

## Plan finalisation report

Local government area: Bayside

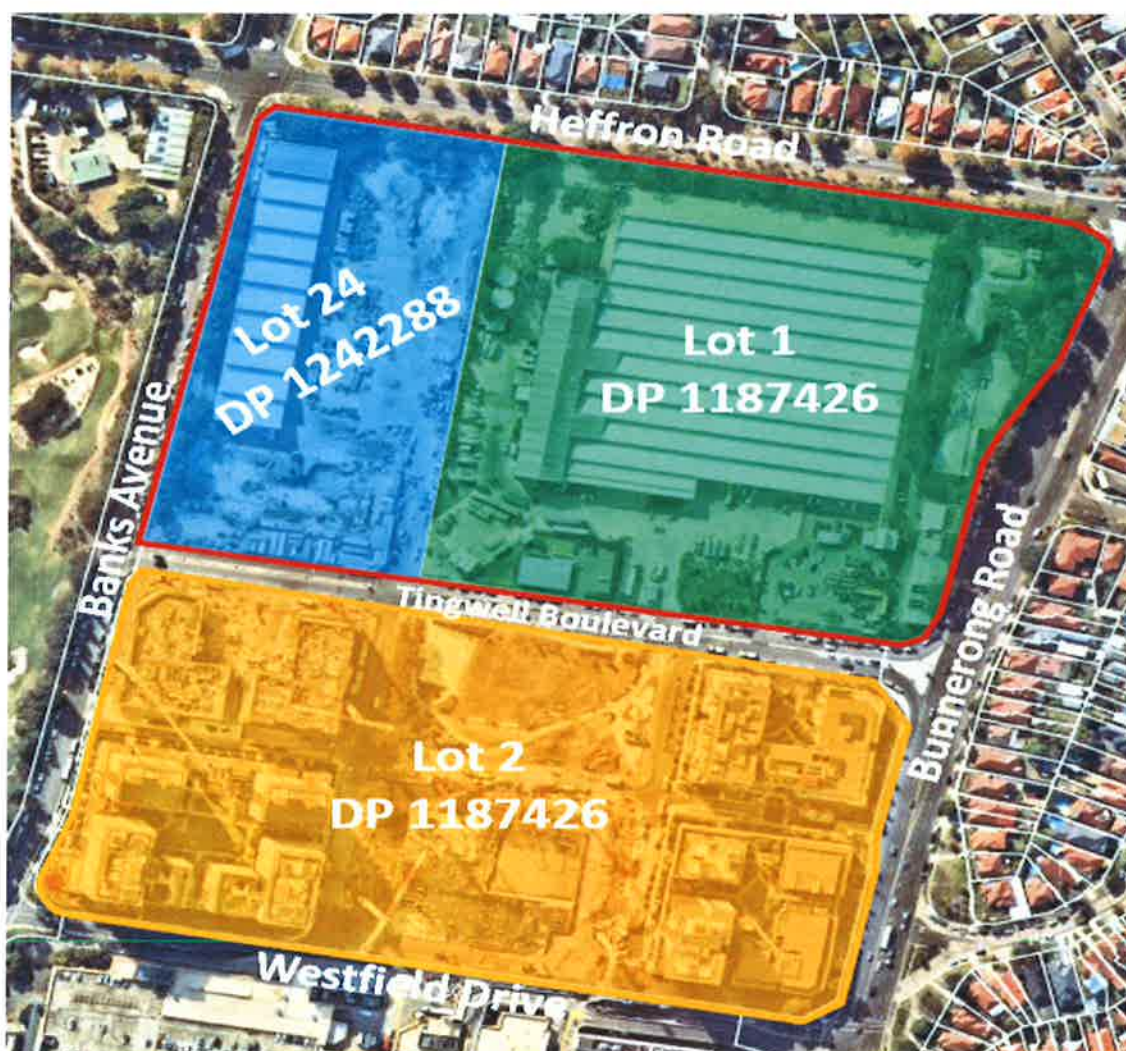
### 1. NAME OF DRAFT LEP

Botany Bay Local Environmental Plan 2013 (Amendment No 8)

### 2. SITE DESCRIPTION

The planning proposal applies to land at 128 and 130-150 Bunnerong Road, Pagewood and is legally identified as Lot 1 DP 1187426 and Lot 24 DP 1242288 (formerly part Lot 2 DP 1187426). The planning proposal site relates to the northern portion of the former British American Tobacco Australasia (BATA) site.

The subject site of the planning proposal is outlined in red in **Figure 1** below.



**Figure 1** – British and American Tobacco Australasia Site (Source: Planning Proposal Report)

The BATA site composes two development stages, Stage 1 (Lot 2 DP 1187426 and highlighted yellow in **Figure 2**) which is currently under construction and BATA Stage 2,



which is the subject site of this planning proposal and is referred to herein as 'the site' (highlighted red in **Figure 2**).

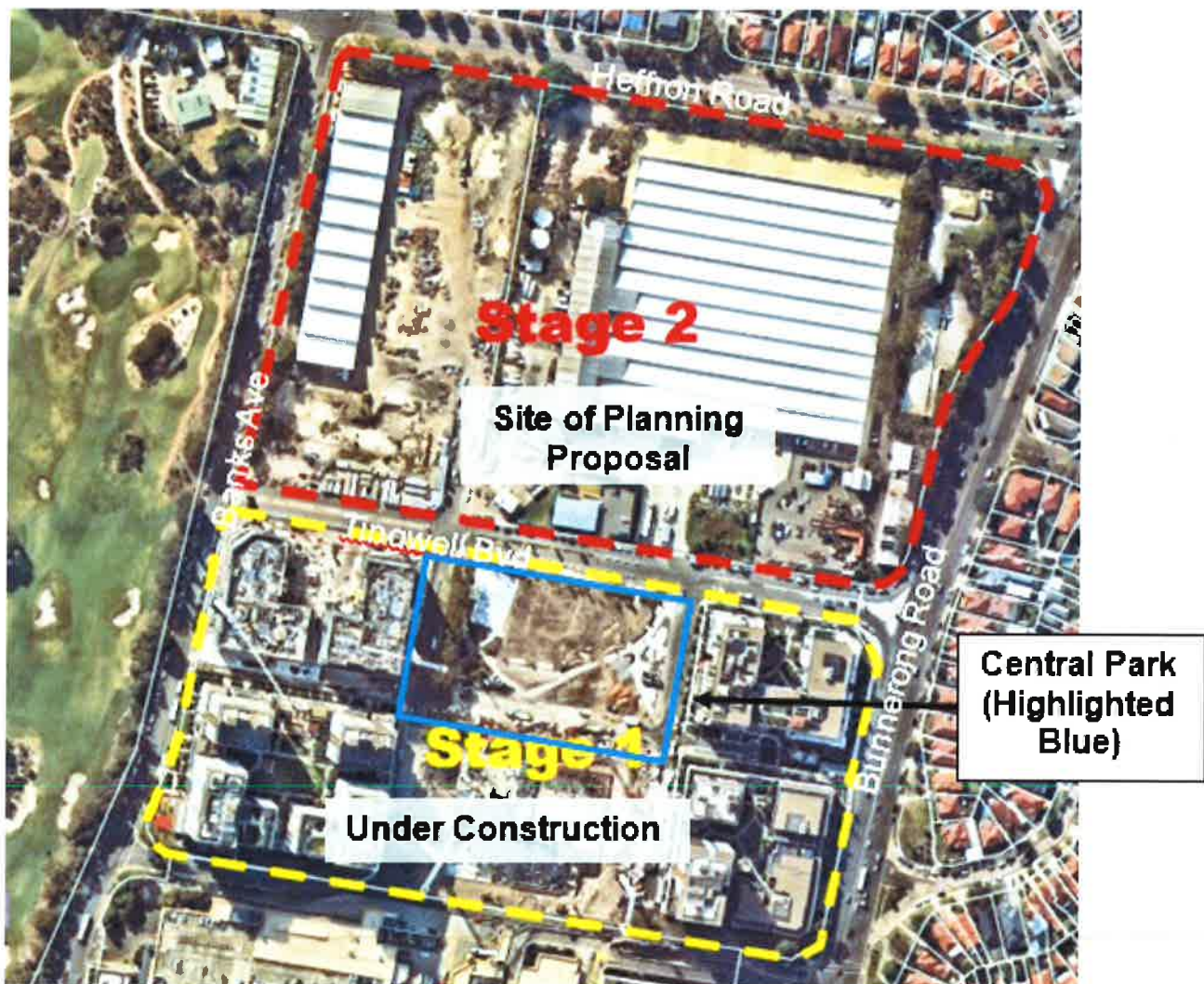
On 7 August 2015, the NSW Land and Environment Court approved a Concept development application for Stage 1 that included approval for 2,223 residential apartments and 5,000m<sup>2</sup> of retail floor space.

Stage 2 encompasses a total site area of approximately 89,500m<sup>2</sup> that is bounded by;

- Bunnerong Road to the east;
- Heffron Road to the north;
- Banks Avenue to the west; and
- Tingwell Boulevard to the south.

The site has historically been occupied by BATA and previously General Motors Holden for manufacturing and distribution purposes.

The existing structures on the site include an administrative building in the north-east, surface car parking and warehouses. The existing structures remain mostly unoccupied following the staged exit of BATA who scaled down operations before permanently vacating the site in 2015. Approval has been obtained to demolish existing structures on the site.



**Figure 2** - Pagewood Green Development Stages (Source: Planning Proposal Report)



The site is also identified as being within the Eastgardens – Maroubra Strategic Centre which has been earmarked for future commercial and residential growth under the Eastern City District Plan.

#### Surrounding Area

The surrounding area of the subject site is bounded to the:

- North – Low density residential development and Jellicoe Park.
- West – Bonnie Doon Golf Course and Mutch Park.
- South – Pagewood Green Stage 1 and Westfield Eastgardens.
- East – Low density residential development within the Randwick Local Government Area.

An aerial photo of the surrounding area can be seen in **Figure 3**.



**Figure 3** - Strategic Context Map (Source: Nearmaps)

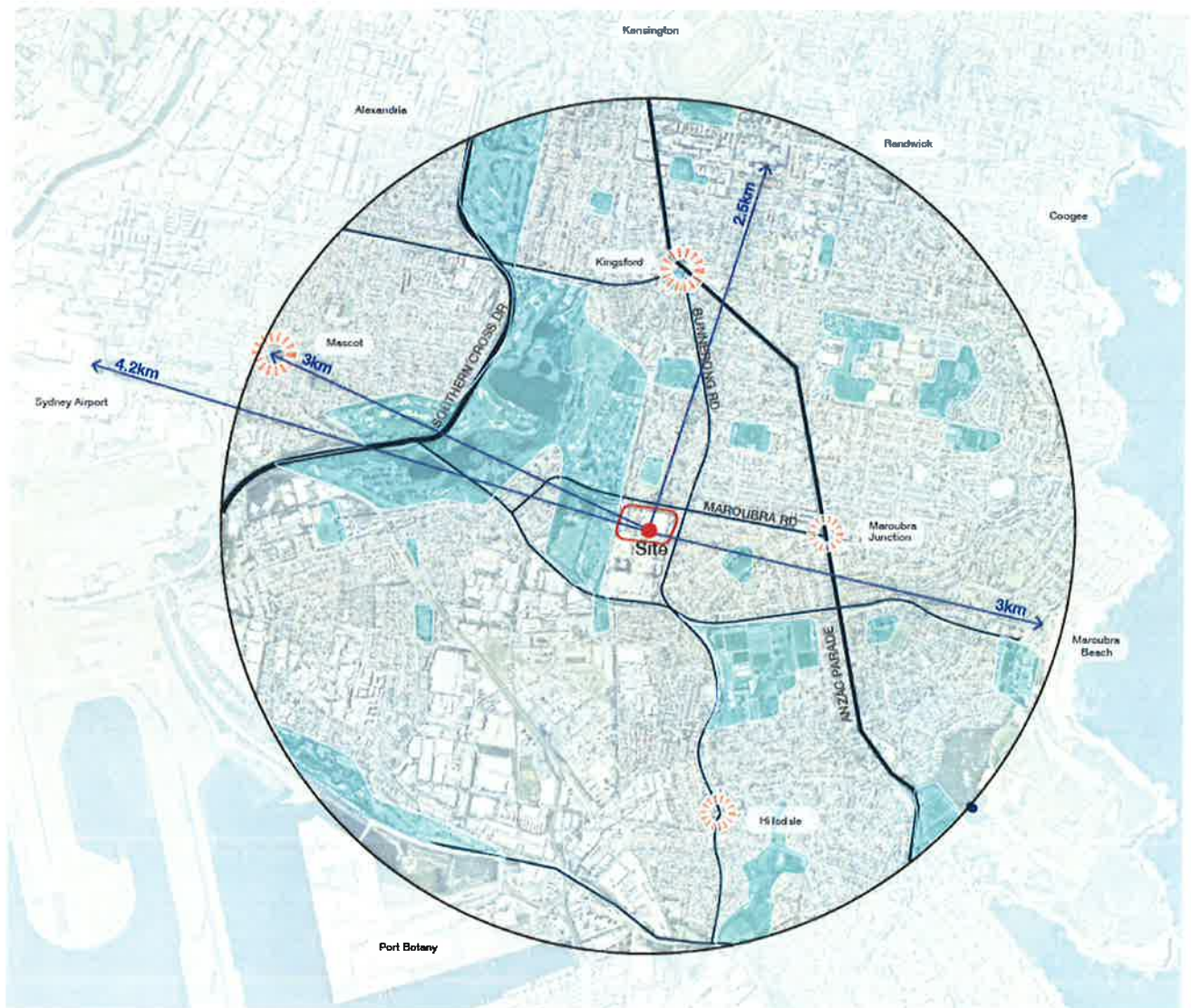


## Strategic Context

The site is located in the suburb of Pagewood in the south eastern suburbs of Sydney and is:

- approximately 4km to the east of Sydney Airport;
- approximately 1.7km to the south of the Kingsford Light Rail interchange;
- approximately 2.3km to the south of the University of NSW;
- approximately 2.5km to the south west of the Prince of Wales Hospital;
- approximately 3.8km to the east of Mascot Strategic Centre and Mascot Station; and
- approximately 1km to the west of Maroubra Junction Strategic Centre.

The site's strategic context can be seen in **Figure 4**, below.

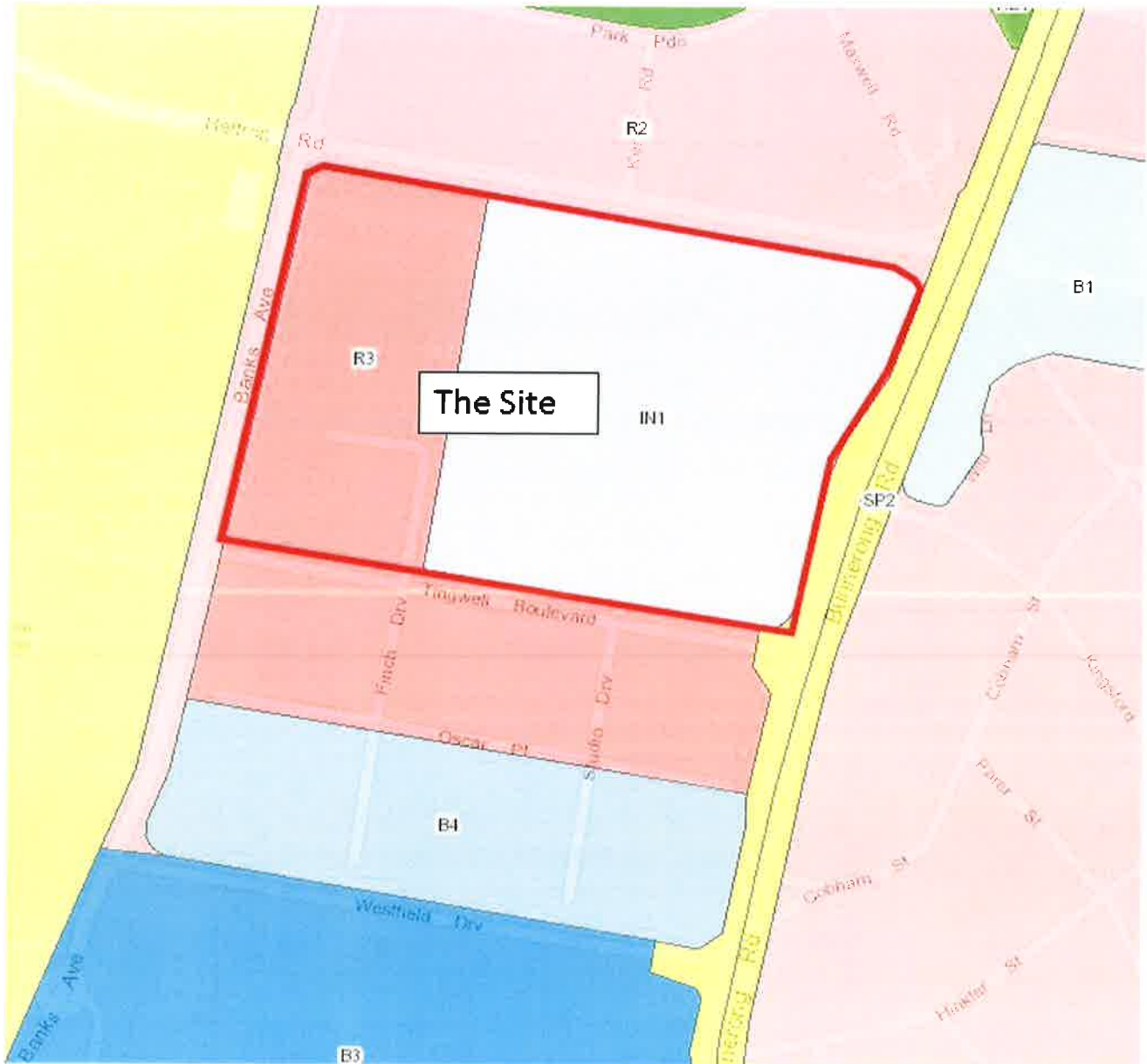


**Figure 4 - Strategic Context Map (SJB Urban Design Report)**

### 3. EXISTING CONTROLS

#### Zoning

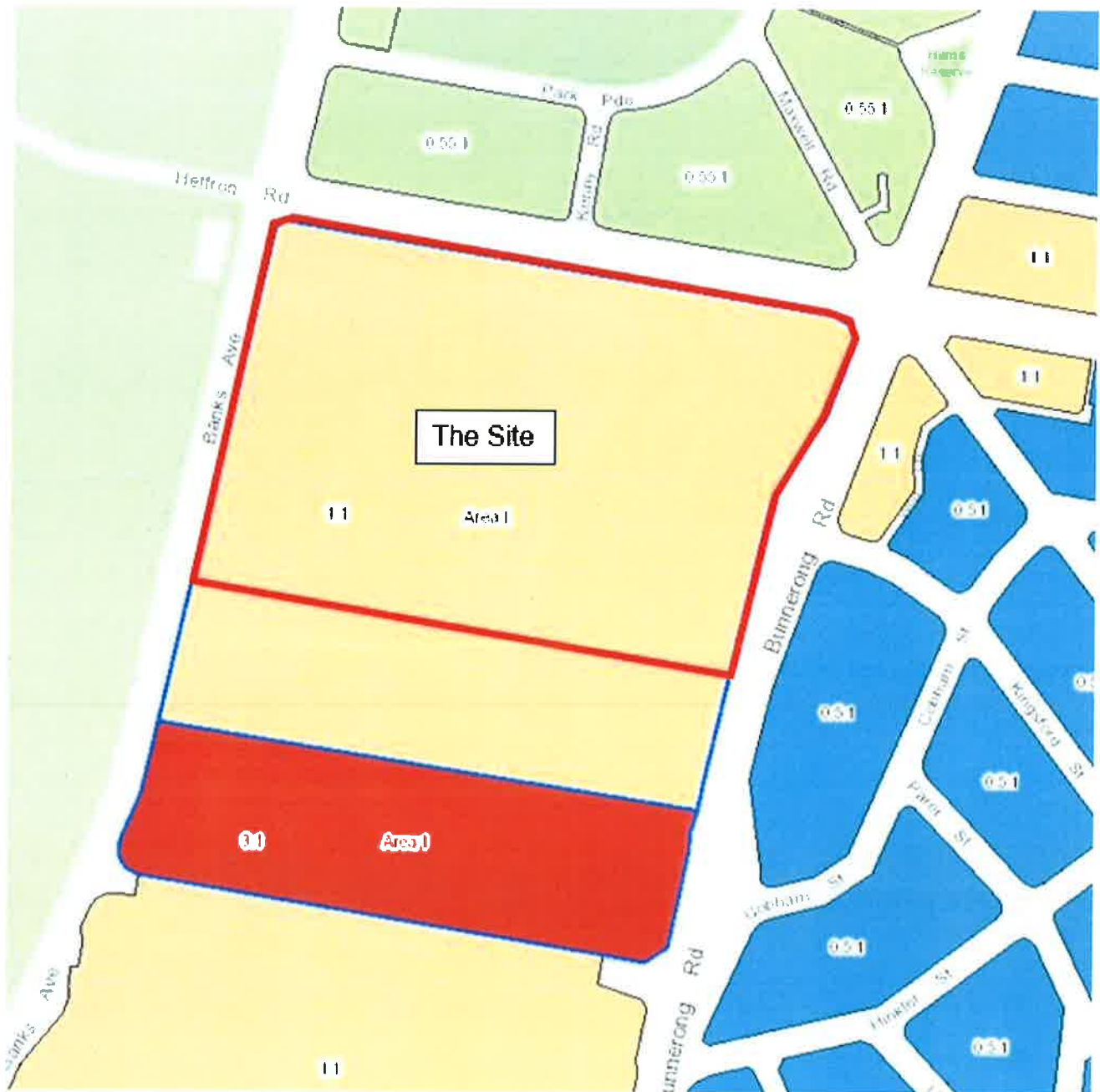
Under the Botany Bay Local Environmental Plan (Botany Bay LEP) 2013, the site is zoned part R3 Medium Density Residential (Lot 24) and part IN1 General Industrial (Lot 1) (**Figure 5**).



**Figure 5** - Existing Land Use Zoning Map (Source: NSW Planning Portal)

### Floor space ratio

Under the Botany Bay LEP 2013, the site has a maximum floor space ratio (FSR) control of 1:1 (**Figure 6**).



**Figure 6** - Existing Floor Space Ratio Map (Source: NSW Planning Portal)



## Building Height

Under the Botany Bay LEP 2013, the site has a maximum building height of 22m for Lot 1 and parts; 11m, 17m, 28m and 32m for Lot 24 (**Figure 7**).



**Figure 7** - Existing Height of Buildings Map (Source: NSW Planning Portal)

### 'Area 1' on the HOB & FSR maps

Under the Botany Bay LEP 2013, the site is identified as being part of "Area 1" on the FSR and height of buildings maps (**Figures 6 and 7**). As the site is identified under "Area 1" on the building height map and FSR map, it is excluded from obtaining any additional height and FSR under clauses 4.3(2A) and 4.4(2A).

### Design Excellence

The site is subject to clause 6.16 – Design Excellence of the Botany Bay LEP 2013, which requires the consent authority to have regard to the following design excellence matters when determining a development:

- whether a high standard of architectural design, materials and detailing appropriate to the building type and location will be achieved,
- whether the form and external appearance of the development will improve the quality and amenity of the public domain,

- (c) whether the development detrimentally impacts on view corridors, and
- (d) the achievement of the principles of ecologically sustainable development.

### Heritage

The site does not contain any state or locally listed heritage items. The site is located in the vicinity of several local heritage items (**Figure 8**) including:

- Jellicoe Park (I155 of Botany Bay LEP 2013, Sch.3);
- Harris Reserve (I66 of Botany Bay LEP 2013, Sch.3);
- 12 Cobham Street, Maroubra (I210 of Randwick LEP 2012, Sch.5);
- 21 Cobham Street, Maroubra (I211 of Randwick LEP 2012, Sch.5); and
- 379 Bunnerong Road, Maroubra (I207 of Randwick LEP 2012, Sch.5).

The closest heritage item, 12 Cobham Street, is approximately 85m to the east of the site (**Figure 8**).



**Figure 8 – Heritage Map** (Source: NSW Planning Portal)



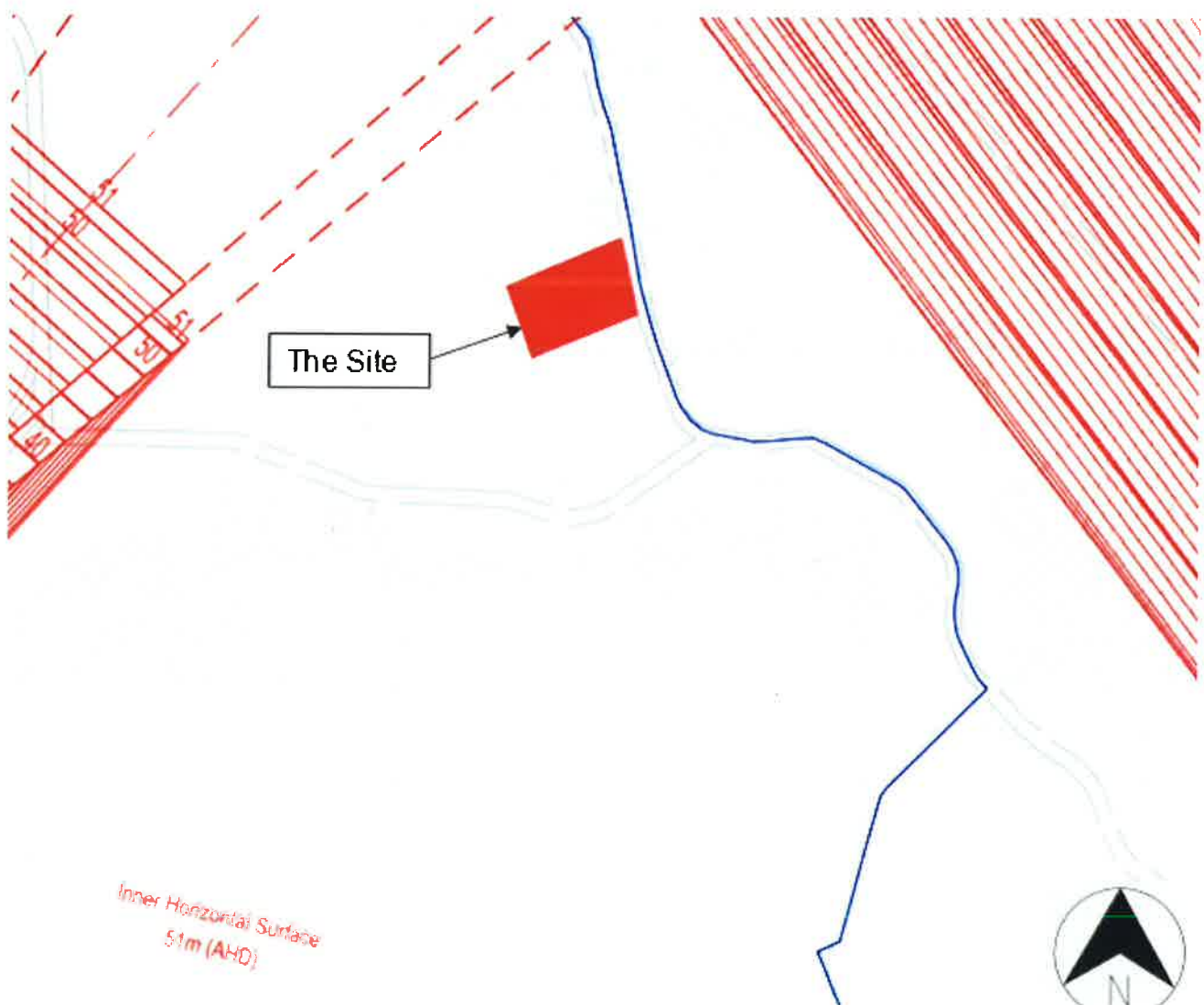
### Clause 6.8 - Airspace Operations

Clause 6.8 - Airspace operations of the Botany Bay LEP 2013 requires the effective and ongoing operation of the Sydney (Kingsford Smith) Airport by ensuring that such operation is not compromised by proposed development that penetrates the Limitation or Operations Surface for that airport.

In this clause **Limitation or Operations Surface** means the Obstacle Limitation Surface or the Procedures for Air Navigation Services Operations Surface as shown on the *Obstacle Limitation Surface Map* or the *Procedures for Air Navigation Services Operations Surface Map* for the Sydney (Kingsford Smith) Airport.

#### Obstacle Limitation Surface

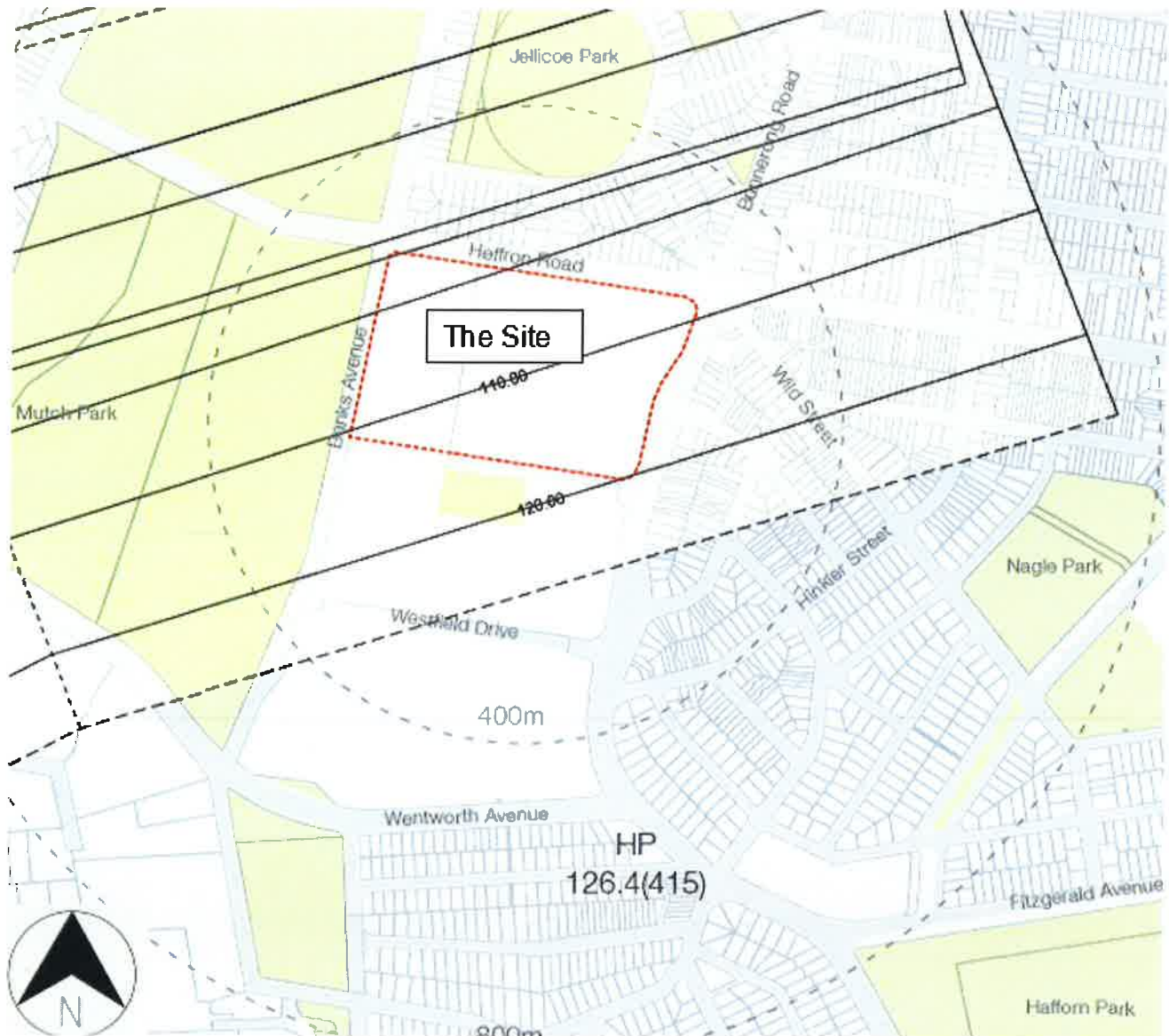
The Stage 2 precinct has a Controlled Activity Approval of 91m AHD from the Federal Department of Infrastructure & Regional Development and Cities (DIRDC) which allows for the penetration of the obstacle limitation surface (OLS) at 51m AHD (**Figure 10**).



**Figure 10** – Sydney Airport Prescribed Airspace Obstacle Limitation Surfaces (Source: Sydney Airport)

## PAN-OPS

The Stage 2 precinct has a 'procedures for air navigation services - aircraft operations (PAN- OPS)' limit of 110m AHD in the north west and 120m AHD for the buildings in the south east of the site (**Figure 11**).



**Figure 11** – Procedures for Air Navigation Services - Aircraft Operations (Source: Sydney Airport and SJB Urban Design Report)



#### **4. PLANNING BACKGROUND**

##### Approved Concept Master Plan (Stage 1 Consent):

On 7 August 2015, the NSW Land and Environment Court approved a Concept development application for Stage 1. The approval provided indicative consent for the following:

- concept subdivision into seven urban blocks for the purposes of residential, non-residential and mixed-use development;
- building envelopes for each urban block, with FSR ranging from 1.73:1 to 3.92:1 and building heights ranging from 11m to 68m;
- 2,223 residential apartments;
- 5,000m<sup>2</sup> in retail space;
- 3,693 car parking spaces; and
- Construction and embellishment of 8,000m<sup>2</sup> Central Park and 2,703m<sup>2</sup> Linear Park to be dedicated to Council

Development consent was later granted for five of the seven urban blocks which was a total of 1,739 dwellings. The two remaining urban blocks now form part of the site subject to this planning proposal, known as Stage 2, resulting in a net increase of approximately 1,639 dwellings under this planning proposal.

These two urban blocks which form part of this planning proposal have not been granted development consent for the construction of any residential development.

Combined, it is intended that BATA Stage 1 and Stage 2 will deliver approximately 3,754 dwellings.

##### Rezoning Review:

The planning proposal was submitted with Bayside Council on 13 April 2017. On 20 July 2017, the proponent lodged a rezoning review request to the Department as Council had not indicated its support for the proposal within 90 days of lodgement. On 12 September 2017, the rezoning review was held by the Sydney Eastern City Planning Panel who determined that the proposal demonstrated strategic and site-specific merit and should proceed to Gateway. The Panel recommended that a revised proposal be submitted to respond to the following matters:

- no additional overshadowing to existing and proposed open spaces in mid-winter between 12pm to 2pm;
- no additional shadowing on existing development to the eastern side of Bunnerong Road;
- 5% affordable housing to be integrated into the development without a bonus as contained in the current planning proposal. Affordable housing is to be handed to a Council-nominated community housing provider;
- satisfactory arrangements with Council for the provision of appropriate community facilities, open spaces and social infrastructure; and
- detailed transport reports that include:
  - assurance from Transport for NSW (TfNSW) that public transport will cope with the proposed population increase;

- impacts on and conflicts with large dangerous goods vehicles, e.g. Denison Street; and
- cumulative impacts of surrounding development, e.g. Westfield Eastgardens planning proposal.

On 27 September 2017, Council accepted the role of Relevant Planning Authority (RPA) (Now PPA) and submitted the proposal to the Department on 25 October 2017. Council submitted additional studies commissioned as part of its preliminary assessment of the proposal.

## 5. PURPOSE OF PLAN

The draft LEP submitted to the Department by the Council under Section 3.36 of the *Environmental Planning and Assessment Act 1979* seeks to:

- rezone the site from part IN1 General Industrial and part R3 Medium Density Residential to R4 High Density Residential;
- increase the maximum floor space ratio (FSR) from 1:1 to 2:1;
- increase the maximum height of buildings from parts 11m, 17m, 22m, 28m and 32m to parts RL 37m (16.6m HOB), RL 60m (37m HOB) and RL 91m (69m HOB);
- introduce a new additional Local Provision at Clause 6.18 requiring the preparation of a development control plan for the subject site;
- set a minimum non-residential floor space requirement for the site of 5,000m<sup>2</sup>; and
- amend Schedule 1 Additional Permitted Uses to further permit the following land uses with consent at the site:
  - commercial premises;
  - recreation facility indoor; and
  - serviced apartments.

## 6. STATE ELECTRATE AND LOCAL MEMBER

The site falls within the Maroubra state electorate. Mr Michael Daley MP is the State Member.

The site falls within the Kingsford Smith federal electorate. Hon Matt Thistlethwaite MP is the Federal Member.

To the regional planning team's knowledge, neither MP has made any written representations regarding the proposal.

**NSW Government Lobbyist Code of Conduct:** There have been no meetings or communications with registered lobbyists with respect to this proposal.

**NSW Government reportable political donation:** There are no donations or gifts to disclose and a political donation disclosure is not required.

## 7. GATEWAY DETERMINATION

On 12 December 2017, a Gateway determination (**Attachment B**) was issued allowing the planning proposal to proceed subject to conditions. The proponent prepared a revised planning proposal to address the conditions of the Gateway determination which was submitted to Council on 4 September 2018.



## 8. ALTERATION OF GATEWAY DETERMINATION

Bayside Council submitted a request to Department to alter the Gateway determination on 11 September 2018. **Table 1** below summarises the proposed alterations to the scope of the proposal.

**Table 1** – Comparison of original and revised planning proposals

| Issue   | Original Planning Proposal at Gateway determination                                       | Revised Planning Proposal at Gateway alteration   |
|---|---|---|
| Land zone   | R4 High Density Residential   | No Change   |
| Max Building Heights  | part 28m and part 65m   | part 15m, part 39m and part 70m (part RL 37.0, part RL 60.0 and part RL 91.0)   |
| Range of Max Storeys  | 8 to 20 storeys   | 4 to 22 storeys   |
| Floor Space Ratio   | 2.35:1 (site area is 89,589m <sup>2</sup> )   | No Change   |
| Additional Permitted Uses and minimum non-residential floor space under Schedule 1 of BBLEP | A minimum of 5,000m <sup>2</sup> of commercial floor space as an additional permitted use | Additionally permit commercial premises, recreation facility (indoor) and serviced apartment development on the site.<br><br>Require a minimum of 5,000m <sup>2</sup> (GFA) non-residential |
| Additional Local Provisions Clause  | N/A   | Proposed to require preparation of a site specific DCP  |
| Indicative Dwelling Numbers   | 2,068 dwellings   | 2,015 dwellings (including 237 serviced apartments)   |
| Public Open Space   | 26,085m <sup>2</sup> (29.1% of site area)   | 20,208m <sup>2</sup> (22.6% of site area)   |

The proposed amendments are the result of revisions to the masterplan for the site. There have been three different plans drafted for the site. The masterplan for the site was originally developed by Thalix, then later revised by Hassell in 2017 (**Figure 12**), and then more recently further revised by SJB (**Figure 13**). This version of the masterplan underpins the current scope of the proposal.

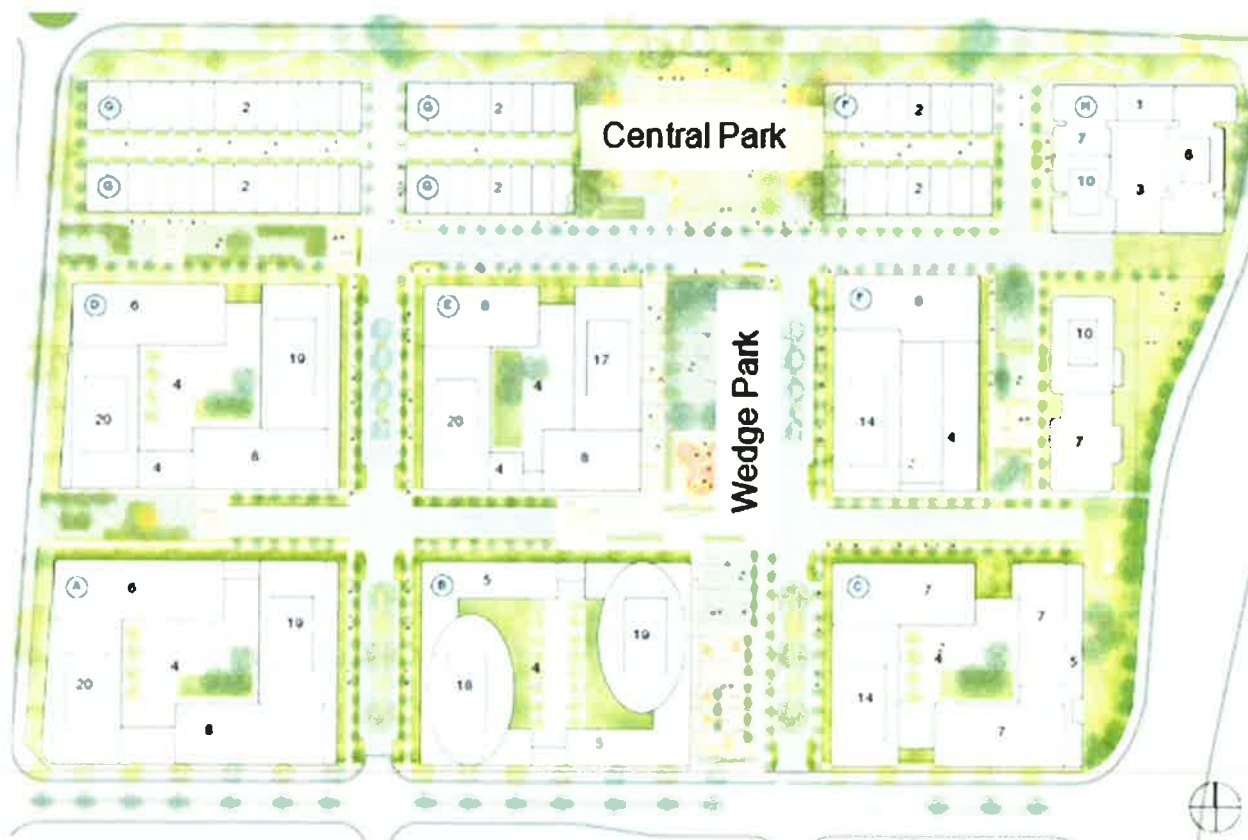
When compared to the previous Hassell scheme the key revised elements under the SJB scheme include:

- reduced public open space for the site, down from 26,085m<sup>2</sup> to 20,208m<sup>2</sup>
- relocation of the north south open space from the western north south road to adjacent to the western north south internal road
- significantly reduced building heights along the frontage of Heffron Road and a proposed taller building element at the corner of Heffron and Bunnerong Roads;
- increased building heights at the southern portion of the site; and
- proposed removal of the heritage element at the corner of Heffron and Bunnerong Road.

The altered Gateway (**Attachment C**) was issued on 9 October 2018.



**Figure 12:** Hassell Masterplan Layout Plan (Sourced: Hassell Masterplan dated April 2017)



**Figure 13:** SJB Masterplan Layout Plan (Sourced: SJB Masterplan dated August 2018)



## 9. EXHIBITION AND COUNCIL RESOLUTIONS

In accordance with the Gateway determination, Council publicly exhibited the proposal from 3 December 2018 to 1 February 2019. The details of submissions received is included at **Section 10** below.

On 12 April RMS additionally responded to confirm that there was no available funding for the Wentworth Avenue intersection upgrades at Page and Baker Streets, Pagewood.

Prior to being considered at the Council meeting, the Bayside Local Planning Panel considered the proposal as it was exhibited on 30 April 2019. The Panel did not support the FSR at 2.35:1 and recommended it be reduced to a 2:1 FSR for the following reasons:

- the peer review undertaken on behalf of Council questioned the proposed FSR of 2.35:1 in terms of outcomes for the site to achieve solar access and appropriate density;
- the built form for its location and that the site is not serviced by fixed transport infrastructure;
- the podium car parking, that is compliant with Council's DCP requirement is not included in the FSR calculation which was the opinion of the proponent;
- concern over solar access of Central Park in Pagewood Green Stage 1; and
- traffic impacts caused by the increased density.

The proponent responded (**Attachment N**) with a revised supporting scheme that sought to substantially reduce parking in the podium levels of the future buildings, and generally include this in the basement levels of the development.

The effect of this was thought to reduce the resultant bulk of the buildings as the provision of car parking does not contribute or count as GFA but would result in additional above ground built form. For this reason, the development would then result reduced bulk, appearance and could then achieve better solar access performance to adjoining development and open spaces.

Council officers considered this additional information to be satisfactory and recommended in its post-exhibition report to Council that the exhibited proposal with a maximum FSR of 2.35:1 be supported (**Attachment O**).

On consideration of the submissions by individuals, organisations, agencies and Randwick Council, Council resolved at its meeting of 12 June 2019 to support the proposal with a reduction in the FSR from 2.35:1 to 2:1.

Council also resolved to require that:

- As part of a site specific DCP or Concept plan Applications (including an updated Concept Plan Master Plan) be prepared to address the following issues at the DA stage:
  - (a) urban design including height transitions, setbacks, building articulation and modulation and the interface of built form with the public domain;
  - (b) podium car parking options to reduce bulk and encouraging articulation;
  - (c) treatment, embellishment and functionality of public open space;
  - (d) car parking and other vehicle rates; and
  - (e) revised traffic modelling to address matters raised by RMS in their submission.
- As part of a future DA for the site, revised traffic modelling is submitted that:
  - (a) addresses matters raised by RMS in their submission; and

(b) includes an analysis of the intersection of Wentworth Avenue and Baker Street.

- Any additional funding to address additional traffic impacts and facilitate the upgrades of the Wentworth/Baker and Wentworth/Page intersections and Heffron Road be provided as part of the DA, over and above that required by the applicable Section 7.11 Contributions Plan.
- That Council again write to the RMS requesting funding for the Wentworth/Baker and Wentworth/Page intersections and Heffron Road.

It is understood that Council wrote to the RMS/Transport but did not receive a further response.

On 10 July 2017 Bayside Council resolved to enter into a VPA with the proponent that ensures that development in accordance with the proposal will provide:

- the provision and dedication of up to 50 Affordable Housing Units to Council containing a total of 100 bedrooms;
- embellishment and dedication of a minimum of 20,000sqm of open space;
- dedication of public roads within the development site;
- monetary contribution of \$23,900,000 (for community facilities and infrastructure); and
- monetary contributions that would otherwise have been required to be paid under the Council's Section 7.11 Development Contribution Plan.

## **10. PUBLIC SUBMISSIONS**

There were 70 submissions received from individuals and organisations including the Bonnie Doon Golf Club, the Hakoah Sydney City East Football Club, the Urban Taskforce Australia and the Sydney Business Chambers.

The Bonnie Doon Golf Club gave in principle support for the proposal, but recommended amendments primarily in relation to roads and traffic.

The Hakoah Sydney City East Football Club noted their support for the proposal and acknowledged monetary contributions being provided for recreation and open space in the area.

The Urban Taskforce Australia and the Sydney Business Chamber both indicated their support for the proposed development.

Additionally, an online petition with 232 signatures objecting to the proposal was also submitted to Council.

The key issues raised in submissions objecting to the proposal included the following:

- |  |  |
|--|--|
| • Impacts in relation to bulk and scale on neighbouring residential land | • Infrastructure provision   |
| • Traffic and parking  | • OLS  |
| • The provision of open space and public accessibility                   | • Crime  |
| • Overshadowing  | • Aesthetics   |
| • Heritage   | • Hazard Impacts from Botany Industrial Park and Denison Street Dangerous Goods Corridor |
| • Provision of affordable housing  | • Additional Permitted uses and non-residential floor space                              |

The issues raised in the submissions received were considered in detail as part of the Council officer's Post-Exhibition Report (**Attachment O**) to the Bayside Local Planning Panel and the Council.

It is considered that Council has appropriately responded to all public submissions. Each of the key issues raised in submissions are discussed in detail below.

#### Impacts in relation to bulk and scale on neighbouring residential land

The submissions received raised concern that the proposal is not in keeping with the existing low density residential character surrounding the site and is a 'gross overdevelopment'. In particular, it was thought that increased building heights are out of keeping with the surrounding low density residential character will result in:

- privacy issues;
- loss of solar access;
- overshadowing; and
- wind tunnelling.

#### *Council's Response:*

Council is of the view that the proposal is supported by a masterplan that includes the appropriate location and layout of built form and typologies. The reasons for this were that the revised masterplan included a reduction in building height and density away from Bunnerong Road and Heffron Road to allow for better transition to adjoining low density residential development and reduced the impacts of overshadowing to these residential properties. Council also considers this built form arrangement allows for a transition in density through the site as it progresses to the southern part of the broader BATA site.

Council also states that the proposal includes a clause that requires a site-specific Development Control Plan (DCP) or a concept masterplan development application. This will require enable detailed design considerations to be formulated to further support suitable development outcomes. These considerations include:

- minimising impacts on adjoining buildings while improving the public domain;
- environmental impacts such as overshadowing and solar access, visual and acoustic privacy, noise, wind and reflectivity; and
- no additional overshadowing will occur to the residential buildings in the R2 zone on the eastern side of Bunnerong Road between 9am and 3pm in mid-winter.

#### *Department's views and assessment:*

The Department considers Council's response adequately responds to this issue. However, the Department has further considered the impacts of the proposed bulk and scale of the development. This is discussed in **Section 12** of this report.

#### Traffic and parking

Concern regarding additional traffic from the development and resulting congestion on the surrounding street network were raised as a key concern. Submissions also stated that there was need to provide adequate off-street car parking within the development as there was concern that if this wasn't the case that this could result in a loss of available on-street parking for surrounding streets.

#### *Council's Response:*

Council refers to ARUP's Transport Impact Assessment (TIA), which concluded that the surrounding road network could support the increased trips generated by the proposed



development. Council also notes that Roads and Maritime Services (RMS) and Transport for NSW (TNSW) have reviewed the proposal and did not raise objection to the proposal.

Council also consider that the site specific DCP requires consideration of car parking. Consequently, Council has resolved that car parking rates be increased beyond what is outlined in the TIA to be consistent with Council's DCP, or, at a minimum BATA Stage 1 and that this matter be resolved as part of a site specific DCP or Concept DA.

*Department's views and assessment:*

The Department has considered this matter further in **Section 11** of this report. In summary, the proposed implementation of a site specific DCP requires that measures are employed to reduce on site car parking and ensuring that is balanced with considerations to improve cycle and pedestrian improvements and increase greater reliance on public transport. It is expected through these measures that the need for parking and the resultant traffic generation will be appropriately reduced.

The provision of open space and public accessibility

The submissions raised concern about an insufficient provision of green and open space as part of the development, with further investigation needed.

*Council's Response:*

Council considers that the proposal will provide and dedicate a minimum of 20,000sqm of embellished open space public open space on the site as per the VPA. This quantum of public open space represents approximately 22.5% of the total site area. Additionally, the configuration of the space areas will also provide a green link between Jellicoe Park to the north and the 'Central Park', which forms part of the approved and Stage 1 part of BATA site to the south.

Council also states that future DAs on site will also be required to provide a minimum amount of communal open space in order to satisfy ADG requirements.

*Department's views and assessment:*

The Department considers Council's response to be adequate. Furthermore and through the Department's further assessment as outlined in **Section 12** of the report, the development has the capacity to remove the podium level car parking and put this underground. The effect of this outcome could further increase the opportunities for additional open space new links between spaces through the site and increase permeability.

The requirement for a site specific DCP also seeks to ensure that development suitably responds to and incorporates well designed spaces throughout the site.

For these reasons the Department is of the view that this matter is adequately addressed without the need for further alteration to the proposal.

Heritage

The submissions received raised concern that the administration building's clock tower will not be retained. The submissions stated that it should be refurbished for community uses.

*Council's Response:*

Council stated that whilst the clock tower was identified as being significant in the Heritage Impact Statement (HIS), the clock tower (as well as other items of heritage significance on the site) is not included on the State Heritage Register or identified as items of environmental heritage in Schedule 5 (Environmental Heritage) of the Botany Bay LEP 2013.

As such, there is no legal requirement for the item to be retained and the proponent has been issued with a Complying Development Certificate to demolish certain buildings on site, including the clock tower.

*Department's views and assessment:*

The Department considers the nomination of this building as an item of heritage significance to be a local matter. Council has not required its retention as part of either this planning proposal or its dedication to Council as part of the voluntary planning agreement.

The Department considers that Council's response to this matter is adequate and notes that a photographic record is required as part of the site specific DCP. This matter can be further addressed as part of the site specific DCP and any part of any future DA(s).

Provision of affordable housing

The submissions received stated that the amount of affordable housing provided should be increased to comply with the 5-10% specified by the Greater Sydney Commission in the Greater Sydney Region Plan.

*Council's Response:*

Council states that the VPA between Council and the proponents includes the provision of total of 100 beds, which is equivalent maximum 50 units. The 'Greater Sydney Region Plan' requires the preparation of 'Affordable Rental Housing Target Schemes' and recommends a target of 5-10% of residential floor space be applied to defined precincts prior to rezoning. The Region Plan states the targets are not affect projects currently underway.

As Council does not have an Affordable Rental Housing Scheme or a local provision to mandate affordable housing, it cannot be implemented. As such, the provision of affordable housing was considered to have merit and has been negotiated via a VPA. This approach was considered appropriate in the absence of a scheme and consistent with 'Greater Sydney Region Plan' the Eastern City District Plan.

*Department's views and assessment:*

Further to Council's response, a local provision to mandate affordable housing on the site could not be included in the Botany Bay LEP 2013. This is because Bayside Council were not identified as an area in need of affordable housing under clause 9 of State Environmental Planning Policy No. 70 – (Affordable Housing Revised Schemes). This was considered as part of the Gateway determination and subsequent alteration.

Nonetheless, it is noted that in February 2019, SEPP 70 was amended to include all LGAs within the State. The amendment removes the administrative step of entering a LGA into SEPP 70, thereby expediting councils' ability to investigate and develop an affordable housing contributions scheme.

The next step in the process will be for council to prepare an affordable housing contribution scheme and amend their local environmental plan to reference the scheme. It is optional for a council to develop an affordable housing contribution scheme and housing has yet to do its Local Housing Strategy, which will be required to address the matter of housing affordability.

In this regard and with the agreed provision of affordable housing as part of the VPA with Council the provision of affordable housing is considered satisfactory and addresses the Gateway (as altered).

### Infrastructure provision

The submissions received raise concern that the development will have negative impacts and demands on infrastructure due to increased density and additional people. They also raise concern that there should be a mass transit facility/public transport in place to support the development resulting from the proposal.

#### *Council's Response:*

Council states that the Voluntary Planning Agreement (VPA) includes contributions that will assist in upgrading public infrastructure, such as the upgrade of the Botany Aquatic Centre, the dedication of public roads and 2 hectares of open space. This VPA

A Due Diligence Report prepared by AT&L and provided with the planning proposal identifies that essential services such as water and sewerage can be adequately provided to the site.

The Transport Impact Assessment prepared by ARUP concludes that the surrounding road network can support the increased trips generated by the proposed development. Transport for NSW (TfNSW) has reviewed the proposal and did not object to the proposal. It also advised that:

- Council should implement travel demand strategies to reduce on site car parking provisions and to mitigate traffic increases;
- the delivery of on road cycle lanes and shared paths in specific locations is encouraged;
- the Southeast Sydney bus service network will change to accommodate the light rail opens in mid 2020, and that the adjustments to the services and network has yet to be finalised;
- limit the retail premises to 5,000sqm due to the potential for exceedance to the traffic capacity;
- there be preparation of a site specific DCP that consider no direct vehicular access to Bunnerong Road, and access to Heffron or Banks Avenue be located practically way from any signalised intersections;
- any child care centres be located where it can only be access via local/internal roads; and
- that revised modelling be provided prior to the LEP or be undertaken as a transport study for the future masterplan DA.

A detailed response to the TfNSW submission is provided in **Section 11** of this Report.

Despite the above, any future DA(s) lodged with Council would need to provide detail on the final proposed scheme, including mix of uses (residential, commercial etc.) and be supported by appropriate information to allow Council to determine whether any additional road and transport infrastructure is required to support the development.

#### *Department's views and assessment:*

Further to Council's response, the Department notes that the regional panel recommended at the rezoning review held in September 2017, that 'satisfactory arrangements with Council be made for the provision of appropriate community facilities, open spaces and social infrastructure'. For 'satisfactory arrangements' to be applied through an LEP, this must only concern the provision of regional and state infrastructure.

It is noted that the Department of Education requested satisfactory arrangements be included in the LEP and RMS/TfNSW did discuss VPA contributions for intersection



upgrades. The Department has written to Council, the proponent and the Department of Education, clarifying that the satisfactory arrangements will not be required for this proposal. Bayside Council and the proponent have entered into a VPA which will provide for the following:

- dedication of a maximum of affordable housing units;
- embellishment and dedication of a minimum of 20,000m<sup>2</sup> of open space;
- dedication of public roads;
- monetary contribution of \$23,900,000 (community facilities and infrastructure); and
- monetary contributions that would otherwise have been required to be paid under the Development Contribution Plan.

The negotiation of these contributions as part of a VPA is a matter between Council and the proponent. The Department is satisfied that this arrangement is a satisfactory means of addressing the Panel's comments.

Additionally, the proponent for the development has agreed under the VPA to also contribute the required amount of contributions in accordance with Council's Section 7.11 Contributions Plan for local infrastructure.

#### Additional Permitted uses and non-residential floor space

Submissions received have requested that the 'Additional Permitted Uses' clause be amended so that non-residential uses across the site must have a minimum total floor space of 5,000m<sup>2</sup>, and no individual retail premises tenancy may exceed 1,000m<sup>2</sup>.

Concern was raised that to permit a large format retail tenancy would risk a large portion of the proposed retail floor space being consolidated into one large tenancy. It was expressed that this may not appropriately meet the varied convenience needs of the new residents and may pull from a trade area beyond (i.e. Westfield).

#### *Council's Response:*

Council states that planning controls should aim to promote flexibility rather than create barriers that could inhibit economic growth and competition. This is also considered within Ministerial Direction 6.3 Site Specific Provisions, which seeks to allow a development to be undertaken "without imposing any development standards or requirements in addition to those already contained in the LEP". As such, it is considered that limiting the size of individual tenancies on site is inconsistent with Direction 6.3 and therefore inappropriate in these circumstances.

Council also states that the distribution of non-residential floor space across the site will be subject to further assessment in a future DA.

#### *Department's views and assessment:*

The Department considers Council's response to be adequate, noting that such an amendment would be inconsistent with Ministerial Direction 6.3 and the site specific DCP for the site requires consideration of the mix of land uses. Consequently, this matter has been adequately addressed as part of this planning proposal and can be further considered as part of any future DA(s).

#### Obstacle Limitation Surface

The submissions received stated that the increase of the building height would penetrate the Sydney Airport Obstacle Limitation Surface (OLS) and thus should be rejected.

#### *Council's Response:*

Council confirms that the Obstacle Limitation Surface (OLS) prescribed for the site is 51m AHD. The proposal includes a maximum height of 91 metres (RL) AHD which exceeds, by 40 metres, the prescribed OLS for the site. However, on 30 January 2019, DIRDC issued a 'Controlled Activity Approval' to a maximum height of 91m AHD. As such, Council considers that aeronautical issues have been resolved.

*Department's views and assessment:*

The Department considers Council's response to be adequate and notes that the above matters would be addressed as part of any future DA(s).

Crime

The submissions received raised concern that the provision of affordable housing will result in an increase in crime rates and public safety.

*Council's Response:*

Council states that it is unlikely that the provision of affordable housing within the development would increase crime rates and detrimentally impact safety. Application of Crime Prevention Through Environmental Design (CPTED) principles (such as lighting and urban design) will be considered and assessed for all buildings (including affordable housing) as part of any future DA for the site.

*Department's views and assessment:*

The Department considers Council's response to be adequate on this matter and notes that the preparation of the site specific DCP can further address and incorporate CPTED principles. The Department does not agree that there is tangible information to suggest that the provision of affordable housing as part of this planning proposal will result in detrimental social impacts in the area.

Aesthetics

The submissions received raised concerns raised regarding the design and aesthetics of the development.

*Council's Response:*

Council states that the subject site is identified as a 'Key Site' under Botany Bay LEP 2013, which triggers a need for any new buildings to comply with Clause 6.16 Design Excellence, which will ensure that a high standard of architectural design is achieved.

Any future development will also be required to demonstrate compliance with SEPP 65 and the associated Apartment Design Guide (ADG), which includes requirements for good quality design and use of high-quality materials and implementation of minimum apartment sizes.

*Department's views and assessment:*

The Department considers Council's response to be adequate on this matter. It is agreed that there are sufficient design mechanisms in place to ensure any future development is appropriately considered under SEPP 65 and the ADG. Additionally, a new site specific clause will be introduced as part of this amendment requiring a future development control plan be developed having regard to a number of design principles. The Department is satisfied that further detailed design consideration can be given at the development application stage.

Hazards from Dangerous Goods

The submissions received raised concern about hazardous materials transported along Bunnerong Rd and that intensification of residential uses on the land could thus significantly increase the risk to human life.

*Council's Response:*

Council notes that a Planning Risk Assessment was not provided as part of the Planning Proposal as the subject site is located outside of the risk areas for the Botany Industrial Park and Denison Street – Dangerous Goods Route. Council also states that the Department of Planning and Environment did not raise any issues or require any additional information at the time of the Gateway Determination.

*Department's views and assessment:*

The Department has considered the risk of introducing the additional population onto this site in context of both the Botany Industrial Park and associated dangerous good corridor.

Framed by the 2012 BIP Quantitative Risk Assessment and Denison Street – Dangerous Goods Route Risk Assessment, this consideration determined that the risks from these hazards do not extend to the subject site. As such, such operations do not pose unacceptable risk to the additional population nor did the introduction of the additional population on this site unsatisfactory affect the operation of the BIP or the associated Denison Street – Dangerous Goods Route.

## **11. ADVICE FROM PUBLIC AUTHORITIES**

Council consulted with the following agencies in accordance with the Gateway determination:

- Transport for NSW;
- Roads and Maritime Services;
- NSW Ports;
- Sydney Airport Authority;
- Civil Aviation Safety Authority;
- NSW Department of Education;
- Environment Protection Authority; and
- NSW Office of Environment and Heritage.

Council received submissions from the following:

- NSW Department of Education;
- Sydney Airport Authority (SAA);
- Civil Aviation Safety Authority (CASA);
- NSW Office of Environment and Heritage (OEH); and
- a joint submission from Transport for NSW (TfNSW) and Roads and Maritime Services (RMS).

Neither NSW Ports and the Environment Protection Authority provided a response in relation to the proposal.

In accordance with Section 9.1 Direction 3.5 Development Near Regulated Airports and Defence Airfields Council also consulted with Federal Department of Infrastructure, Regional Development and Cities (DIRDC).

Council also consulted with Randwick City Council as the subject site is located in proximity to the Randwick local government area boundary.



### Joint Submission TfNSW and RMS (Attachment G):

The joint TfNSW & RMS submission did not raise any objection the proposal. Nonetheless, the submission did raise a number of matters which can be addressed as part of any future development application. The matters raised in the submission are discussed below, with Council's and the Department's responses and assessments provided below.

#### **1. Traffic demand model**

The RMS submission included a recommendation that Council implement site-specific clauses within either the LEP or DCP for the maximum provision of residential car parking consistent with the Guide to Traffic Generating Developments (RMS Guide), being:

- 0.4 spaces per 1 bedroom
- 0.7 spaces per 2 bedroom
- 1.2 spaces per 3 bedroom
- 1 space per 7 units for visitor

This was justified by:

- The sites location within the Eastgardens-Maroubra Strategic Centre; and
- That Council should implement travel demand strategies, such as reduced on-site car parking provisions to mitigate the potential impact of traffic movements to/from future developments.

#### *Council's Response:*

Bayside Council has resolved that they require a car parking rate consistent with either the Botany Bay DCP (BBDCP) 2013 or the concept DA approval for Stage 1 of the Pagewood Green development. A comparison table (**Table 2**) for the various car parking rates is provided below.

| Development Type                  | Part 3A/9D BBDCP                             | Approved Stage 1 Master Plan                 | Proposed rates                               | RMS Guide to Traffic Generating Development |
|-----------------------------------|--|--|--|---|
| <b>Residential Flat Buildings</b> |  |  |  |   |
| Studio/1 bedroom                  | 1 space per apartment                        | 1 space per apartment                        | 0.5 space per apartment                      | 0.6 space per apartment                     |
| 2 bedroom apartment               | 2 space per apartment                        | 1.5 space per apartment                      | 1 space per apartment                        | 0.9 space per apartment                     |
| 3 bedroom apartment               | 2 space per apartment                        | 2 space per apartment                        | 1.5 space per apartment                      | 1.4 space per apartment                     |
| Visitor parking                   | 1 space per 5 apartments                     | 1 space per 10 apartments                    | 1 space per 10 apartments                    | 1 space per 5 apartments                    |
| <b>Commercial/Retail</b>          |  |  |  |   |
| Shops                             | 1 space per 25sqm                            | 1 space per 40sqm                            | 1 space per 40 sqm                           |   |
| Childcare                         | 1 space per 2 employees                      | 1 space per 2 employees                      | 1 space per 2 employees                      |   |
|                                   | 1 space per 5 children                       | 1 space per 5 children                       | 1 space per 5 children                       |   |
|                                   | 1 pick-up and set-down space per 20 children | 1 pick-up and set-down space per 20 children | 1 pick-up and set-down space per 20 children |   |

**Table 2 – Comparison of car parking rates**

Council's peer review of the TIA undertaken by Cardno states that reduced car parking rates are unlikely to result in higher usage of public transport, rather, it would increase parking demands on the surrounding street network. Whilst the Apartment Design Guide allows reduced car parking rates aligned with the RMS Guide to Traffic Generating Development, this is only in circumstances where the subject site is "800 metres of a railway station or light rail stop in the Sydney Metropolitan Area". The subject site does not meet this criteria, therefore, Council considers its car parking requirements prevail as per BBDCP 2013.

Council also states that the site specific DCP requires consideration of car parking rates. Consequently, Council resolved that car parking rates be increased beyond what is outlined in the TIA to be consistent with Council's DCP, or, at a minimum BATA Stage 1 and that this matter be resolved as part of a site specific DCP or Concept DA.

*Department's assessment:*

The Department notes the RMS/TfNSW submissions recommendation that a maximum parking rate be included in either the LEP or DCP and the associated recommended rates. The Department also notes that the proponent has requested a maximum car parking rate be included in the LEP, which are generally consistent with those recommended by RMS/TfNSW.

A site-specific provision within the LEP for a maximum car parking rate is not supported by Council and was not publicly exhibited. The planning proposal currently includes a provision for the preparation of a site specific DCP which requires consideration of car parking.

The Botany Bay LEP 2013 does not currently include a provision requiring a maximum rate of car parking for any form of development. Notwithstanding this, the RMS submission considered that a maximum rate could either be included in the LEP or resolved as part of a DCP. As the proposal already includes a provision requiring the site specific DCP to consider car parking, the Department considers that the proposal is consistent with this submission's recommendation. Consequently, a site specific provision for a maximum car parking rate not be included in the LEP.

This will ensure the flexible negotiation of the car parking rates between the proponent and Council, which will be informed by further details of the development as part of any future development application(s).

As part of the consideration of the development application, Schedule 3 of the Infrastructure SEPP requires an application to be referred to RMS for comment. The Infrastructure SEPP also requires that the consent authority must consider the accessibility of the site concerned, including the potential to minimise the need for travel by car.

## **2. Intersection Upgrades and Traffic Modelling**

The RMS/Transport submission recommended that a contribution toward local and regional active transport connections would assist in reducing traffic impacts associated with the increased density. The following suggestions should be considered for funding:

1. An upgrade of the on-road cycle lanes, along Banks Avenue between Heffron Road and General Bridge Crescent, to a separated cycleway.
2. A new shared path along Heffron Road, Page Street and Cowper Avenue, which will link to a future Green Corridor.

The commitment to deliver transport infrastructure would ensure that the planning objectives of the Eastern City District Plan are implemented in conjunction with the dwelling growth associated with the subject land use changes.

The submission also noted that Transport has reviewed revised modelling provided by the Applicant on 2 March 2019 and noted some matters that should be addressed either prior to the making of the Plan, or at a minimum in any transport study prepared in support of the future Masterplan DA.

*Council's Response:*

Council states that the traffic modelling included as part of the TIA outlines that surrounding intersections, particularly Wentworth Avenue/Page Street will operate at an improved Level of Service, subject to the planned upgrades and other improvements being delivered. RMS have raised no objection to the traffic modelling, but noted some matters that should be addressed in any transport study prepared in support of the future Masterplan DA.

The TIA does not provide commentary on the intersection of Wentworth Avenue and Baker Street, however, it should be noted that the Baker Street/Wentworth Avenue intersection has been identified as requiring upgrade to a signalised intersection. The City of Botany Bay Section 94 Contributions Plan outlines the required funding to implement this upgrade.

It is recommended that at the DA stage, the traffic modelling be updated to address RMS requirements, as discussed above, as well as include an analysis of the Wentworth/Baker Street intersection. Additional funding over and above Section 7.11 Contributions may be necessary to facilitate any required upgrades to address any traffic impacts that need to be addressed prior to any DA being approved within the site.

The timing and delivery of the necessary infrastructure upgrades should be considered as part of any future DA for the site, including any Staged DA, to ensure the surrounding intersections operate at an appropriate Level of Service in the future. As such, it is ideal that the upgrades to the Wentworth/Page and Wentworth/Baker intersections be completed prior to an Occupation Certificate associated with any future DA for buildings on the site.

*Department's assessment:*

The Department considers Council's response to be adequate and notes that the above matters would be addressed as part of any future DA(s) or as part of Council's works program subject to allocation of funding through agreed methods.

Furthermore, the negotiation of these contributions as part of a VPA is a matter between Council and the proponent.

### **3. Public Transport**

The RMS submission noted that the Southeast Sydney bus service network will change once the CBD & Southeast Light Rail opens in mid-2020. The definition of the network has not yet been finalised.

The submission also noted recent changes (December 2018) to the bus network, where some changes were made to services operating to/through Eastgardens. For instance, Routes 310 and X10 were withdrawn and several new routes were introduced; 307, 310X and 400N. Improvements to Route 391 were also made.

*Council's Response:*

Council states that the Traffic Impact Assessment (TIA) submitted by the proponent states that "Meriton and STA have discussed bus services that will be provided directly to the site within the short term, including bus stops built within the site".

*Department's assessment:*

The Department is satisfied that the site is adequately serviced by existing public transport, with buses being the main public transport option. Several major bus routes are located on Bunnerong Road near Heffron Road (north-east of the site) and at the Westfield



Eastgardens bus terminal (south-east of the site). These buses operate from Eastgardens to the Sydney CBD, Bondi Junction, Maroubra and La Perouse.

#### **4. Retail Floorspace**

The RMS submission recommended that Council include LEP controls to limit the floor space of the additional permitted use of 'retail premises' to 5,000 sqm. This has been recommended as any exceedance of the retail floor space has not been accounted for in the traffic assessment and the associated traffic may exceed the capacity of the road infrastructure and recently delivered upgrades;

##### *Council's Response:*

Council states that the non-residential floor space component is a requirement of the Gateway Determination and is deemed necessary to enable future resident's adequate access to shops and services on site. Future DA's will be required to be referred to RMS to enable further comment in this regard and the potential for further upgrades, including any DA involving commercial floor area.

##### *Department's assessment:*

The Department considers the site represents an opportunity to generate additional employment opportunities, within an identified strategic centre, through the requirement for a minimum of 5,000 square metres of commercial premises, serviced apartments and recreation facilities (indoor).

All three proposed additional uses will contribute towards serving the needs of the predominately residential development on site. It will also encourage people to walk and cycle to these facilities. The revised proposal is also not inconsistent with the R4 zone objectives as it provides for predominately residential land uses on the site.

The SJB Masterplan proposes predominantly residential land uses across the site, with 80% of the indicative GFA being residential development. The remaining 20% of the indicative GFA is predominately allocated to serviced apartments, retail floor space, childcare centres and indoor recreation facilities. This was reflected in the Traffic Report considered by RMS/TfNSW, who have not objected to the proposal.

Therefore, the Department considers that it is not necessary amend the provision to cap the non-residential floor space on the site. Council's response to be adequate and the final mix of land uses with associated traffic impacts can be adequately addressed as part of any future DA(s).

##### **NSW Department of Education (Attachment H):**

The Department of Education raised concerns surrounding the lack of Special Infrastructure Contributions (SIC) when considering the size of the proposed development. The Department of Education anticipates a significance rise in demand for additional teaching space in government schools as a result of the development.

The Department of Education has requested that Council in collaboration with Schools Infrastructure NSW and the NSW Department of Planning, Industry and Environment consider a mechanism to obtain development contributions for required public education facilities that are to result from the proposal.

The Department of Education advises that this can be conducted via satisfactory arrangements or a Voluntary Planning Agreement (VPA).

##### *Council's Response:*

Council states that it does not support the proposal by the Department of Education for the redirection of monetary contributions, which have already been negotiated as part of a VPA.

### *Department's views:*

In a letter dated 11 June 2019, the Department wrote to the Department of Education, Council and the proponent, following a request for clarification from the proponent in relation to a SIC.

The Department advised in its letter that as the site is not located within a planned precinct or growth area, a satisfactory arrangements provision would not be applied to the proposal. The Department also advised that this is reflected in both the original Gateway determination and Alteration of the Gateway determination. This does not prevent the potential for future amendments to the VPA negotiated between Council and the proponent.

### NSW Office of Environment and Heritage (Attachment I):

The NSW Office of Environment and Heritage (OEH) advised that the supporting Heritage Impact Statement (HIS) is not considered to sufficiently assess the impact of the development on heritage items in the vicinity of the site. The HIS is also considered insufficient in its justification as to why it concluded the proposed development will not have any negative impacts on heritage.

It was also recommended that should the demolition of the buildings proceed:

- the recommendations of the HIS to mitigate heritage impacts be implemented; and
- that photographic archival recording be expanded to include all remaining infrastructure associated with the General Motors Holden manufacturing period.

### *Council's Response:*

Council advised that the buildings on site are not listed on the state heritage register and are not identified under Schedule 5 of Botany Bay LEP 2013. Consequently, Council consider that there is no statutory requirement to retain the buildings and has subsequently been issued with a CDC for the demolition of the structures.

Council considers that the recommendations from OEH will be addressed throughout the assessment of any future development applications.

### *Department's assessment:*

Further to Council's response, the Department considers the retention of the administration building as an item of heritage significance to be a local matter. Council has not required its retention as either part of this planning proposal or dedicated to Council as part of the associated voluntary planning agreement. The planning proposal discusses the preparation of a photographic record of the site, which can include the recommendation of OEH as part of a development application.

With regard to potential impacts the proposal may have on nearby heritage items, the masterplan of the site has been informed by the Hill Thalys peer review prepared for Council. This peer review considered the context of the development proposal within the surrounding area. The layout of the SJB masterplan is informed by the Hill Thalys peer review prepared for Council. This includes the concentration of density and height to the south western portion of the site.

Furthermore, the development of this site will not result in greater impacts on nearby heritage items than BATA Stage 1.

Finally, the site specific DCP clause requires consideration of heritage impacts for both European and Aboriginal items. Thus, these matters have either been adequately addressed as part of this planning proposal and can be further addressed as part of any future DA(s).

#### Randwick City Council (Attachment J):

Randwick Council provided a submission noting several issues with and recommendations for the proposal, being:

- the increase in the FSR to 2.35:1 is excessive;
- the increase in building height is out of character with the surrounding area;
- the justification for the increased density relies on future, uncommitted mass transit whilst only relying on buses for the foreseeable future;
- greater transition should be provided along Bunnerong Road and which is consistent with that along Heffron Road;
- greater setbacks, consistent with the Hills Thalys scheme, should be provided along Bunnerong Road;
- the R4 zoning isn't appropriate for the site, with an R1 zoning considered more appropriate;
- the proposal will have a negative impact on Randwick Council open space and infrastructure;
- Central Park be enlarged to provide more public open space and building heights be reduced to increase solar access to the park;
- the proposal does not provide a clear breakdown of the uses on the site;
- sufficient on-site car parking will need to be provided, Randwick does not support the car parking rates reference in the planning proposal;
- the proposal will result in a significant increase in traffic volume;
- residents will have to drive 2km to the Light Rail terminus at Kingsford, resulting in traffic and car parking impacts in the locality;
- negative impacts that the increased population will have on social and community infrastructure;
- trees should be retained;
- pedestrian safety concerns; and
- drainage impacts.

#### *Council's Response:*

Council's responses to these issues can be found in **(Attachment O)**.

#### *Department's views and assessment:*

The Department considers that these matters raised are addressed in this report. It is also noted that Council's responses are to be adequate.

#### Civil Aviation Safety Authority (CASA) (Attachment K):

CASA raised no objections concerning the planning proposal and no objections to the maximum building envelope at RL 91.0m.

#### Sydney Airport Authority (SAA) (Attachment L):

SAA advised that the height of the Obstacle Limitation Surface (OLS) over the site is 51 AHD and that under applicable airspace regulations, development that protrudes the OLS will be subject to assessment and approval by the Federal Department of Infrastructure, Regional Development and Cities (DIRDC).

### *Council's Response*

Council noted SAA's submission and advised that on 30 January 2019, DIRDC issued a Controlled Activity Approval to a maximum of 91 AHD, which is the maximum height that the planning proposal seeks to achieve. As such, Council considers aeronautical issues in relation to the planning proposal have been resolved.

### *Department's views and assessment:*

The Department notes that DIRDC has issued a Controlled Activity Approval to a maximum of 91 AHD. The Department is satisfied that this issue has been adequately addressed as part of this planning proposal. Further consideration and consultation with SAA should be undertaken at the development application stage.

### Department of Infrastructure, Regional Development and Cities (DIRDC) (Attachment M):

DIRDC advised that the proponent should continue to liaise with SAA surrounding the final height of the proposed buildings. DIRDC also recommended that the proponent consult with SAA in relation to any crane activities associated with construction at the site. This is to ensure that any approvals required under the *Airports (Protection of Airspace) Regulations 1996* are obtained prior to the commencement of construction. DIRDC did not raise any objection in relation to the proposal.

### *Council's Response:*

Council noted DIRDC's response and advised that it will continue to liaise with SAA during any future development applications pertaining to the site.

### *Department's views and assessment:*

The Department is satisfied that any airport concerns will be resolved as part of any future development applications.

## **12. DEPARTMENT'S FINALISATION ASSESSMENT**

Based on the Council's resolution to reduce the maximum FSR from 2.35:1 to 2:1, the Department has undertaken further assessment to determine whether this outcome is warranted, taking into account the potential built form outcomes for the development and the consequential parking and traffic concerns raised by the community, and which are reflected in the additional resolutions of Council on the proposal.

The Department's assessment of this matter, Council's views and the reasons for the alteration to the proposal are provided below.

The reduction of the maximum FSR to 2:1 equates to an overall reduction of approximately 30,000m<sup>2</sup> in gross floor area, which translates to approximately 300 residential units.

Upon reviewing of the exhibited concept and the amended concepts provided to Council in consideration of the above potential impacts, the Department expressed concern with the unnecessary bulk and scale of the podium car parking as:

- increasing the bulk and scale of the built form; and
- increasing overshadowing of proposed open space.

Although car parking is excluded from the calculation of FSR where this is provided at podium levels and therefore is located above ground, this has capacity to add additional bulk to the resultant buildings.

Consequently, the Department requested that further justification be provided with consideration of a revised scheme that removed podium car parking from the concept



designs for the development but still retaining a maximum FSR of 2.35:1. This was provided by the proponent and is included at **Attachment P**.

A comparison of overshadowing impacts of the exhibited scheme and the revised scheme provided to the Department is provided in **Table 3** below. Additional comparisons of the concept schemes are provided in **Figures 14 to 18**.

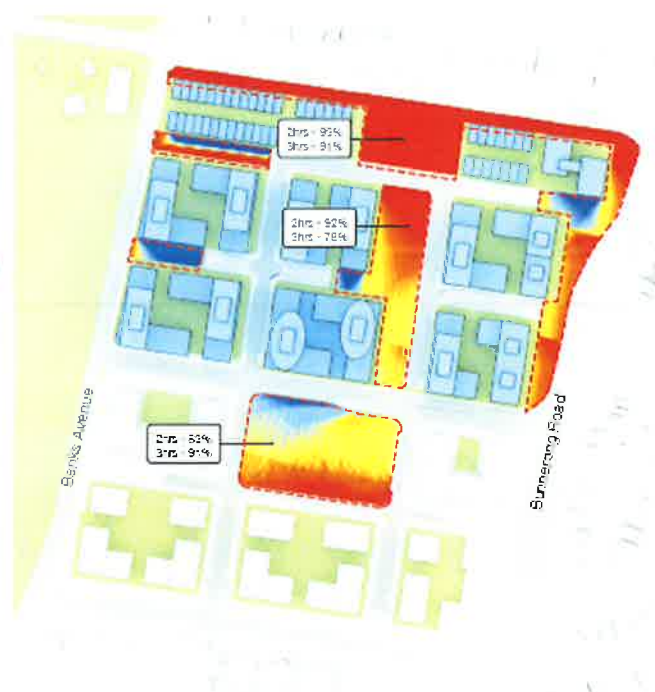
**Table 3** – Comparison of solar access performance of revised concept

| Solar Access                        | Exhibited Concept with 2.35:1 FSR | Revised Concept with 2:1 FSR dated May 2019 | Revised Concept with 2.35:1 FSR dated September 2019 |
|-------------------------------------|-----------------------------------|---|--|
| 2hrs on 21 June (Public Open Space) | 78%                               | 85%   | 86%  |
| 3hrs on 21 June (Public Open Space) | 60%                               | 70%   | 75%  |



**Solar Insolation - 2.35:1 Original Scheme**

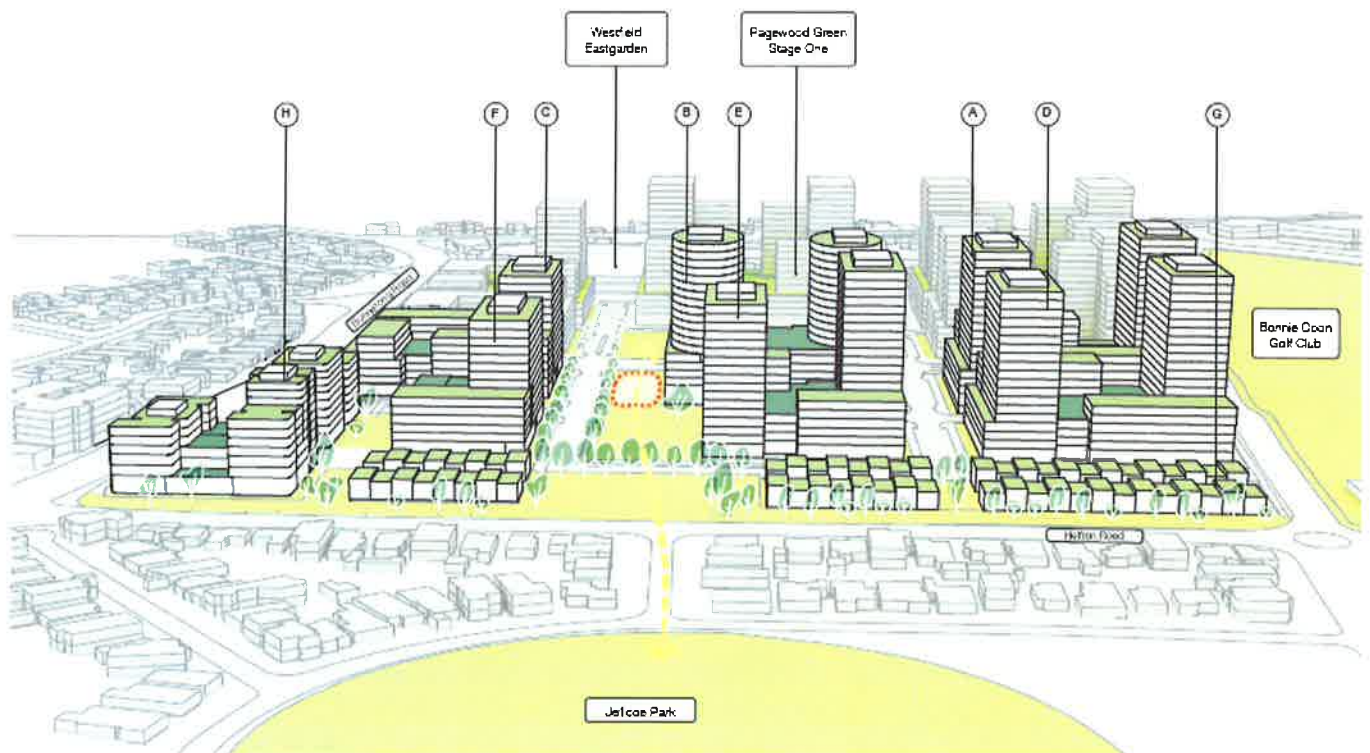
Overall 78% of the public realm receives more than 2 hours of sunshine on the winter solstice, while 60% receives more than 3 hours of sunshine.



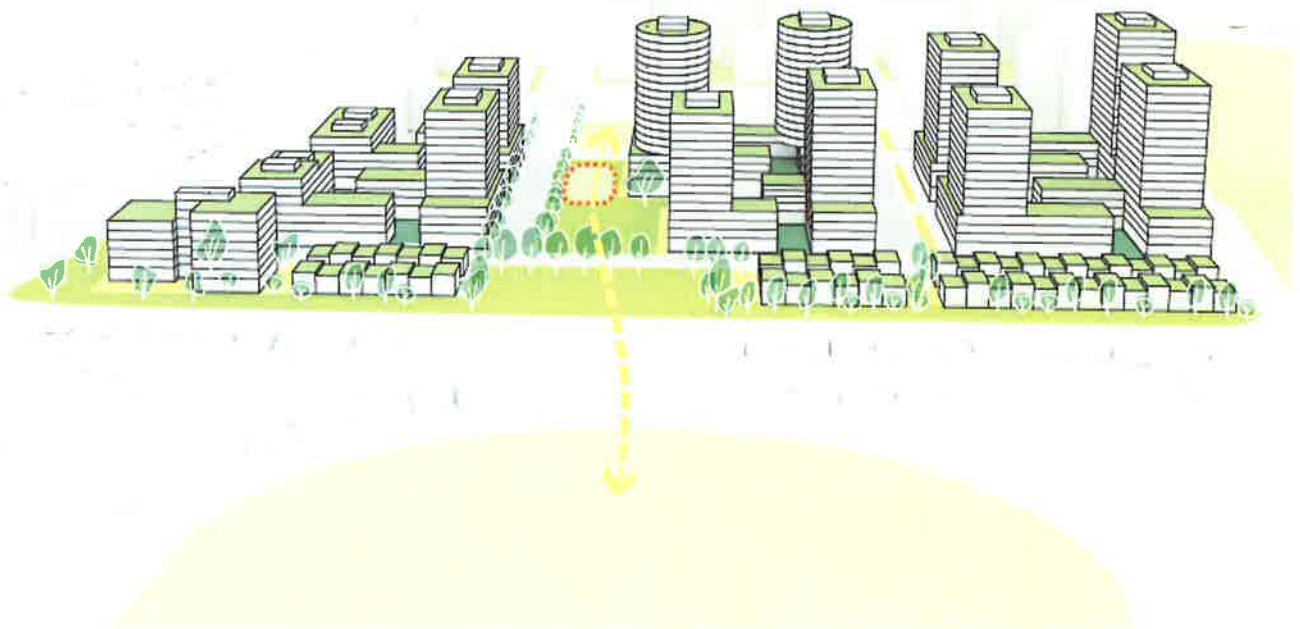
**Solar Insolation - 2.35:1 Current Revision**

Approximately 86% of the public realm receives more than 2 hours of sunshine on the winter solstice, while 75% receives more than 3 hours of sunshine.

**Figure 14** – Solar Access comparison of exhibited and revised schemes (Source: SJB revised concept dated September 2019)



**Figure 15** – Concept as exhibited with 2.35:1 FSR (Source: SJB Masterplan dated November 2018)



**Figure 16** – Amended concept dated September 2019 with 2.35:1 FSR (Source: SJB revised concept dated September 2019)



**Figure 17** – Exhibited concept scheme with 2.35:1 FSR (Source: SJB Masterplan dated November 2018)



**Figure 18** – The revised concept dated September 2019 with 2.35:1 FSR (Source: SJB revised concept dated September 2019)



The revised scheme with underground parking illustrates a clear capacity for the development to reduce the massing of buildings and remove podium levels in many of the buildings, thereby:

- creating new open space opportunities between buildings and improving and increasing site permeability;
- reducing the overall apparent density of development; and
- improving the solar access performance of the buildings, in particular to adjoining and new internal open spaces.

Additionally, through improved opportunities for pedestrian permeability through the site and parking and transport management strategies employed under and as required by a site specific DCP, is expected to help support managed and reduced traffic generation from development.

Concern was not raised about the impacts the increased density would have on traffic volumes or usage of public transport as the joint TfNSW/RMS submission did not object to a proposed FSR of 2.35:1. As previously discussed in **Section 11**, appropriate car parking rates can be adequately addressed as part the site specific DCP, ensuring the flexible negotiation of the car parking rates between the proponent and Council, which will be informed by further details of the development as part of any future development application(s). It was also recognised that in considering any traffic generating development under a DA, Schedule 3 of the Infrastructure SEPP requires an application to be referred to RMS for comment.

It is for these collective reasons that the Department is satisfied that the proposal at a maximum FSR of 2.35:1 can achieve satisfactory amenity and built form outcomes when this is translated into a future development on the site. Therefore, the maximum FSR of 2.35:1 is reflect in the LEP amendment.

### 13. SECTION 9.1 DIRECTIONS

The draft LEP is considered to have either demonstrated consistency or justified any inconsistencies with relevant 9.1 Directions at the Gateway determination stage. Table 2 below outlines the proposal's consistency and justification for any inconsistency with relevant 9.1 Directions.

| Section 9.1 Direction                                   | Consistent   | Comment   |
|---|--|---|
| <b>1. Employment and Resources</b>                      |  |   |
| 1.1 Business and Industrial Zones                       | No.<br>Inconsistency was justified under clause (5)(b) at Gateway determination stage. | This Direction encourages retention of employment land, however for the reasons outlined in <b>Section 15</b> of this report, inconsistency with this Direction is acceptable and will ultimately support and promote the viability of the strategic centre of East Gardens and Maroubra Junction.<br><br>Given the intent of the planning proposal has not changed since the Gateway determination, no further approval is needed. |
| <b>3. Housing, Infrastructure and Urban Development</b> |  |   |
| 3.1 Residential Zones                                   | Yes  | The planning proposal is considered consistent with the direction as it seeks to broaden housing choice in the area. The proposal also will also make more efficient use of existing infrastructure and services and does not encourage urban sprawl.   |



| Section 9.1 Direction  | Consistent | Comment   |
|--|------------|---|
| 3.4 Integrating Land Use and Transport                         | Yes        | <p>The planning proposal is considered consistent with the Direction. The proposal seeks to increase residential density in a location with access to a range of jobs, services and existing public transport.</p> <p>Future Transport 2056 also identifies the locality as a potential location for extensions to either the Sydney Metro project or South East Light Rail.</p> <p>Consultation has been undertaken with Transport for NSW and Roads and Maritime Services. In response, it is anticipated that eight additional bus services will operate during peak hours commencing in mid-2020 and bus stops will be integrated throughout the site.</p>  |
| 3.5 Development Near Licensed Aerodromes and Defence Airfields | Yes        | <p>The planning proposal is considered generally consistent with the Direction. The site is located outside of the 2039 ANEF contours for Sydney airport. As such, aircraft noise does not need to be further considered as part of the planning proposal.</p> <p>However, the site is subject to an OLS restriction of RL 51.0m. The proposed development comprises buildings up to 20 storeys with a maximum height of RL 91.0m, illustrating a protrusion of the prescribed airspace of up to 40m.</p> <p>As discussed, DIRDC has issued a Controlled Activity Approval to a maximum of RL 91.0m, which is the proposed maximum height of buildings. The approval and associated consultation satisfy the planning proposal authority's obligations under the direction.</p> <p>It is noted that further Controlled Activity Approvals will be required during the construction phase to allow for cranes and other associated structures. However, this can be considered during the development application stage.</p> |
| <b>6. Local Plan Making</b>                                    |            |   |
| 6.3 Site Specific Provisions                                   | Yes        | <p>The planning proposal is considered consistent with the Direction as it is consistent with the standard instrument and does not impose any new clauses that are not already contained within Botany Bay LEP 2013.</p> <p>Additionally, the inclusion of a provision that requires a minimum of 5,000m<sup>2</sup> of non-residential floor space will allow for the continuation of employment uses at the site as it transitions from an industrial land use.</p>   |

## 14. STATE ENVIRONMENTAL PLANNING POLICIES

### SEPP 65 – Design Quality of Residential Apartment Development

As the planning proposal seeks to facilitate the development of a series of residential flat buildings, consideration of SEPP 65 is required. A general assessment has been undertaken by the Department and the concept scheme in support of the proposal has been shown to generally comply with the ADG.

Detailed design of buildings that comply with the proposed envelopes sought by this Planning Proposal will be undertaken at DA stage, where compliance with SEPP 65 will need to be demonstrated. The concept scheme provides:

- building envelopes which are 25% greater than the achievable floor area in accordance with the ADG;
- 82.7% of proposed apartments receive a minimum of 2hrs solar access during winter solstice, greater than the 70% requirement at 2hrs in the ADG;
- a minimum 24m building of separation that meets the minimum requirements in the ADG;
- building depths that will support a range of apartment layouts and can achieve compliance with the ADG;
- building orientations that seek to maximise solar access for apartments, with 82.7% of proposed apartments capable of receiving a minimum of two hours of direct sunlight;
- satisfactory solar access to neighbouring residential development, the public domain and open spaces;
- communal open space at ground level and which accounts for approximately 25% of the site area in accordance with the ADG requirements;
- communal open space which is anticipated to receive adequate solar access throughout the year;
- align tower elements north-south to minimise overshadowing to the public domain and within blocks;
- offset tower forms and create breaks to provide amenity, variety, outlook and relief; and
- deep soil zones will meet the minimum requirement of 7% of the site area.

Overall, the planning proposal has adequately demonstrated that the proposed increases in building height and FSR are capable of appropriately responding to SEPP 65.

#### SEPP 55 - Remediation of Land

Under clause 6 of SEPP 55 when a planning proposal proposes a land use change the consent authority must consider whether the site is contaminated. Due to the site's industrial history it must be considered whether the land can be suitably remediated for residential uses.

A Summary of Contamination Investigations was conducted by Douglas Partners and accompanies the planning proposal. The investigation concludes that the site can be made suitable for mixed uses, including residential uses, subject to the following additional works:

- Additional soil, groundwater and soil vapour investigations to meet the NSW EPA sampling guidelines and with reference to the intended site use as residential to supplement the previous work undertaken;
- Preparation of a Remediation Action Plan;
- Preparation of an Asbestos Management Plan;
- Site Remediation and Validation reporting; and
- Preparation of a Site Audit Statement.

It is considered that the site can be made suitable for residential purposes, subject to the above works being undertaken during development of the site.

## 15. EASTERN CITY DISTRICT PLAN

In March 2018 the Greater Sydney Commission (GSC) released the Eastern City District Plan. The District Plan operates as a bridge between regional and district planning as it allows for the concentrated implementation of the Greater Sydney Region Plan: *A Metropolis of Three Cities* at the District level. The Eastern District Plan encompasses the Bayside Local Government Area.

The Gateway determination considered the then draft Eastern City District Plan. The planning proposal was considered to be generally consistent with the District Plan.

However, it was noted that the proposal was inconsistent with then draft Planning Priority E12 - Protecting industrial and urban services.

Any inconsistencies with the plan have been justified at the Gateway determination stage. Nonetheless, an assessment of the proposal's consistency with the relevant planning priorities of the now adopted Eastern City District Plan is provided below.

### ***Liveability – Priorities and Actions***

#### Planning Priority E3 - Providing services and social infrastructure to meet people's changing needs.

The plan has identified an expected increase of 20% in the number of children under four years who will live in the Eastern City District by 2036, with 25% of the growth in this age group anticipated in Bayside Council.

This planning priority focuses on providing services and social infrastructure to meet the changing composition of population groups in local places. The priority indicates the requirement for land and floor space to be dedicated for education and childcare facilities.

The supporting concept indicates that the development will include provision for centre-based child care services, which are permitted in the R4 zone along with educational establishments. The proposal is considered to be consistent with this planning priority.

#### Planning Priority E5 – Providing housing supply, choice and affordability with access to jobs, services and public transport.

The plan outlines the Eastern City District needs an additional 157,500 dwellings between 2016 and 2036.

This priority indicates that new housing must be delivered to meet the demand of different housing types and tenure as well as be coordinated with local infrastructure to create liveable, walkable, cycle-friendly neighbourhoods with shops, services and public transport.

The plan states that Bayside LGA requires an additional 10,150 dwellings by 2021. This proposal states that the development of the site will facilitate up to 2,015 new dwellings. The supporting development scheme shows that this will be provided in a mix of apartment types as well as medium density housing. This priority also indicates the need to implement affordable rental housing targets when preparing planning proposals for new urban renewal or Greenfield areas. The plan reaffirms that across Greater Sydney, targets generally in the range of 5-10 per cent of new residential floor space are viable.

As discussed earlier, in February 2019, SEPP 70 was amended to include all LGA's within the State. However, the Gateway determination was issued on 12 December 2017, predating the introduction of SEPP 70, whilst Bayside Council will still need to prepare an affordable housing contribution scheme and seek to amend their local environmental plans to reference such a scheme. Bayside Council are yet to undertake this work.

The Department supports the provision of affordable housing on the site and until Council's preparation of an affordable housing contribution scheme and subsequent amendment, the

provision of affordable housing in the residential component of the precinct can be negotiated through a VPA.

Therefore, it is considered that the proposal is consistent with this planning priority as it will provide new housing, a diversity of housing types and affordable housing for the community.

### ***Productivity – Priorities and Actions***

#### **Planning Priority E10 – Delivering integrated land use and transport planning and a 30-minute city.**

The plan indicates that housing, jobs, health and education facilities will be planned in strategic centres to create 30-minute cities.

This priority focuses on the need to integrate land use and transport planning to improve the strategic road network and key intersections to improve traffic flows through the district and access to strategic centres.

The plan notes that access to strategic centres and interchanges will be supported by the train network, intermediate transit modes and an improved road network. The intermediate transit network to be considered in the next 20 years includes the CBD and South East Light Rail extension to Maroubra Junction and bus services from Green Square to La Perouse.

The priority indicates that planning of communities should take a balanced approach to minimising the negative impacts of freight movements and support more efficient freight movements, and that creating safe environments for walking and cycling contributes to businesses choosing to locate and invest.

Consultation with TfNSW, RMS and NSW Ports was undertaken to determine the impacts of the proposal on the public transport network, surrounding roads and freight movements. No public agencies objected to the proposal and as such it is considered to be consistent with this planning priority.

#### **Planning Priority E11 – Growing investment, business opportunities and jobs in strategic centres.**

The plan notes that strategic centres provide important services, jobs and places for communities to meet. To manage growth and change of the district's centres, Eastgardens-Maroubra Junction is considered as a strategic centre.

The priority focuses on creating well-planned strategic centres to stimulate economic activity by providing jobs closer to where people live and use infrastructure more efficiently. The plan indicates that the district will need to accommodate 1.8 million square metres of additional retail floor space in the next 20 years and there will be a demand for additional office floor space.

The planning proposal states that the existing freight and warehouse tenants at the site employ only 15 workers. The proposal indicates that approximately 342 jobs will be created as result of the proposal. Therefore, the site represents an opportunity to generate additional employment opportunities.

This will be provided through a requirement for a minimum of 5,000sqm of non-residential floor space and commercial premises, indoor recreation facilities and serviced apartments as additional permitted uses.

Therefore, the proposal is consistent with this planning priority as it will deliver a minimum non-residential floor space and provide for commercial/non-residential additional permitted uses.



### Planning Priority E12 - Retaining and Managing Industrial and Urban Services Land:

As the planning proposal seeks to rezone IN1 General Industrial land, the priority must be considered. The District Plan imposes a retain and manage approach to industrial lands across the Eastern City District. The retain and manage approach seeks to ensure that all existing industrial and urban services land is safeguarded from competing pressures, with particular reference to residential and mixed-use developments.

The District Plan recognises the significance of urban services and industrial lands in supporting the city and its population. These lands are required for both economic and employment purposes.

Specifically, the District Plan states that:

- existing industrial and urban services land needs to be retained, not converted to residential and/or mixed-use development; and
- future employment growth across all industries and urban services will require additional floor space, additional land or both.

The Greater Sydney Region Plan also seeks to protect all industrial land from conversion to residential development. However, the plan recognises there will be a need:

*“... to review the list of appropriate activities within any precinct in consideration of evolving business practices and how they can be supported through permitted uses in local environmental plans. Any review should take into consideration findings of industrial, commercial and centre strategies for the local government area and/or the district.” (p133).*

The proposal seeks to allow residential accommodation that is inconsistent with the Region Plan and District Plan’s approach of protecting industrial land from conversion to residential development.

In April 2018, the Department wrote to the GSC seeking clarification on whether planning proposals like this one could proceed to Gateway determination where they look to rezone industrial land. The GSC has provided an information note regarding planning proposals affecting employment land. The information note states that if a planning proposal was submitted by a council before the adoption of the district plans in March 2018 and had been referred to and supported by the relevant Sydney planning panel to proceed to Gateway determination, then the decision of the panel is to be the prevailing consideration as to whether a proposal proceeds to Gateway determination.

This proposal preceded the District Plan having had a Gateway determination originally issued on 12 December 2017. Moreover, the proponent and Council have demonstrated that the viability of industrial development on the site being protected is not warranted. The Department has also formed the view that this land use change from industrial to residential is appropriate on the basis that:

- the land is surrounded by other land uses not being industrial land, and would if retained be isolated from other nearby industrial land;
- retention of this land would permit the development of industrial uses that could result in poor interface and impact amenity of existing and adjoining residential development, in particular with regard to noise and air quality;
- the proposal will complete the transformation of the site as was intended by the original development intentions for the site for a mixed use precinct;

- the site's previous historical industrial use as part of the British American Tobacco is no longer operational and much of the original site for this use has been transformed for a mixed use precinct; and
- the proposal will contribute to provide supporting services and jobs that will support the achievement of contributing to the overall 1,900- 2,900 jobs by 2036 in the strategic centre of East Gardens and Maroubra Junction; and
- there are sufficient industrial lands elsewhere in the broader Botany area that are larger and better support manufacturing and industrial uses that both support Sydney and the operation of Sydney Airport.

## 16. MAPPING

The planning proposal requires Sheets \_\_004 and \_005 of the following maps to be amended:

- floor space ratio;
- height of buildings;
- land use zoning; and
- additional permitted uses map.

The maps, their numbers, names and associated map cover sheet are correct and have been checked by the Department's ePlanning Team and sent to Parliamentary Counsel.

## 17. CONSULTATION WITH COUNCIL

Council was consulted on the terms of the draft instrument under clause 3.36(1) of the *Environmental Planning and Assessment Act 1979* (**Attachment D**). Council's response to the draft LEP was received on 14 November 2019 (**Attachment E**) and raising concern with inclusion of serviced apartments in the calculation of the minimum non-residential floor space and noted the increase in FSR. The Department's response is discussed below.

### Inclusion of Serviced Apartments in the calculation of the minimum non-residential floor space

When consulted about the draft instrument, Council raised concern about serviced apartments not being included in the definition of "non-residential purposes". This means that serviced apartments can contribute to the minimum 5,000m<sup>2</sup> gross floor area for non-residential purposes. Council's concern was that only serviced apartments would be provided to achieve the minimum floor space requirement and no other forms of non-residential development to then generate a mixed use outcome as intended by the proposal's scheme.

On review the planning proposal indicates that there is intent for non-residential floor space/development would translate into 5,000m<sup>2</sup> of retail, 1,200m<sup>2</sup> for two childcare centres and 327 serviced apartments. Moreover, the Concept DA for the site that was lodged with Council in September 2019 reflects a similar outcome also.

Finally, the inclusion of serviced apartments within the calculation of the non-residential floor space was not raised as a matter of concern in the submissions received during the exhibition of the planning proposal.

FSR of 2.35:1 higher than Council resolution of 2:1

Council noted the increase in the FSR from 2:1 to 2.35:1.

The background and merits of this post-exhibition change are discussed earlier in this report and it is recommended the plan be made with a maximum FSR of 2.35:1 as exhibited.

**18. PARLIAMENTARY COUNSEL OPINION**

On 22 November 2019, Parliamentary Counsel provided the final Opinion that the draft LEP could legally be made. This Opinion is provided at **Attachment PC**.

**19. RECOMMENDATION**

It is recommended that the Minister's delegate as the local plan-making authority determine to make the draft LEP under clause 3.36(2)(a) of the Act because it:

- is generally consistent with the Eastern City District Plan, relevant section 9.1 Ministerial Directions and state environmental planning policies, and any inconsistency is justified and acceptable;
- encourages development that will facilitate increased housing provisions in a centre that can be adequately served by public transport and that is well served to provide additional services and facilities to support new residents;
- includes a requirement for a site specific DCP that will further address details with regard to layout, open spaces, roads, parking, built form designs and land use arrangements, which will further define the way in which the site can be developed and integrated with the surrounding transport and open space networks, including the adjoining Stage 1 development;
- it allows the opportunity to redevelop an isolated industrial parcel of land to avoid land-use conflicts between industrial operations and the proposed development approved as part of the Stage 1 Consent for the southern portion of the former BATA site;
- contributes to the Bayside Council dwelling target by allowing the delivery of approximately 1,639 new and additional dwellings (including serviced apartments);
- ensures the provision of employment by delivering approximately 342 jobs; and
- will have satisfactory environmental, social and economic impacts.

The plan finalisation report (**Attachment Report**) confirms that the planning proposal is consistent with the Gateway determination and all conditions under the Gateway determination and matters raised during consultation have been adequately addressed.



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