department staff</u>: Carolyn Hunt and Lisa Ellis Briefing: 9 April 2024 <ul style="list-style-type: none"> <u>Panel members</u>: Carl Scully (Chair), Amelia Thorpe, Alice Spizzo and Joe Awada <u>Council assessment staff</u>: Fiona Prodromou, Luis Melim and Marta Gonzalez-Valdes <u>Department staff</u>: Carolyn Hunt and Lisa Ellis

		<ul style="list-style-type: none"> • Briefing: 2 October 2024 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Carl Scully (Chair) ○ <u>Council assessment staff</u>: Fiona Prodromou, Luis Melim and Marta Gonzalez-Valdes ○ <u>Applicant representatives</u>: Paige Matthews, Alex Rodakis, Ian Cady and Ben Pomroy ○ <u>Department staff</u>: Tim Mahoney and Lisa Ellis • Site Inspection: 20 February 2025 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Carl Scully (Chair), Alice Spizzo, Susan Budd and Joe Awada ○ <u>Council assessment staff</u>: Fiona Prodromou, Luis Melim and Marta Gonzalez-Valdes • Applicant Briefing: 20 February 2025 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Carl Scully (Chair), Alice Spizzo, Susan Budd and Joe Awada ○ <u>Council assessment staff</u>: Fiona Prodromou, Luis Melim and Marta Gonzalez-Valdes, Christopher Thompson, Atef Syed ○ <u>Applicant representatives</u>: Alex Rodakis, Stephanie Wu, Tom Cook, Ben Pomroy, Theo Isak and Georgia Isak ○ <u>Department staff</u>: Carolyn Hunt, and Lisa Ellis • Final briefing to discuss Council's recommendation: 20 February 2025 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Carl Scully (Chair), Alice Spizzo, Susan Budd and Joe Awada ○ <u>Council assessment staff</u>: Fiona Prodromou, Luis Melim and Marta Gonzalez-Valdes, Christopher Thompson, Atef Syed ○ <u>Department staff</u>: Carolyn Hunt, and Lisa Ellis
9	COUNCIL RECOMMENDATION	Approval
10	DRAFT CONDITIONS	Attached to the Council Assessment Report