

## COUNCIL ASSESSMENT REPORT

### SYDNEY EASTERN CITY PLANNING PANEL

<b>PANEL REFERENCE &amp; DA NUMBER</b>	PPSSC-250 – DA-2022/409
<b>PROPOSAL</b>	Change of use of existing buildings into an education establishment with internal fit-out works and use of the existing car parking, operating 24 hours a day, seven (7) days a week
<b>ADDRESS</b>	Lots 1 & 2 in DP 1001894 - 28-40 Lord Street Botany NSW 2019
<b>APPLICANT</b>	University Of Technology Sydney
<b>OWNER</b>	Perpetual Trustee Company Limited
<b>DA LODGEMENT DATE</b>	20 December 2022
<b>APPLICATION TYPE</b>	Crown Development Application
<b>REGIONALLY SIGNIFICANT CRITERIA</b>	Clause 2.19 of <i>State Environmental Planning Policy (Planning Systems) 2021</i> ; Schedule 6: Crown Development over \$5,000,000.00
<b>CIV</b>	\$ 6,605,358 (excluding GST)
<b>CLAUSE 4.6 REQUESTS</b>	N/A
<b>KEY SEPP/LEP</b>	Bayside Local Environmental Plan 2021
<b>TOTAL &amp; UNIQUE SUBMISSIONS, KEY ISSUES IN SUBMISSIONS</b>	Nil
<b>DOCUMENTS SUBMITTED FOR CONSIDERATION</b>	Architectural Plans – H2O Architects Pty Ltd Statement of Environmental Effects - Urbanac Acoustic Report – Resonate Traffic and Parking Assessment Report – Positive Traffic Letters with additional information
<b>SPECIAL INFRASTRUCTURE CONTRIBUTIONS (S7.24)</b>	N/A
<b>RECOMMENDATION</b>	Approval
<b>DRAFT CONDITIONS TO APPLICANT</b>	YES

<b>SCHEDULED MEETING DATE</b>	Tuesday 13 June 2023
<b>PLAN VERSION</b>	18 November 2022 Version No. 01
<b>PREPARED BY</b>	Michael Maloof – Senior Assessment Planner
<b>DATE OF REPORT</b>	8 June 2023

## EXECUTIVE SUMMARY

- Key issues
  - Fire upgrades and Building Code of Australia
  - Intensity of use - Number of Students and Staff
  - Car parking and Access
  - Hours of operation – late night operating hours
- No key concerns raised from agencies or the community.
- Prerequisites satisfied for educational establishments (i.e., Section 3.5 of SEPP (Transport and Infrastructure) 2021)
- The above issues were resolved through the imposition of conditions of development consent, e.g., staff limits and operation of a management plan for the use.
- Consistent with the public interest
- Recommendation – Approved subject to conditions including approval from Crown to impose conditions where required – permissible use with building upgrade works – the site is capable of accommodating the proposed use.
- Under Section 4.15(1) of the EP&A Act 1979 the provisions of the SEPP (Transport and Infrastructure) 2021, Bayside LEP 2021 and the Rockdale DCP 2011 were considered in the assessment of the application.

The development application (DA-2022/409) seeks consent for the change of use of the existing three buildings and car park into an education establishment with internal fit-out works and use of the existing car parking, operating 24 hours a day, seven (7) days a week ('the proposal'). The minor fit-out works include refurbishment and fire upgrade works to the existing buildings to provide for the staff and students and comply with the essential fire safety requirements of the Building Code of Australia.

The subject site is known as 28-40 Lord Street ('the site') and comprises two lots with two (2) road frontages including Lord Street to the south. The site is located between Botany Road to the west and the Goods Railway Line to the east and occupies an irregularly shaped area of 2,886m<sup>2</sup>. There are multiple vehicle access points to the site from Lord Street.

Existing development on the site consists of three separate buildings with two having three storeys and one single storey with warehousing attached. The site contains car parking areas between the buildings and is currently partially occupied by various commercial uses which will shortly relocate away from the site.

The site is located in a business precinct within the northern part of Botany that contains a variety of land uses including a golf course, open space and various buildings including industrial to business and commercial with car parking and landscaped setbacks. The land further south of the site includes low and medium density residential uses while the land to the north includes SP2 Infrastructure zoned land used for transport purposes. The precinct around the site comprises predominantly two (2) to three (3) storey commercial and industrial buildings with ground level car parking.

The site is located in the E3 – Productivity Support zone (formerly the B7 – Business Park zone) pursuant to Clause 2.2 of the *Bayside Local Environmental Plan 2021* ('LEP 2021'). The use of the premises as an educational establishment with ancillary purposes is permissible with Council consent within the E3 Productivity Support zone.

There were no concurrence requirements from agencies for the proposal and the application is not integrated development pursuant to Section 4.46 of the *Environmental Planning and Assessment Act 1979* ('EP&A Act'). However, a referral was sent to the APA Group and the NSW Police who both raised no objections to the proposal. The NSW Police also provided additional information in respect to the context of the site and recommended conditions of consent which are proposed to be imposed on the use.

The application was placed on public exhibition from 11 January 2023 to 31 January 2023. Since that time, there were no (nil) submissions received by Council.

The application is referred to the Sydney South Planning Panel ('the Panel') as the development is '*regionally significant development*', pursuant to Section 2.19(1) and Clause (5)(b) of Schedule 6 of *State Environmental Planning Policy (Planning Systems) 2021* as the proposal is development for the crown with a CIV over \$5 million.

A briefing was held with the Panel on 13 April 2023 where key issues were discussed, including zoning and permissibility of the proposed use, number of students and staff and the number of car parking spaces on the site. The potential reuse of the site and the intensity of the proposed use and potential for amenity impacts were also raised.

The key issues associated with the proposal included:

1. *Intensity of use* - The proposed educational establishment is not considered to exceed the capacity of the site and will include adequate car parking, access, lighting and operational management. The proposal is acceptable in respect to the intensity of the use subject to the conditions of development consent.
2. *Late night hours operation* - The proposal will include access to and from the site during late night hours for the purposes of research in the Tech Lab. A condition has been imposed in respect to the hours of operation for both daylight and late night hours with limited numbers of staff and students within each.
3. *Traffic and Car Parking* – The proposal utilises the existing double driveways for entry and exit along with the existing provision of car parking on the site. The proposal involves the reduction of parking spaces from 587 to 573 spaces and allocates the spaces to the specific stages on the site. The application was referred to Council's Development Engineer who raises no objections to the proposal in respect to traffic, access and parking subject to the imposition of conditions of development consent.
4. *Noise and amenity* - The applicant has submitted an Acoustic Report and Operational Plan of Management with the application providing details of management of the proposed use. The proposal will be required to adhere to the requirements set out in each report by way of a condition being imposed.

Other issues which have been satisfactorily addressed include the Waste Management Plan, landscape information relating to tree protection and additional plantings and the proposed stormwater management provisions for the site.

Following a detailed assessment of the proposal against the relevant controls, pursuant to Section 4.16(1)(b) of the *EP&A Act*, the development application is recommended for approval subject to the conditions contained in **Attachment A** of this report.

## 1. THE SITE AND LOCALITY

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### 1.1 The Site

The site comprises land at 28-40 Lord Street, Botany, being legally described as Lot 1 (No.40) and Lot 2 (No.28) in DP 1001894. The site is located on the northeastern side of Lord Street and is irregular in shape with the primary frontages facing Lord Street being approximately 126.4m to the south and 12.5m to the eastern end of Lord Street. The southwestern side boundary, to No. 8 Lord Street, is 205.5m. The northern boundary to the Botany Goods Railway Line is approximately 478m.

The two lots are used jointly by UTS and contain direct vehicular access from the eastern end of Lord Street. The subject site has an irregular middle boundary between the two allotments. The site is located within the B7 Business Park zone and is level across the lot.



**Figure 1 - Locality Map**

The site has a total area of 47,634m<sup>2</sup> (or 4.763 ha) with each lot having areas of 8,644m<sup>2</sup> (Lot 1) and 38,990m<sup>2</sup> (Lot 2).



**Figure 2 – Aerial photograph of the subject site showing the building layout where the proposed use will be located.**

## 1.2 The Locality

The subject site is located at the northern end of the suburb of Botany immediately south of the Botany Goods Railway Line, the Mill Stream and further north the Southern Cross Drive. The site adjoins the Mill Stream to the northwest, Botany Goods Railway Line to the northeast and then Eastlakes Golf Course further to the east. To the west adjoining the site is an industrial property at No. 8 Lord Street. This industrial property contains 5 separate large industrial buildings surrounded by car parking and landscaped areas. This property also adjoins the Mill Stream to the north.

To the south of the site, on the opposite side of Lord Street is Boralee Park and Botany Aquatic Centre to the southeast. These properties have frontage to and can be accessed from Lord Street. Opposite to the southwest area more industrial buildings fronting Lord Street. These comprise two and three storey detached industrial buildings with car parking and landscaping at the front of each property. Adjoining these properties to the south (behind) are low and medium density residential developments along Daphne Street. The Botany town centre is located approximately 600m away to the southwest of the site along Botany Road.

The existing buildings B and C and part building D (D2) on the subject site have already been approved for educational purposes for the University of Technology Sydney (UTS) by Council (DA-2019/276). Please refer to the site history (Section 2.3) later in this report.

The subject site is generally surrounded by a range of uses including industrial, commercial, open space, residential and airport and airport related uses. The subject site has access to public buses along Botany Road at the western end of Lord Street and is located 1.6km away from the Railway Station at the Domestic Airport at Kingsford Smith Airport.







**Figure 4 – View of buildings A and B from Lord Street at the front of the Site**

- Generally, the occupation of all three buildings on the premises by UTS will maintain the same operating hours (7.30 am to 9.30 pm Monday to Friday) as previously approved on the site. However, additional hours are sought with this application due to the specific nature of the research-based activities requiring access to monitor experiments conducted during late night hours seven days a week. The additional operating hours are requested by 25% of staff between 6.00 am and 10.00 pm and by 10% of staff 24 hours a day.
- Section 5.12 of the SEE submitted with the application states that the proposal includes the surrendering of four previous approvals on the subject site. The proposal seeks to apply to the entire site and supersede the four previous approvals to provide one consent for all operations on the site. The previous approvals (being stage 0 in this application) include DA-2016/100, DA-2017/1083, DA-2019/279 and DA-2021/230 which are shown bolded and include more details in the Site History section later in this report.
- The existing café on the site adjacent to the car park is not included in the current application. In this regard, the café will continue operating on the site as previously approved including its allocation of two (2) on site car parking spaces.
- This application includes plans prepared by H2O Architects Pty Ltd dated 18/11/22 which outline the details of the proposed minor works for each of the three stages for the site and the general timeframes over which the work will be conducted.

**Table 1: Development Data**

Control	Proposal
Site area	47,634m <sup>2</sup>
GFA	Block A – 7,300m <sup>2</sup> Block B/C – 11,500m <sup>2</sup> Block D – 8,265m <sup>2</sup> Block E – 5,580m <sup>2</sup>  Total - 32,645m <sup>2</sup>
FSR (1:1)	No change to the existing buildings – the proposed works are internal and use the existing floor space – existing FSR of 0.685:1 (32,645m <sup>2</sup> ) shall remain
Clause 4.6 Requests	No – the proposal does not vary any LEP controls
Max Height (25m)	No change to the existing buildings
Landscaped area	Total of 4,685m <sup>2</sup> for the site
Car Parking spaces	587 (existing) spaces reduced to 573 spaces
Setbacks	No change to the existing buildings
Number of students	1,872 students, maximum at any one time. These students are all postgraduate and this number includes the number of staff (as below). This is because they all involve researched-based study and are recorded as such.
Number of Staff	Total support staff at the Tech Lab is fewer than 5. There is no fixed ratio of staff to students per se, as it changes constantly with a research-based Tech Lab.
Internal Works	Internal fit-out and fire upgrade works as detailed on the plans submitted with the application.
External Works	Lighting of open space and car park areas at night and way finding signage. Possible landscape works to comply with conditions only.
Hours of operation	7.30 am to 9.30 pm Monday to Friday; plus 6.00 am to 10.00 pm seven (7) days a week for a maximum of 25% of students and staff; plus 24 hour operation seven (7) days a week for a maximum of 10% of students and staff.
Signage	No signage is proposed with the DA aside from minor internal directional (way finding) signage. Future signage will be the subject of a separate application. Existing signage for current tenants will be removed prior to occupation of the site by UTS.



**Table 2: Development Stages**

<b>Proposed Stage</b>	<b>Details of each Stage</b>
Stage 0	Existing buildings B and C and part building D (D2) and associated car parking (150), 380-570 persons and loading on the subject site have already been approved – no change – 150 parking spaces cumulative total. Plus café, 2 spaces
Stage 1 (from April 2023)	Remainder of Block D (D1) fit-out and new furniture 140 car parking spaces and 583-875 persons for UTS. Minor demolition works on level 0 for warehouse area for research and new partitions at the southeast end of the building. Minor internal branding of UTS in lobby areas. Fire upgrade to comply with compartmentalisation - 331 parking spaces cumulative total.
Stage 2 (from 2025)	Adds Block A1 and A2 with associated car parking (150) with minimal internal fit-out works and 780-1,170 persons. New furniture within the existing fit-out. Minor internal branding of UTS in lobby areas. Fire upgrade to comply with essential fire services with fire hydrants - 471 parking spaces cumulative total.
Stage 3 (from 2034)	Adds Block E and associated car parking (100), loading areas and 895-1,343 persons to the site. Minimal internal fit-out works including remove existing and new floor finishes with new partitions and fitout with amenities (male, female and unisex). New furniture within the existing fit-out. Minor internal branding of UTS in lobby areas. Fire upgrade to comply with essential fire services with fire hydrants - 573 parking spaces cumulative total.

## 2.2 Background

A pre-lodgement meeting (PDA-2022/50) was held prior to the lodgement of the applicant on 1 November 2022 where various issues were discussed. A summary of the key issues and how they have been addressed by the proposal is outlined below:

- Planning approach and strategy
- Review of conditions
- Traffic and Parking
- Noise
- Flooding
- Site Area

The development application was lodged on 20 December 2022. A chronology of the development application since lodgement is outlined below including the Panel's involvement (briefings, deferrals etc) with the application:

**Table 3: Chronology of the DA**

<b>Date</b>	<b>Event</b>
20 December 2022	DA lodged
11 January 2023	Exhibition of the application
18 January 2023	DA referred to external agencies
18 January 2023	Request for Information from Council to applicant
1 February 2023	Site Inspection arranged with applicant and Council
7 March 2023	Discussions with Regional Panel chair
8 March 2023	The application was considered by the Bayside Traffic Development Advisory Committee
13 April 2023	Additional information requested from applicant regarding landscaping matters
13 April 2023	Panel briefing held
8 May 2023	Additional information provided by the applicant - GFA
12 May 2023	Additional information provided by the applicant – landscaping, outdoor areas, and public domain
12 May 2023	Additional information requested from the applicant – traffic, parking, and access
25 May 2023	Additional information provided by the applicant – traffic, car parking, access, revised stages of development, confirmed final numbers of students and staff and flood plain management.
5 June 2023	Final additional information provided by the application relating to traffic and parking and flood refuge details.
9 June 2023	Conditions finalised and sent to applicant for agreement by the Crown
9 June 2023	UTS responded in agreement for minor changes to the final version of conditions of consent
9 June 2023	Assessment Report and revised Consent Conditions finalised by Council and forwarded to the Regional Panel for consideration
13 June 2023	Date of Regional Panel Meeting

## 2.3 Site History

The site has a complex and long history of approvals, with numerous Development Applications for the master plan of the business park, the construction of each building and the sites car parking and the individual uses for different parts of each building on the site.

In summary, the relevant and recent approvals for areas subject to this proposal are:

- DA-2015/213 - for internal demolition and alterations to existing office areas on ground and first floor levels of Buildings B and C at 2/28 Lord Street, Botany, approved on 11 February 2016.
- **DA-2016/100** - for the internal fit-out and change of use of Unit 2 ground floor and first floor from business to educational establishment for the University of Technology Sydney for research and development was approved by the Sydney Central Planning Panel on 17 March 2017.
- **DA-2017/1083** - for fit-out and change of use to an Education Establishment on Level two (2) Suite 2 in Building B & C was approved by Council on 30 October 2017.
- DA-2017/11203 - Business Identification Signage Construction of an illuminated building identification signs at the entrance of the UTS tenancy and two freestanding totem signs at the Lord Street frontage – Approved 11 December 2017.
- **DA-2019/276** - Change of use from business to educational establishment for research and development for University of Technology Sydney; alterations to buildings B and C; use of existing parking and installation of ancillary rooftop air handling plant and equipment – Approved on 17 January 2020.
- **DA-2021/230** - Change of use to part of Block D as an educational establishment for the UTS Faculty of Engineering and Information Technology including alterations and internal fit out – Approved on 27 October 2021.
- PDA-2022/50 - Change of use of the whole site to an Educational Establishment – Letter issued on 01 November 2022.

For the sake of brevity, the complete and exhaustive list of previous approvals has not been included in this section. Parts of the site are still occupied by applicants of some of the previous approvals. (E.g., Kanomi, the Big Picture, Schindler's Lifts, etc.) However, tenants are slowly relocating to other properties in readiness of the current application for UTS.

### **3. STATUTORY CONSIDERATIONS**

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When determining a development application, the consent authority must take into consideration the matters outlined in Section 4.15(1) of the *Environmental Planning and Assessment Act 1979* ('EP&A Act'). These matters as are of relevance to the development application include the following:

- (a) *the provisions of any environmental planning instrument, proposed instrument, development control plan, planning agreement and the regulations*
  - (i) *any environmental planning instrument, and*
  - (ii) *any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Planning Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and*
  - (iii) *any development control plan, and*
  - (iiia) *any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4, and*
  - (iv) *the regulations (to the extent that they prescribe matters for the purposes of this paragraph),*  
*that apply to the land to which the development application relates,*

- (b) *the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,*
- (c) *the suitability of the site for the development,*
- (d) *any submissions made in accordance with this Act or the regulations,*
- (e) *the public interest.*

These matters are further considered below.

It is noted that the proposal is considered to be (which are considered further in this report):

- Crown DA (s4.33) - written agreement from the Crown to the proposed conditions of consent must be provided.

Note the proposal is not considered to include integrated or designated development for the purposes of the Act. In this regard, the application did not require any concurrence or referrals to public authorities (s4.13) apart from the APA Group and NSW Police.

### **3.1 Environmental Planning Instruments, proposed instrument, development control plan, planning agreement and the Regulations.**

The relevant environmental planning instruments, proposed instruments, development control plans, planning agreements and the matters for consideration under the Regulation are considered below.

#### **(a) Section 4.15(1)(a)(i) - Provisions of Environmental Planning Instruments**

The following Environmental Planning Instruments are relevant to this application:

- *State Environmental Planning Policy (Biodiversity and Conservation) 2021*
- *State Environmental Planning Policy (Planning Systems) 2021*
- *State Environmental Planning Policy (Resilience and Hazards) 2021*
- *State Environmental Planning Policy (Transport and Infrastructure) 2021*
- *Bayside Local Environmental Plan 2021*

A summary of the key matters for consideration arising from these State Environmental Planning Policies are outlined in **Table 3** and considered in more detail below.

**Table 4: Summary of Applicable Environmental Planning Instruments**

<b>EPI</b>	<b>Matters for Consideration</b>	<b>Comply (Y/N)</b>
State Environmental Planning Policy (Biodiversity & Conservation) 2021	Chapter 2: Vegetation in non-rural areas  The proposal does not involve the removal of any existing mature trees on the subject site. (I.e., there is no clearing of vegetation in non-rural rural areas). Conditions may be imposed requiring the provision of additional trees / shrubs on the site.	Yes



State Environmental Planning Policy (Planning Systems) 2021	<p>Chapter 2: State and Regional Development</p> <ul style="list-style-type: none"> <li>Section 2.19(1) declares the proposal regionally significant development pursuant to Clause 4 of Schedule 6 as it comprises development carried out by or on behalf of the Crown (within the meaning of Division 4.6 of the Act) that has a capital investment value of more than \$5 million.</li> <li>The crown development has been considered and is acceptable on the site in this regard.</li> </ul>	Yes
State Environmental Planning Policy (Industry and Employment) 2021	<ul style="list-style-type: none"> <li>Chapter 3 – Advertising and Signage</li> </ul>	N/A
SEPP (Resilience & Hazards)	<p>Chapter 4: Remediation of Land</p> <ul style="list-style-type: none"> <li>Section 4.6 - Contamination and remediation has been considered in the Contamination Report and the proposal is satisfactory subject to conditions.</li> </ul>	Yes
State Environmental Planning Policy (Transport and Infrastructure) 2021	<p>Chapter 2: Infrastructure</p> <ul style="list-style-type: none"> <li>Part 2.3 – Development Controls Division 12A – Pipeline and pipeline corridors</li> <li>Section 2.122 - Traffic-generating development – applies to new premises or enlargement or extension of existing premises – thus does not apply.</li> </ul> <p>Chapter 3: Educational Establishments</p> <ul style="list-style-type: none"> <li>Section 3.5 - Universities - Specific Development Controls</li> </ul>	<p>Yes</p> <p>N/A</p> <p>Yes</p>
Proposed Instruments	No compliance issues identified.	Yes
Bayside LEP 2021	<ul style="list-style-type: none"> <li>Clause 2.3 – Permissibility and zone objectives</li> <li>Clause 4.3 – Height of Buildings</li> <li>Clause 4.4 – Floor Space Ratio</li> <li>Clause 5.21 – Flood Planning</li> <li>Clause 6.1 – Acid Sulfate Soils</li> <li>Clause 6.4 – Terrestrial Biodiversity</li> <li>Clause 6.5 – Riparian Land, Wetlands and Waterways</li> </ul>	Yes
Botany Bay DCP 2013	<ul style="list-style-type: none"> <li>Part 3A – Parking and Access</li> <li>Part 3C – Access and Mobility</li> <li>Part 3L – Landscaping and Tree Management</li> <li>Part 3M – Natural Resources</li> <li>Part 3N – Waste Minimisation and Management</li> <li>Part 6: Employment zones <ul style="list-style-type: none"> <li>6.2.6 - Lord Street Business Park Precinct</li> <li>6.3.2 – Building and Site Layout</li> <li>6.3.18 – Non-Industrial &amp; Business Park Developments</li> <li>6.3.20 – Creative Industries</li> </ul> </li> <li>Part 8 – Botany Character Precinct</li> </ul>	Yes

Consideration of the relevant SEPPs is outlined below

### ***State Environmental Planning Policy (Biodiversity and Conservation) 2021***

The proposal has been considered in respect to the requirements of the SEPP (Biodiversity and Conservation). The proposal will not remove any existing mature trees from the site and will merely involve the occupation and fit-out of the existing buildings. Accordingly, the proposal complies with the requirements of the SEPP and is acceptable in this regard.

### ***State Environmental Planning Policy (Industry and Employment) 2021***

Page 13 of the SEE submitted with the application confirms the proposal does not involve any signage on the site. As such, Chapter 3 Advertising and Signage of the SEPP does not apply to the proposed development.

### ***State Environmental Planning Policy (Planning Systems) 2021 ('Planning Systems SEPP')***

#### Chapter 2: State and Regional Development

The proposal is *regionally significant development* pursuant to Section 2.19(1) as it satisfies the criteria in Clause 4 of Schedule 6 of the Planning Systems SEPP as the proposal is development for development carried out by or on behalf of the Crown (within the meaning of Division 4.6 of the Act) that has a capital investment value of more than \$5 million. Accordingly, the Sydney City East Planning Panel is the consent authority for the application. The proposal is consistent with this Policy.

### ***State Environmental Planning Policy (Resilience and Hazards) 2021***

#### Chapter 4: Remediation of Land

The provisions of Chapter 4 of *State Environmental Planning Policy (Resilience and Hazards) 2021* ('the Resilience and Hazards SEPP') have been considered in the assessment of the development application. Section 4.6 of Resilience and Hazards SEPP requires consent authorities to consider whether the land is contaminated, and if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out. In order to consider this, a Phase 1 Environmental Site Assessment prepared and an Environmental Summary of Sir Joseph Banks Corporate Park both prepared by URS Australia Pty Ltd were prepared for the subject site.

No buildings are expected to be demolished or constructed as part of this development, the existing ground surface is suspected to remain intact except for carparking areas of site dedicated to tree planting and landscaping and possible trenching works for the installation of new services (if required).

The reports submitted with the application showed there were no sites with contaminated land notices within 500m of the site. The Phase 1 report confirmed that the site was previously remediated for the existing buildings and there were no monitoring requirements placed on the new site owners as a result of the remediation works. URS stated that the Sir Joseph Banks Corporate Park site is suitable for ongoing light industrial/commercial land use.

The SEE prepared by Urbanac states that the site does not require a preliminary investigation report to be prepared because the land is not within an investigation area, and since the site was remediated as part of the original Sir Joseph Banks Corporate Park development approval there is complete knowledge of the development carried out on the land, and development for

a purpose referred to in Table 1 to the contaminated land planning guidelines has not been carried out.

Given the nature of the proposed work, which includes minimal disturbance of the existing ground surface (existing hardstand over the majority of the site) and excavation of material is likely to be minimal for landscaping and service trenching purposes only, Council's Environmental Scientist is satisfied with the contamination investigation findings. No further contamination testing is required in connection with the proposed development.

#### *Acid Sulfate Soils*

The SEE report notes that the northern tip of the subject site is affected by Class 1 Acid Sulfate Soils (ASS). Any works in this area would require submission of an acid sulfate soils management plan prepared for the proposed works in accordance with the Acid Sulfate Soils Manual. The SEE report states that no works are proposed in this area.

The majority of the subject site is situated on Class 4 ASS land. Works more than 2 metres below the natural ground surface and by which the water-table is likely to be lowered more than 2 metres below the natural ground surface require the submission of an ASS Management Plan in accordance with the ASS Manual. The SEE report states that no works are proposed that meet this criterion. Minor excavations are proposed during landscaping works and when trenching for new services (if required), but these works will not be located at a depth at which an ASS Management Plan would be required.

The proposal does not involve any bulk excavation and is limited to occupation of the existing buildings with minimal landscaping or car parking works which would not exceed soil depths near 2m or more. No works are proposed in the north-west corner of the site and shall excavations are unlikely disturb acid sulfate soils. Accordingly, the proposal is not likely to trigger any Acid Sulfate Soil management conditions which are therefore not applicable in this instance.

Based on the above, the proposal is acceptable subject to the imposition of conditions relating to asbestos, any contamination found during building works, any excavated materials and importation of fill. Should the application be approved, conditions shall be imposed in this regard.

#### ***State Environmental Planning Policy (Transport and Infrastructure) 2021***

Part 2.3 Development Controls, Division 12A, Subdivision 2 relates to development adjacent to pipeline corridors. The proposal is in the vicinity of Moomba to Sydney Ethane pipeline owned by Gorodock Pty Ltd which is located adjacent to the subject site within the railway corridor (along the northern boundary).

Clause 2.77 states that before determining an application Council must be satisfied that the potential safety risks and integrity of the pipeline have been identified and taken into account, along with any response from the pipeline operator.

The application was referred to the APA Group who on 17 January 2023 advised that they raise no objection to the proposal to change the use from business to educational establishment, given it will not result in a change in the pipeline location class and reduce risks to "as low as reasonably practicable".

#### *Chapter 3 relates to Educational Establishments* *Section 3.5 - Universities - Specific Development Controls*

The proposal includes the use of the entire site for the purposes of a university involved in research (tech lab). Clause 3.46 applies to universities and allows development with the consent of Council within the prescribed zone. The site is zoned E3 Productivity Support (formerly B7 Business Park) and benefits from this provision. Accordingly, the proposal is permissible within the prescribed zone on the subject site.

The proposal does not benefit from clause 3.47 which applies to universities and identifies development permitted without the consent of Council. The SEPP continues to list exempt development (clause 3.49) and complying development (clause 3.50).

Based on the above, the proposal is consistent with the requirements of State Environmental Planning Policy (Transport and Infrastructure) 2021 and is acceptable in this regard.

### ***Bayside Local Environmental Plan 2021***

The relevant local environmental plan applying to the site is the *Bayside Local Environmental Plan 2021* ('the LEP'). The relevant aims of the Bayside LEP include the following:

- (aa) to protect and promote the use and development of land for arts and cultural activity, including music and other performance arts,*
- (b) to provide high quality open space areas and recreational facilities,*
- (c) to reduce community risk and improve resilience to, and from, urban and natural hazards,*
- (d) to encourage sustainable economic growth and development in Bayside,*
- (g) to encourage walking, cycling and use of public transport through appropriate intensification of development densities surrounding transport nodes,*
- (h) to encourage development that demonstrates efficient and sustainable use of energy and resources in accordance with ecologically sustainable development principles,*
- (i) to enhance and protect the functions and roles of the international trade gateways of Sydney Airport and Port Botany,*
- (j) to increase urban tree canopy cover and enable the protection and enhancement of green corridor connections,*
- (k) to promote and enhance the amenity of Botany Bay's foreshores and Bayside's waterways.*

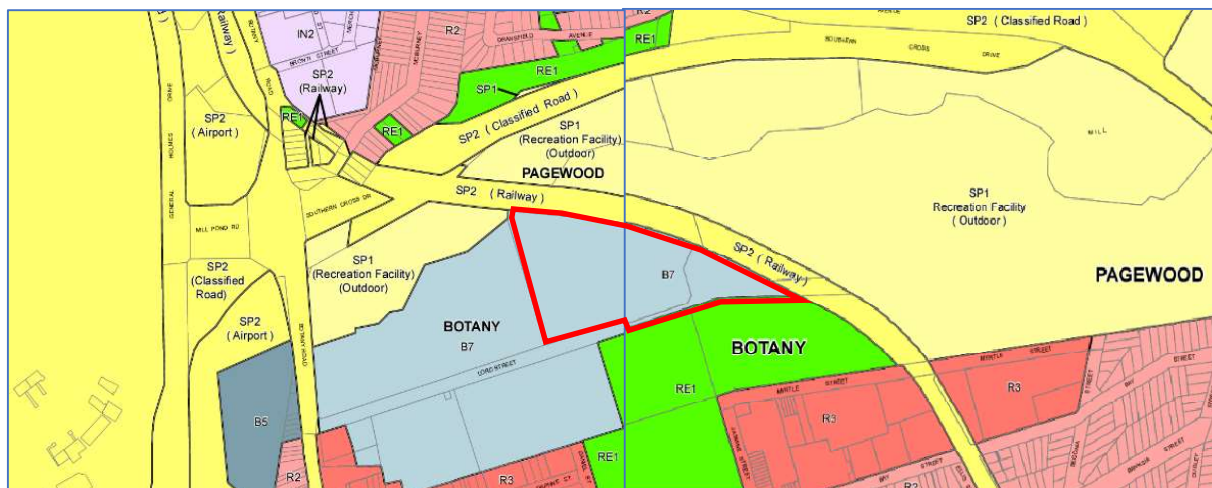
The proposal is consistent with these aims as the proposal will involve retention and upgrade of the existing buildings, car parking and landscaped areas. It will also enhance and increase the urban tree canopy cover and demonstrate efficient and sustainable use of energy and resources. The proposal will also encourage walking, cycling and use of public transport.

### ***Zoning and Permissibility (Part 2)***

The site is located within the E3 Productivity Support (formerly B7 Business Park) Zone pursuant to Clause 2.2 of the Bayside LEP 2021.

According to the definitions in Clause 4 (contained in the Dictionary), the proposal satisfies the definition of an *educational establishment* which is a permissible use with consent in the Land Use Table in Clause 2.3. The use is permissible in both the E3 Productivity Support and the former B7 Business Park zone which applied to the site.





**Figure 5 – Extract of the zone map of the Site from the Bayside LEP 2021**

The objectives of the E3 zone (and former B7 zone) include the following (pursuant to the Land Use Table in Clause 2.3):

- *To provide a range of facilities and services, light industries, warehouses and offices.*
- *To provide for land uses that are compatible with, but do not compete with, land uses in surrounding local and commercial centres.*
- *To maintain the economic viability of local and commercial centres by limiting certain retail and commercial activity.*
- *To provide for land uses that meet the needs of the community, businesses and industries but that are not suited to locations in other employment zones.*
- *To provide opportunities for new and emerging light industries.*
- *To enable other land uses that provide facilities and services to meet the day to day needs of workers, to sell goods of a large size, weight or quantity or to sell goods manufactured on-site.*
- *To promote redevelopment that is likely to contribute to the locality, including by improving the visual character of the locality, improving access and parking, reducing land use conflicts and increasing amenity for nearby residential development.*
- *To encourage uses in arts, technology, production and design sectors.*
- *To promote businesses along main roads and to encourage a mix of compatible uses.*

The proposal is considered to be consistent with these zone objectives for the following reasons:

- The proposal will provide a range of facilities and associated offices.
- The use is compatible with, and does not compete with, the land uses on surrounding lands and commercial centres.
- The proposal will maintain the economic viability of local and commercial centres.
- The proposal will meet the needs of the community.
- The proposal will provide opportunities for new and emerging light industries.
- Will retain the café on the site which services the site and surrounding community.
- The proposal will improve parking in the area particularly on weekends enabling overflow parking from the public pool and park areas.
- The proposal will encourage uses in arts, technology, production and design.
- The proposal will add to the mix of compatible land uses in the precinct.

*General Controls and Development Standards (Part 2, 4, 5 and 6)*

The Bayside LEP 2021 contains controls relating to development standards, miscellaneous provisions and local provisions. The controls relevant to the proposal are considered in **Table 4** below.

**Table 5: Consideration of the LEP Controls**

Control	Requirement	Proposal	Comply
Permissibility and zone objectives (Clause 2.3)	Educational establishment	An educational establishment is permissible within the E3 Productivity Support zone (and former B7 Business Park) zone. The use is consistent with zone objectives	Yes
Height of buildings (CI 4.3(2))	25 metres	No height change proposed to the existing buildings	Yes
FSR (CI 4.4(2))	1:1 (47,634m <sup>2</sup> )	No FSR change proposed to the existing buildings	Yes
Flood planning (CI 5.21)	The property is flood affected (1%AEP)	No proposed building works, excavation or change in levels	Yes
Acid sulphate soils (CI 6.1)	Mill Stream is Class 1 Remainder is Class 4	The proposal does not involve any works in proximity to the Mill Stream or more than 2m below the natural ground surface (i.e., is not likely to lower the water-table 2m below the natural ground surface).	Yes
Earthworks (CI 6.2)	Earthworks are not have a detrimental impact on the environmental functions, processes and uses on surrounding land	The proposal does not involve fill or excavations but the occupation of the existing buildings on the land. As such, the proposal complies with the requirements of this clause.	Yes
Terrestrial Biodiversity (CI 6.4)	The tip of the northern corner of the site is affected by the Mill Stream	The proposal does not involve any building works in proximity to the Mill Stream and is not likely to affect the existing terrestrial biodiversity of the site. The proposal will not impact upon and will conserve the native flora and fauna.	Yes
Riparian Land, Wetlands and Waterways (CI 6.5)	The tip of the northern corner of the site is affected by the Mill Stream	The proposal does not involve any building works in proximity to the Mill Stream and is not likely to affect the existing	Yes

		waterways, riparian lands, and ecological processes on the site.	
Development in areas subject to aircraft noise (CI 6.8)	The site is located within ANEF 25-30	Acoustic report was submitted with the application. (Refer to the paragraph below)	Yes

### **Clause 6.8 - Aircraft Noise**

The site is affected by the ANEF 25-30 and is adjacent to the flight path being affected by the Obstacle Limitation Surface (OLS) at RL 22.0 AHD. The proposal does not involve any new buildings or building works on the site and as such, is not likely to affect the OLS.

An acoustic report prepared by Resonate dated Tuesday 22 November 2022 for the proposed development on the site. The report examines the effect of train noise, road noise (traffic and car park), mechanical plant noise and aircraft noise on the use and operations of the site.

The report states that the proposal is able to meet the indoor design criteria with acceptable internal vibration levels for the proposed use. The use of sensitive equipment within the site by the university may require further review at the detailed design phase of the development.

### **Conclusion**

Based on the above, the proposal is considered to be generally consistent with the objectives of and controls in the Bayside LEP 2021.

### **(b) Section 4.15 (1)(a)(ii) - Provisions of any Proposed Instruments**

There are no proposed instruments which have been the subject of public consultation under the EP&A Act, which are relevant to the proposal.

### **(c) Section 4.15(1)(a)(iii) - Provisions of any Development Control Plan**

The following Development Control Plan is relevant to this application:

- *Botany Bay Development Control Plan 2013* ('the DCP')

Notwithstanding the above, the Bayside Development Control Plan 2022 was draft at the time of lodgement of the application and has since come into force on 10 April 2023.

- Part 3A – Parking and Access

Part 3A requires all vehicle parking to be provided on site. The application was accompanied by a Traffic and Parking Assessment Report prepared by Positive Traffic titled 'UTS Tech Lab for Change of Use / Fit out, 28-40 Lord Street, Botany comprising Lots 1 and 2 of DP 1001894', dated November 2022. The report contains information on previous approvals for the use of the site by UTS, anticipated occupancy of the site and number of parking spaces throughout the site. It was followed up by another report called the Campus Space Utilisation Study which examined the occupancy rates and likely split with staff and students occupying the site.

The campus provides a bus service between the UTS City Campus and the educational facility via Green Square, Redfern and railway stations for use by both staff and students of the research facility. This shuttle service is required as a condition of consent as part of a previous UTS approval on the site. The report provides information on the shuttle bus.

As part of the assessment a referral was made to Council's Development Engineer. Council's Development Engineer has reviewed both the report and information regarding the proposal and has found them to be satisfactory and provided support to the information submitted. The comments provided by the engineer are as follows:

- Council agrees with travel characteristic with staff 37% staff and 14% researchers will drive to the campus. This was reflected in each subsequent DA previously approved on the site. This results in a surplus of 121 car spaces.
- Council's Development Engineer looked at the previous and submitted traffic reports and found the proposal is likely to result in a rate of 63% of staff and students that will be in attendance which results in a peak number of 1,343 people at any one time. This is reasonable and given the split with staff and students, can be satisfactorily accommodated on the site requiring 415 car parking spaces.
- Each previous DA was examined (that is being superseded by the current DA) and found that the current information is accurate and reasonable.

Based on the findings, the proposal for 1,541 people at a rate of 1 space per 2.7 persons would provide a demand for 571 car parking spaces. The proposal will involve a reduction from 587 to 573 on site car parking spaces in connection with the use.

Based on the above, the information submitted justifies the proposal and the maximum occupancy of the site. In this regard, the proposal is acceptable in respect to the provision of car parking on the site.

Utilising the existing access arrangements and car parking area between the existing buildings on the site, the access and parking can meet the demands of the proposed use which is considered acceptable in this regard. Accordingly, the proposal complies with the requirements of Council's DCP and is acceptable in respect to access and parking.

- *Part 3C – Access and Mobility*

The existing buildings on the site already provide access for all persons through the principal entrances with appropriate sanitary facilities and amenities in accordance with the Building Code of Australia (BCA) and the relevant Australian Standards. Part of the proposed fit-out includes additional sanitary facilities and services within the existing buildings and retention of the existing services.

A BCA report prepared by Professional Certification Group Pty Ltd dated 10 November 2022 was submitted with the application and demonstrates how the works can comply with the building classification, ramp access and egress, mobility and fire safety requirements of the BCA. Accordingly, the proposal complies with the requirements of this section and is acceptable in respect to access and mobility.

- *Part 3L – Landscaping and Tree Management*

The subject site contains substantial trees and plantings within the curtilage around the existing buildings and within the car parking area. The proposal will not remove any of the existing trees or landscape planting. However, the proposal can be improved in respect to landscaping and the application was referred to Council's Landscape Architect. The



proposal can include additional tree planting, replenished soil conditions for plants and trees, a maintenance schedule, separation from hard paved areas and include trees of a suitable species.

Based on the above and subject to the conditions being imposed, the proposal complies with the requirements of Council's DCP 2013. Accordingly, conditions have been imposed in the draft consent and the proposal is acceptable in this regard.

- *Part 3M – Natural Resources*

Part 3M identifies that part of the site in the north-western corner is home to Eastern Suburbs Banksia Scrub. This area is not in the vicinity of the proposed works. Furthermore, the physical works are limited to internal works only. This application is considered to be consistent with the objectives and relevant requirements of Part 3M.

- *Part 3N – Waste Minimisation and Management*

A waste management plan prepared by the applicant has been provided to Council, which addresses the works involved including removal of metal studs, plasterboard, carpets, insulation, ceiling grid and acoustic ceiling tiles.

- *Part 6: Employment zones*

- 6.2.6 - *Lord Street Business Park Precinct*

The subject site is located within this precinct and the controls in the DCP apply to the site. In this regard, the proposed development is consistent with the future desired character objectives of this section of the DCP.

The proposal is consistent with the controls in this section of the DCP in that the proposal will utilise the existing buildings which have a setback from the Mill Stream, will use high quality internal fittings and finishes, retain the existing landscaped streetscape and will not impact on the surrounding residential precincts. The use of the existing buildings has included measures to retain suitable interior noise levels and there will be no increase in the height of the existing buildings. Accordingly, the proposal complies with the requirements of section 6.2.6 of Council's DCP 2013.

- *6.3.2 – Building and Site Layout*

The proposal will not significantly alter the existing buildings or the layout of the site (e.g., setbacks, height, landscaping, etc). In this regard, the proposal shall retain the existing setbacks and car parking areas between the buildings with no external changes to the buildings on the site. The buildings will contain amenities and staff room areas with furnishings for the future occupants and waste handling and removal areas. Building entrances will remain legible from the street frontage and the layout shall avoid pedestrian and vehicular conflict with vehicles manoeuvring on the site.

- *6.3.18 – Non-Industrial and Business Park Developments*

The proposal is consistent with the requirements of this section of the DCP. In this regard, the proposal will be compatible with the business and industrial environment and will not restrict the surrounding uses. The proposed use will operate after sunset and includes appropriate lighting of public areas including the car park to provide a safe environment for the users after hours.

- *6.3.20 – Creative Industries*

The research and technology-based laboratory uses conducted by UTS are considered a creative industries that will contribute to the future industrial use of land in the area. The proposal is consistent with the objectives and requirements of this section of the DCP. The proposal will include the use of some awnings and street furniture to protect pedestrians and improve the use of the site by staff and students. The proposed extended hours of operation will not result in any significant adverse amenity impacts on the nearby residential properties.

- *Part 8 – Botany Character Precinct*

The subject site is located at the northern end of the Botany Character Precinct. In this regard, the proposal does not conflict with the desired future character of the area or any of the controls within Part 8 of the DCP. The proposal is consistent with the streetscape, setback, landscape and public domain controls in this section. Accordingly, the proposal is compliant and acceptable in respect to the requirements of Part 8 of Council's DCP 2013.

The following contributions plan is relevant pursuant to Section 7.18 of the EP&A Act and has been considered in the recommended conditions (notwithstanding Contributions plans are not DCPs they are required to be considered):

- *S7.11 Development Contributions Plan 2016*

This Contributions Plan has been considered in light of the comments below:

The applicant seeks the change of use to the existing buildings for the purposes of an education establishment with minor internal fit-out and use of the ancillary external hardstand are for car parking. Council does not levy employment-based developments under Section 7.11 within the Botany precinct. In addition, based on Clause 208(4)(g) of Environmental Planning and Assessment Regulation 2021 - Determination of the proposed cost of the development - the costs of fittings and furnishings must not be included in an estimation or determination of the proposed cost.

Accordingly, a levy under the Section 7.11 Development Contributions Plan 2016 is not required to be imposed in a condition and a Section 7.12 contribution levy is not applicable to the DA.

**(d) Section 4.15(1)(a)(iiia) – Planning agreements under Section 7.4 of the EP&A Act**

There have been no planning agreements entered into and there are no draft planning agreements being proposed for the site.

**(e) Section 4.15(1)(a)(iv) - Provisions of Regulations**

Section 61 of the 2021 EP&A Regulation contains matters that must be taken into consideration by a consent authority in determining a development application. However, the proposal does not involve the subdivision of land or the demolition of any buildings (apart from minor internal demolition of partitions). Accordingly, the proposal is acceptable in respect to Section 61 of the EP&A Regulations.

Section 62 (consideration of fire safety) and Section 64 (consent authority may require upgrade of buildings) of the 2021 EP&A Regulation are relevant to the proposal. In this regard,

the proposal will include upgrading the existing buildings in respect to fire safety and provide safe ingress and egress of persons using the buildings in the case of a fire to satisfy the requirements of the Building Code of Australia (BCA). A BCA report was submitted with the application and addresses the fire safety requirements of the proposed use in each of the existing buildings. The report discusses fire safety measures to comply with the BCA requirements. The proposal is acceptable and subject to the proposed conditions, will comply with the requirements of the Regulations.

These provisions of the EP&A Regulations 2021 have been considered and are addressed in the recommended draft conditions (where necessary).

### **3.2 Section 4.15(1)(b) - Likely Impacts of Development**

The likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality must be considered. In this regard, potential impacts related to the proposal have been considered in response to SEPPs, LEP and DCP controls outlined above and the Key Issues section below.

The consideration of impacts on the natural and built environments includes the following:

- Context and setting – The proposal is consistent with the context of the site, in that the proposed use will retain the existing layout and arrangement of buildings on the site. The proposal is appropriate for the site and the use of the buildings will not alter the local or regional context, scenic qualities and streetscape of the subject site. The proposal will not alter the existing character or streetscape of the site. The proposal will not result in any adverse impacts in respect to the amenity of the locality as it will retain the same building scale, mass, form and character consistent with the surrounding development. The proposal is unlikely to result in any significant amenity impacts or potential impacts on the amenity of the adjoining properties.
- Access and traffic – The proposed research facility by UTS will involve the use of the existing double entry and exit driveways and the 573 on site car parking spaces. The applicant has submitted to Council the occupancy report and Traffic and Parking Assessment Report which states the anticipated / forecast parking demands for the proposed use. The application was referred to Council's Development Engineer who raised no objections to the proposal and confirmed the provision of onsite car parking complies with Council's requirements, is acceptable and satisfies the anticipated demand of the proposed use. It is anticipated that staff and students will have a modal split with public transport being an option as well as private vehicle access to the site.

The existing car parking spaces, loading areas, traffic generation and capacity of road network is able to safely accommodate the anticipated volume of staff and students at the facility without any significant adverse amenity impacts or congestion. Conditions will be imposed in relation management of the traffic, access and parking on the subject site.

- Public Domain – The proposal will not result in any impacts on the public domain given there are no changes to the front of the site or within Council's nature strip. There is public open space opposite the site and the site contains numerous pedestrian linkages to the public domain areas around the site.
- Utilities – the existing utilities and services are available for the proposed use on the site. Statutory authorities have not raised any objections or concerns with the development that have not otherwise been addressed through conditions.

- Heritage – the subject site does not contain or adjoin any items of environmental heritage. The site is not located within a Heritage Conservation Area. The proposal is not likely to result in any impacts on heritage value or significance of any heritage items in the surrounding area. This includes the Mill Stream and adjacent water reserve and Booralee Park opposite the site.
- Other land resources – the proposal will not result in any significant impacts on the Mill Stream or water catchment around the site or the biodiversity of land within the north-western corner of the site.
- Water/air/soils impacts – The proposal does not involve any excavation or construction of new building works on the site. As such, it is unlikely to result in any impacts from the soil contamination levels. The applicant was referred to an Environmental Scientist who raised no objections to the proposal subject to conditions.
- Flora and fauna impacts – the proposal will involve the retention of all trees and vegetation on the site within the nature strip along the front of the site within Lord Street. However, conditions may be imposed in relation to the replacement of more suitable trees within the subject site. In this regard, the proposal will have minimum adverse impacts on the existing flora and fauna on the site. The proposal will not adversely affect any threatened species or the biodiversity of species on or within proximity to the subject site.
- Natural environment – The proposal will not result in any significant changes to the existing ground levels or natural contours of the site.
- Noise and vibration – the proposal will not involve any major construction works or new buildings on the site. The proposal will involve an increase in the number of people accessing the site both during the daylight and late-night hours. In this regard, the proposed increase is sustainable and is not likely to result in any significant noise or operational impacts given the conditions imposed limiting the number of people accessing the site during both day and late-night hours.
- Natural hazards – the subject site is affected by flooding, contamination and acid sulfate soils. However, the proposal does not involve any new buildings or excavation for footings and will reuse the existing buildings on the site. In this regard, the proposal is not unreasonable in respect to contamination and acid sulfate soils. The proposal has been assessed in respect to flooding and Council's Development Engineer raises no objections to the flood management report submitted with the application and the existing finished floor levels on the site. In this regard, conditions have been included in the draft notice of determination.

The natural hazards of the site have been adequately addressed by the proposal. Based on the above, no objections are raised to the scheme in respect to the natural hazards on the site.

- Safety, security and crime prevention – the proposal will use CPTED Principles to improve security on the site. The application was referred to the NSW Police who responded on 17/01/2023 recommending conditions be imposed in respect to safety, security and crime prevention. The conditions have been imposed in the draft Notice of Determination.

- Social impact – the proposal will improve the use and occupation of the site with an increase in students and staff, increased health and safety of the community, improve fire safety measures, improved sense of place, improved community facilities, and improved interactions between the proposed development and the occupants of the surrounding community.
- Economic impact – the proposal will have a positive effect on employment generation, existing/future businesses, economic benefits, business investment, research and development benefits and access to the car park afterhours that would assist the community (accessing the pool and open space opposite).
- Site design and internal design –the proposal will retain the existing configuration of buildings and increase their use with improve fire safety and amenities. The proposal will increase the efficient use of the site and mitigate potential impacts.
- Construction – the proposal will not involve the construction of any new buildings but will involve internal building works and fire upgrading of the existing buildings on the site. The proposal shall comply with the requirements of the Building Code of Australia and subject to conditions, is acceptable in this regard.
- Cumulative impacts – the proposal is not likely to result in any adverse cumulative impacts given it is limited with respect to the maximum occupancy and available car parking on the site. The proposal complies with an is consistent with the planning controls applying to the site and not likely to result in any significant adverse impacts in respect to its intensity or operation.

Accordingly, it is considered that the proposal will not result in any significant adverse impacts in the locality as outlined above.

### **3.3 Section 4.15(1)(c) - Suitability of the site**

The proposal will upgrade and retain the existing buildings on the site and enable them to be fit for purpose as an educational establishment. The proposal will facilitate the retention of the existing buildings and prolong their life. The site benefits from existing services including water, power, public transport and has access to open space opposite to the south.

Council's Development Engineer has advised that the site is affected by the 1% AEP Flood level. However, the applicant has submitted a flood risk management plan prepared by Taylor Thomson Whitting (NSW) Pty Ltd (TTW) and dated 20 September 2022 which outlines flood controls applying to the site. Council's Development Engineer has reviewed the plan and advised that no objections are raised subject to the imposition of a condition requiring compliance with the plan. This is based on the floor levels of the existing buildings which appear to be above the probable maximum flood (PMF) level.

The proposal is permissible on the site within the E3 Productivity Support zone. Based on the above, the site is considered suitable for and conducive to the proposed use. The site can accommodate the proposed educational establishment and there are no adjoining uses which are prohibitive in this regard.

### **3.4 Section 4.15(1)(d) - Public Submissions**

Adjoining owners were notified in writing of the application from 11 January 2023 to 31 January 2023. Council did not receive any submissions in respect to the scheme.

### 3.5 Section 4.15(1)(e) - Public interest

The proposed development is in the interest of the public given the educational benefits of the research technology lab and its contribution to the advancement of the engineering and scientific products in different fields. The proposed university use will meet the needs of the community and contribute to its advancement with minimal adverse amenity impacts on the surrounding industrial and residential precincts. The proposed use is permissible within the E3 zone and will provide both economic and social benefits and will allow the adaptable reuse of the existing buildings on the site.

The proposal will facilitate the orderly reuse of the existing development on the site and is consistent with the principles of Ecologically sustainable development. In this regard, the proposal will make a positive contribution to the site and is in the public interest.

## 4. REFERRALS AND SUBMISSIONS

### 4.1 Agency Referrals and Concurrence

The development application has been referred to various agencies for comment and concurrence as required by the EP&A Act and outlined below in Table 5.

There are no outstanding issues arising from these concurrence and referral requirements subject to the imposition of the recommended conditions of consent being imposed.

**Table 6: Concurrence and Referrals to agencies**

Agency	Concurrence/ referral trigger	Comments (Issue, resolution, conditions)	Resolved
<b>Concurrence Requirements (s4.13 of EP&amp;A Act)</b>			
Environment Agency Head (Environment, Energy & Science Group within DPIE)	S7.12(2) - <i>Biodiversity Conservation Act 2016</i>  <i>Chapter 2</i>	The proposal is not likely to significantly affect threatened species and accordingly, the proposal was not required to be referred for concurrence.  Concurrence is not required.	N/A
Rail authority for the rail corridor	Section 2.98(3) - <i>State Environmental Planning Policy (Transport and Infrastructure) 2021</i>	The proposal does not involve the excavation of ground to a depth of at least 2m below ground level (existing) on land within, below or above a rail corridor.  Concurrence is not required.	N/A
<b>Referral/Consultation Agencies</b>			
RFS	S4.14 – EP&A Act Development on bushfire prone land	Referral not required	N/A



Electricity supply authority	Section 2.48 – <i>State Environmental Planning Policy (Transport and Infrastructure) 2021</i> - Development near electrical infrastructure	Referral not required	N/A
Rail authority	Section 2.97 – <i>State Environmental Planning Policy (Transport and Infrastructure) 2021</i> - Development land that is in or adjacent to a rail corridor.	Referral not required	N/A
Transport for NSW	Sections 2.121 and 3.58 – <i>State Environmental Planning Policy (Transport and Infrastructure) 2021</i> - Development that is deemed to be traffic generating development in Schedule 3.	On 23 March 2023 TfNSW responded with a letter stating that the proposal is unlikely to have any significant impact on the classified road network. As such, there are no requirements for the proposed development and no conditions are to be imposed in this regard.	Yes
APA	The application was referred to the APA Group for comments / conditions. The APA raised no objections to the proposal given it will not result in any change in the pipeline location class on the site.	<p>On 17 January 2023 the APA Group responded with a letter stating that they have no objections to the proposal. The letter state restrictions but did not request to impose any conditions of development consent.</p> <p>One of the restrictions outlined in the letter has been included in a condition of development consent. The proposal is acceptable in this regard.</p>	Yes (One condition imposed in this regard.)
NSW Police	<p>The application was referred to the NSW Police for consideration given the extended operating hours and late night activity on the site.</p> <p>Outcome: Satisfactory subject to standard conditions being imposed on any consent granted (refer to Attachment A).</p>	<p>On 17 January 2023 the NSW Police responded in support of the application subject to recommendations and conditions being imposed in any development consent for the site.</p> <p>Conditions to be imposed on any consent issued relate to the use of CCTV, lighting, inductions for staff for after hour use of the premises, fencing, consider security guard use if necessary, the use of boom gates, alarm systems and a contact sign to be placed on the site for reporting.</p> <p>Standard security conditions were also recommended.</p>	Yes (conditions)

Design Review Panel	CI 28(2)(a) – SEPP 65  Advice of the Design Review Panel ('DRP')	The proposed educational establishment will utilise the existing buildings on the site and does not involve any new building works. The advice of the DRP was not required to be considered with this scheme.	N/A
<b>Integrated Development (S 4.46 of the EP&amp;A Act)</b>			
RFS	S100B - <i>Rural Fires Act 1997</i> bush fire safety of subdivision of land that could lawfully be used for residential or rural residential purposes or development of land for special fire protection purposes	The proposal does not involve bush fire safety or subdivision of land.	N/A
Natural Resources Access Regulator	S89-91 – <i>Water Management Act 2000</i> water use approval, water management work approval or activity approval under Part 3 of Chapter 3	The proposal does not involve any excavation or require any approval under the Water Management Act 2000.	N/A

## 4.2 Council Officer Referrals

The development application has been referred to various Council officers for technical review as outlined **Table 6**.

**Table 7: Consideration of Council Referrals**

Officer	Comments	Resolved
Engineering	Council's Development Engineer reviewed the submitted flood management plan and considered that there were no objections to the proposal subject to conditions. There were no stormwater concept plans submitted with the scheme as it does not involve any changes to the existing stormwater system on the site. Council's Development Engineer raises no objections to the scheme in this regard subject to the imposition of conditions of consent.	Yes (conditions)
Traffic	Council's Traffic Engineering Officer reviewed the proposal and did not raise any concerns in relation to the anticipated traffic generation, access within the site and car parking subject to the imposition of conditions of development consent. These issues are considered in more detail in the Key Issues section of this report.  The application was referred to the Bayside Traffic Development Advisory Committee on 8 March 2023. The	Yes (conditions) Refer to key Issues

	committee raised no objections to the proposal and required no amendments or conditions be imposed.	
Building / Fire	<p>Building Upgrade – Total Conformity with the NCC</p> <p>Pursuant to Clause Part 4, Division 1, Section 64 of the Environmental Planning and Assessment Regulation 2021, the existing building must be brought into total conformity with the Building Code of Australia. In this regard, construction plans that demonstrate compliance with the Building Code of Australia must be submitted to the Principal Certifier. Should there be any non-compliance, and an alternative method of fire protection and structural capacity is proposed, a detailed report, plans and supporting documents prepared by an appropriately accredited and qualified fire consultant having specialist qualifications in fire engineering must be submitted, justifying the non-compliances.</p> <p><b>REASON</b></p> <p>To ensure compliance with the EP&amp;A Regulation 2021.</p>	Yes (condition)
Health	The application was referred to Council's Environmental Health Officer who raised no objections to the proposal subject to the imposition of conditions of development consent.	Yes (conditions)
Environmental Scientist	The application was referred to Council's Environmental Scientist who raised no objections to the proposal subject to the imposition of conditions of development consent.	Yes (conditions)
Landscape	The application was referred to Council's Landscape Architect who raised no objections to the proposal subject to the imposition of conditions of development consent.	Yes (conditions)
Waste	The application was referred to Council's Waste Management Officer who raised no objections to the proposal subject to the imposition of conditions of development consent.	Yes (conditions)
Trees	The application was referred to Council's Tree Management Officer who raised no objections to the proposal. In this regard, there were no conditions to be imposed on any development consent issued for the site.	Yes (no conditions required)
Contributions Planner	<p>The applicant seeks the change of use to the existing buildings into an education establishment with minor internal fitout and use of the ancillary external hardstand and car parking.</p> <p>Council does not levy employment-based developments under S7.11 in the Botany precinct. Also, based on Clause 208(4)(g) of Environmental Planning and Assessment Regulation 2021 - Determination of proposed cost of development - the costs of fittings and furnishings must not be included in an estimation or determination of the proposed</p>	Yes (no conditions required)

	cost. Thus, the S7.12 contribution levy is not applicable to the DA.	
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The outstanding issues raised by Council officers are considered in the Key Issues section of this report.

### 4.3 Community Consultation

The proposal was notified in accordance with the DCP from 11 January 2023 until 31 January 2023. The notification included the following:

- Notification letters sent to adjoining and adjacent properties (approximately twenty (20) letters sent); and,
- Notification on the Council's website.

The Council did not receive any submissions in relation to the proposal.

## 5. KEY ISSUES

The following key issues are relevant to the assessment of this application having considered the relevant planning controls and the proposal in detail:

### 5.1 Intensity of the Use

The proposal on average will involve a total of 1,541 staff and students on the premises while there will be a maximum number of 1,343 at any one time on the site. These numbers are based on the average likely attending over the four stages and will be the highest number anticipated for the fourth stage. In this regard, the maximum number of staff and students enrolled at the facility may be 2,130 however not all will attend the premises daily and the use will be limited to a maximum of 1,541 or around 1,600 at any one time. The existing buildings contain a gross floor area (32,645m<sup>2</sup>) which is more than capable of accommodating the maximum number of patrons without any significant adverse amenity impacts given the separation of buildings and distribution of access areas across the site.

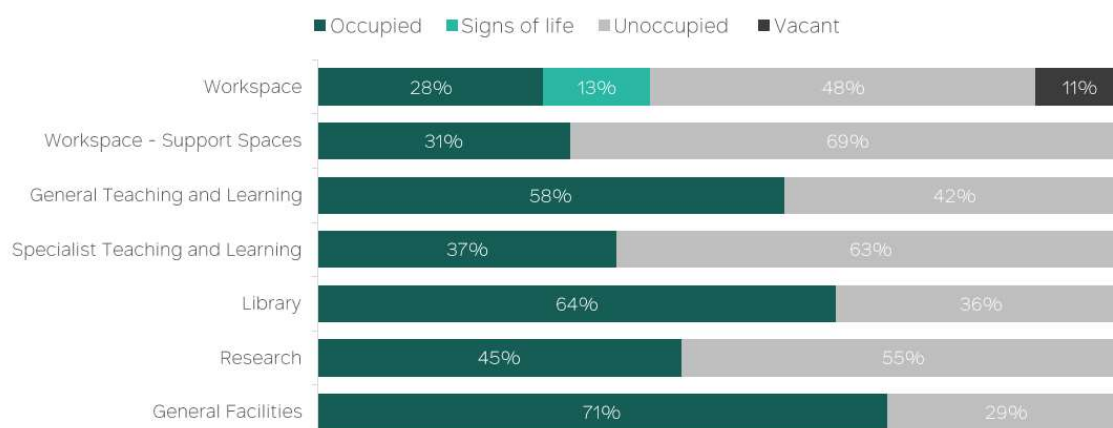
The applicant has provided information relating to the occupancy across the campus. The report states that the average occupancy (measures from studies taken across the city campus of UTS) is 42%. General facilities (cafes, normal training rooms, events, etc) attract the highest occupancy which is 71% with the library being at 64%. Workstations were considerably lower at 28% actively being used over the week with a maximum usage of 49%.

The proposed use will result in the occupation of the subject site not unlike the details in Figure 6, however, to a lesser extent given the research based Techlab being limited in staff and student numbers during specific hours operating on the site.

## Executive Summary

### City Campus

12 Number of buildings	6985 Number of spaces	42% Overall occupied	39% Overall utilisation	45% Busiest day <sup>1</sup> Tuesday	38% Quietest day <sup>1</sup> Friday
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**Figure 6 – Extract of the occupancy information from the UTS Campus Space Utilisation Study (city campus) from the applicant**

The information submitted by the applicant indicates that there is a total GFA of 32,645m<sup>2</sup> of floor area that will be used for the purposes of the educational establishment which includes a range of uses. The range includes workspaces, support services, general teaching areas, specialist learning areas, library, research and laboratory rooms and finally general facilities. This amount of gross floor area is more than capable of accommodating the proposed use given the number of staff and students involved with an efficient operation having minimal conflict, access and permeability issues. The proposal is well within the constraints of the site and with the internal works proposed, will provide legible and safe internal areas as detailed on the plans submitted with the application.

The information submitted by the applicant indicates that there is a total GFA of 13,015m<sup>2</sup> of floor area that could be used for the provision of flood refuge for patrons on the site. The rate of 2m<sup>2</sup> per person ordinarily applied for the provision of flood refuge would indicate that the site could easily account for 6,507 persons with adequately shelter. In this regard, the proposal has well over the capacity required to safely cater for the number of staff and students in the scheme during a flood with safe refuge. Based on the above, the Operational Plan of Management shall be amended for each stage of the development to show the location of flood refuge areas for each stage in the event of a flood. A condition has been imposed in this regard.

**Resolution:** The issue has been resolved through an analysis of the proposed use and the recommended conditions of consent. The conditions limiting the maximum number of staff and students during specific hours of operation are considered likely to minimise any significant adverse amenity impacts from the proposed use on the site.

## 5.2 Traffic and Parking

The proposal does not involve any significant changes to the existing buildings on the site apart from minor internal upgrade works, including fire upgrade works and additional amenities on the site. The required provision of car parking was calculated based on the anticipated occupancy rate and details provided by the applicant. In this regard, a limit is placed by way of a condition imposed on the maximum occupancy for the site given that there are only a limited number of car parking spaces (573) and gross floor area capable of accommodating the proposed use. The draft condition imposed complies with the requirements set out in the Planning Circular (PS 21-038) relating to the expansion of schools and the way in which conditions should be imposed that allow future flexibility whilst still managing the intensity of the approved use.

*“This could include a condition requiring the applicant to submit revised traffic and pedestrian management plans to the consent authority to reflect the increased number to the satisfaction of the approval of the consent authority, or requiring certain road works to be undertaken when numbers reach a specified level. This approach delivers an absolute limit to growth at the school but provides flexibility for incremental increases up to the limit permitted by the cap condition to address future operating needs without the need for a new application.”*

The proposal will utilise the existing shuttle bus service which is currently in operation and likely to have an increased frequency and use on the site with the current proposal. The increase in population can easily be accommodated with the car parking provision and use of the shuttle bus service in connection with the use. The proposed development, whilst appearing to contain large numbers of staff and students, is not considered to be of a size, scale or intensity so as to cause any adverse traffic safety, road congestion or parking implications.

The application was referred to Transport for NSW (TfNSW) who on 23 March 2023 responded in writing with no objections to the proposal. TfNSW stated that they had no requirements or conditions required to be imposed in respect to the scheme as the proposal was unlikely to have a significant impact on the classified road network.

The application was referred to Council's Development Engineers who advised that the resulting traffic can be safely accommodated on the surrounding road network with no significant reduction in pedestrian and road safety. The proposal includes 573 on site car parking spaces which is more than sufficient to cater for the anticipated number of staff and students attending the facility.

The allocation of car parking spaces on the site has been designed to provide adequate car parking for the separate buildings with no reduction in pedestrian and vehicular safety. The parking areas can comply with the requirement of AS2890.1, allow adequate sight distances, are accessed by multiple double driveways to Lord Street which provide entry and exist in a forward direction that is safe and legible to and from the site.

### **5.3 Urban Design**

The proposal does not involve any significant changes to the existing buildings on the site and may involve minor internal upgrade works, including fire upgrade and additional amenities on the site. As such, the proposal is not likely to change the urban design or external appearance of the existing buildings on the site.



The proposal use can operate within the existing building fabric and will utilise the existing car parking areas and between the existing buildings. As such, the proposal will not alter the existing streetscape and will retain the same building bulk which is appropriate for the stie and will continue to contribute to the desired future character of the area.

The buildings will retain the same alignment to street frontages with sufficient setbacks and facade articulation to Lord Street. Accordingly, the proposal is acceptable in respect to urban design and the future desired character of the precinct.

#### **5.4 Noise and Vibration Assessment**

The application was submitted with an acoustic report prepared by Resonate dated 22 November 2022 that addressed noise and vibration by looking at the interior noise levels with anticipated mechanical air conditioning, student and staff levels, aircraft noise and car parking and road noise. The acoustic report found that the site experiences a range of noise sources.

The report addressed the interior noise levels in respect to the above criteria and found that the proposed works will allow the proposed use to operate within acceptable interior noise levels. Train and aircraft noise levels could be minimised by situation certificate uses with a higher sensitivity away from the northern façade (away from the goods line).

The proposal can operate with minimal impact from road noise even with the anticipated increase in road traffic to and from the site. The proposal satisfies the acoustic criteria and no further mitigation measures are required in this regard. The mechanical services can be designed to be compliant with the noise criteria and implement best practice noise control techniques.

Based on the Noise and Vibration Report the noise and vibration impacts arising from the proposed development are not likely to be unreasonable and not likely to result in any significant acoustic impacts on the site or adjoining properties. Similarly, the interior noise levels within the existing buildings would be acceptable as they can comply with the noise controls and be designed to minimise any adverse amenity impacts on the use of the rooms within each building.

Section 8 of the report concludes that the internal works and proposed use can proceed if noise control measures are employed and the location of uses within the buildings selective. Council has considered this report and following a detailed assessment, concluded the report was satisfactory and has been addressed through the imposition of recommended conditions of development consent.

Resolution: The issue has been resolved through recommended conditions of consent as outlined in **Attachment A**.

## **6. CONCLUSION**

This development application has been considered in accordance with the requirements of the EP&A Act and the Regulations as outlined in this report. Following a thorough assessment of the relevant planning controls and the key issues identified in this report, it is considered that the application can be supported.

The adaptive re-use of the existing buildings on the site is supported by Council and subject to conditions, including limiting the total number of staff and students occupying the site, the proposal is not likely to result in any significant adverse amenity impacts on the surrounding properties. This report has addressed a range of issues, including traffic and parking, noise and vibration, urban design, intensity of use and engineering issues. Based on this assessment, the proposal will be suitable for the site and the proposal is compatible with the surrounding locality. The proposal is consistent with the objectives of the planning controls applying to the land and is acceptable in this regard.

The proposal has been assessed in accordance with Section 4.15 of the Environmental Planning and Assessment Act 1979. The proposal is permissible within the E3 Productivity Support zone (formerly the B7 Business Park zone) and is considered to result in a development which is suitable in the context.

Based on the above, the key issues outlined in Section 5 have been resolved satisfactorily through the imposition of conditions of consent. As such, the proposal is recommended for approval subject to the draft conditions of consent in **Attachment A**.

## **7. RECOMMENDATION**

That the Development Application DA-2022/409 for a change of use of existing buildings into an education establishment with internal fit-out works and use of the existing car parking, operating 24 hours a day, seven (7) days a week at 28-40 Lord Street Mascot be APPROVED pursuant to Section 4.16(1)(a) of the *Environmental Planning and Assessment Act 1979* subject to the draft conditions of consent attached to this report at Attachment A.

The following attachments are provided:

- Attachment A: Draft Conditions of consent
- Attachment B: Approval from the Crown (applicant) for imposition of Conditions
- Attachment C: Architectural Plans