

## SYDNEY CENTRAL PLANNING PANEL PANEL DETERMINATION MEETING

JRPP No	2017SCL022
DA Number	DA-16/18/03
Local Government Area	Bayside Council
Proposed Development	Section 96(2) Application to modify Development Consent No. 16/18 for the introduction of roof top terraces above the top floor apartments of each buildings and minor alterations, including changes to the extent of glazing to the building facades and the reorientation of a car park exhaust stack.
Street Address	130-150 Bunnerong Road, Pagewood
Applicant	Karimbla Constructions Services (NSW) Pty Ltd
Number of Submissions	Two (2) objections
Regional Development Criteria (Schedule 4A of the Act)	Section 96(2) Application to modify a consent determined by the former JRPP (Joint Regional Panel)
List of All Relevant s79C(1)(a) Matters	<ul style="list-style-type: none"> <li>• Environmental Planning &amp; Assessment Act 1979, Part 4 – Development Assessment &amp; Schedule 4A – Development for which regional panels may be authorised to exercise consent authority functions of Councils;</li> <li>• Environmental Planning &amp; Assessment Regulation 2000, Part 6 – Procedures relating to development applications;</li> <li>• State Environmental Planning Policy 2004 (BASIX);</li> <li>• State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development;</li> <li>• Botany Bay Local Environmental Plan 2013; and</li> <li>• Botany Development Control Plan 2013.</li> </ul>
List all documents submitted with this report for the panel's consideration	<ul style="list-style-type: none"> <li>• This Development Assessment Report (2017SCL022); and</li> <li>• Amended Modifications Plans and Cover Letter for this Development Application received by Council on 21/6/2017.</li> </ul>
Recommendation	Refusal
Report by	Olivia Yana – Development Assessment Officer

## **RECOMMENDATION**

It is RECOMMENDED that the Sydney Central Planning Panel, as the Consent Authority, resolve to **refuse** Section 96(2) Application to modify Development Consent No. 16/18 at 130-150 Bunnerong Road, Pagewood, for the following reasons:

1. Pursuant to Clause 2(3)(d) of SEPP 65, it has not been demonstrated that the proposal will improve the design quality of residential apartment development, as the amenity, safety and security of its occupants and the wider community will not be maintained.
2. The proposed roof terrace exceeds the maximum Height of buildings for the site as provided by Clause 4.3(2) of the Botany Bay LEP 2013 and is inconsistent with the objectives of the clause. (*Environmental Planning and Assessment Act 1979 Section 79C(1)(a)(i)*).
3. The contravention of the FSR and height development standards will not be in the public interest and the incremental breaches of the approved Stage 1 Masterplan are not appropriate. (*Environmental Planning and Assessment Act 1979 Section 79C(1)(a)(e)*).
4. The proposed roof terraces and associated structures do not address the requirements of Part 9D.3.6, 9D.5.3.6, 9D.6.3 and 9D.6.13 of the Botany Bay DCP 2013 in relation to the desired future character, rooftop open spaces, wind mitigation measures and solar protection. (*Environmental Planning and Assessment Act 1979 Section 79C(1)(a)(iii)*).
5. The proposal has not demonstrated suitability of the site for the addition of roof terrace in terms of amenity and safety. (*Environmental Planning and Assessment Act 1979 Section 79C(1)(c)*).
6. The proposed modification is inconsistent with the extent of the approved development in the Stage 1 Masterplan. (*Environmental Planning and Assessment Act 1979 Section 83D(2)*)
7. The proposal has not provided adequate information regarding the details of the roof terraces and associated structures on the roof on the elevation plans, and the amended BASIX and wind assessment reports.

## **EXECUTIVE SUMMARY**

Development Application No. 16/18 was approved by the former Joint Regional Planning Panel (JRPP) on 9 June 2016 as a Stage 2A(2) Integrated Development Application for the construction of a mixed use development incorporating 487 apartments and a childcare centre within a building consisting of a 5 storey podium including 847 car spaces sleeved with apartments and 2 x 16 storey and 2 x 20 storey towers above.

On 1 March 2017, the applicant lodged a Section 96(1A) Application for the introduction of roof top terraces above the top floor apartments of each buildings and minor alterations, including changes to the extent of glazing to the building facades

and the reorientation of a car park exhaust stack. As the proposed development will result in substantial changes to the design, the applicant was requested to re-submit the proposal as a Section 96(2) Application. The Statement of Environmental Effects (SEE) submitted does not address all the changes proposed with this application and the applicant was requested to provide additional information.

Council staff briefed the Sydney Central Planning Panel (SCPP) on 11 May 2017. The key issues raised by the Panel related to the additional deviation to the LEP height limit and the Stage 1 Masterplan approval, and the additional breach to the height limit is not appropriate given that there is no community benefit associated with the use of this space. These issues were raised with the applicant on 15 May 2017.

The applicant lodged an amended application form on 16 May 2017 seeking consent pursuant to Section 96(2). The application was then placed on public exhibition and advertised under the *Environmental Planning and Assessment Regulations* for a fourteen (14) day period from 24 May 2017 to 7 June 2017. Two (2) objections were received, objecting to the proposal.

Amended plans responding to Council's request for additional information were received on 20 June 2017. The design of the roof top terrace has been modified with lightweight materials, deletion of BBQ areas and walls, and deletion of 2x2 bedroom units from Building A and D. Additional GFA of 4m<sup>2</sup> is proposed as part of this modification. Changes made in the amended plans, however, do not adequately address the issues raised by Council and the Panel. The proposed additional amenity on the roof area does not add provide for any community benefit, does not provide a highly useable space and is inconsistent with the aims and objectives of Clause 2(3)(d) of SEPP 65, and the permitted height of the Stage 1 Masterplan consent.

The application fails to address the requirements of Part 9D.3.6, 9D.5.3.6, 9D.6.3 and 9D.6.13 of the Botany Bay DCP 2013 in relation to desired future character, communal roof top gardens, wind mitigation measures and solar protection. As the original wind assessment report for the approved development recommended wind breaks to the roof top gardens above Level 16, the proposed roof top terrace above Level 19 would also require wind and solar protection. The current proposal does not address these requirements and the additional structures required would further exceed the height limit. The safety from residents accessing the roof top area above Level 19 is not addressed within the proposed modification (Objective 4E-4 of the ADG).

The Section 96(2) Application has been assessed in accordance with the relevant requirements of the *Environmental Planning and Assessment Act 1979* and does not satisfy the Stage 1 Masterplan consent and the relevant planning instruments, objectives and standards. It is therefore recommended that the proposed modification be refused.

## **BACKGROUND**

The subject site, which is known as UB5W, is located at the intersection of Banks Avenue and Westfield Drive on the south western corner of the L-Shape block

contained within the larger block bounded by Bunnerong Road to the east, Banks Avenue to the west, Heffron Road to the north, and Westfield Drive to the south. The L-shape block with a total site area of 103,547m<sup>2</sup> is approved as the overall Stage 1 Masterplan site under DA-14/96 and legally described as Lot 2 in DP 1187426. UB5W, with an area of 13,507m<sup>2</sup>, is part of the Stage 1 Masterplan and is referred to as Lot 1 under DA-15/104 approval for the subdivision plan, which is yet to be registered. UB5W is provided with private access way on the eastern side is generally rectangular in shape with a frontage to Banks Avenue of approximately 78 metres and 129 metres to Westfield Drive. The approved mixed use development buildings containing 4 towers above a 5 storey podium is currently still under construction.

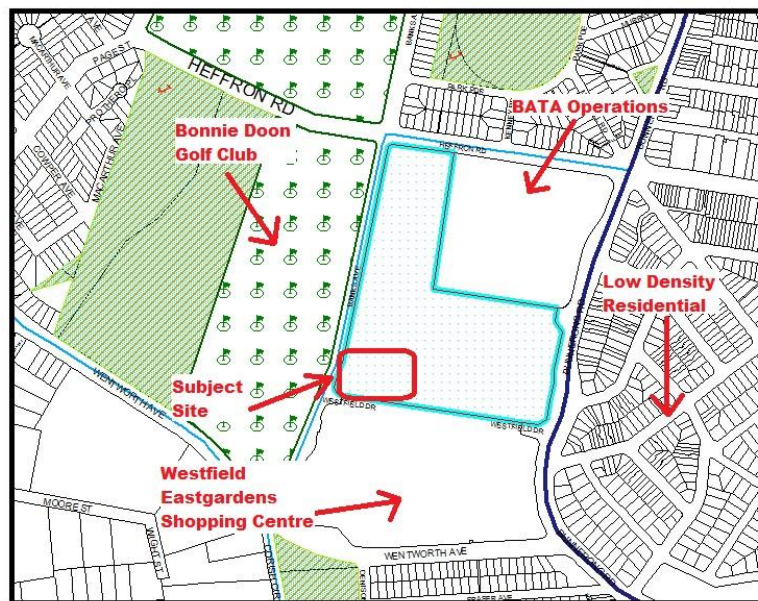


Figure 1. Locality Map

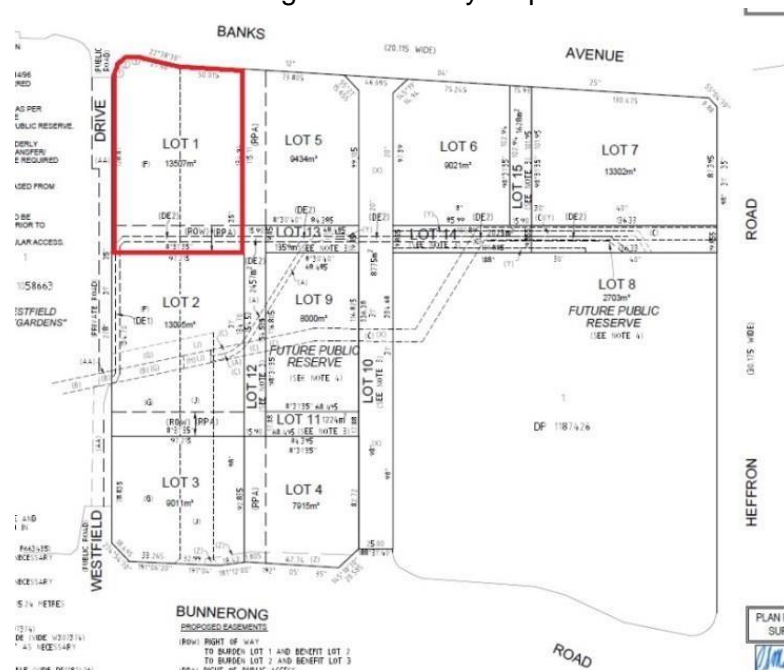


Figure 2. Approved Subdivision Plan (DA-15/104)

*Stage 1 – Masterplan (DA-14/96)*

Integrated Development Application No. 14/96 was received by Council on 5 May 2014 for the redevelopment of the site for a staged mixed use development involving subdivision and concept approval for the location of public road network, private access ways through the site, on-site stormwater detention including water sensitive urban design (WSUD), Building Envelopes and Building Heights facilitating approximately 2,733 dwellings on site, parking spaces in above ground and basement facilities, and provision of 8,000sqm of public open space. The Capital Investment Value CIV for these works was \$128,431,190.00, therefore the former Joint Regional Planning Panel (JRPP) was the consent authority. On 28 August 2014, this application was referred to the JRPP in accordance with Schedule 4A of the Environmental Planning & Assessment Act 1979 (EP&A Act) as it has a CIV in excess of \$20 million (Reference No. 2014/SYE/105).

The Stage 1 Masterplan concept was approved by way of a Section 34 Agreement on 7 August 2015. The consent is a concept approval and does not grant consent for any demolition, remediation, excavation or building works. The approval is limited to the massing, modulation, overall siting and setbacks, maximum height of buildings, maximum GFA, uses, maximum FSR, public domain provisions, unit mix minimum unit sizes, indicative unit numbers, and minimum car parking provisions. The approved FSR for UB5W is 3.83:1 (Table 4, Condition No. 12) and the heights are stipulated below (Table 5, Condition No. 15).

<b><u>Block No.</u></b>	<b><u>Tower No.</u></b>	<b><u>Maximum Podium Height</u></b>	<b><u>Maximum Building Height</u></b>	<b><u>Maximum Plant Room Height</u></b>
<b>Urban Block 5W</b>	A1, A2, A4, A5	16.9m (RL38.9)	51.0m (RL73.0)	53.6m (RL75.6)
	A3, A6	16.9m (RL38.9)	63.4m (RL85.4)	66.0m (RL88.0)

Unit mix requirements are stated as the following (Table 8, Condition No. 34).

<b><u>Unit Size</u></b>	<b><u>Proportion</u></b>	<b><u>Indicative Maximum Number of Units</u></b>
Studios	N/A	0
One bedroom	Maximum 20%	445
Two bedroom	50%	1112
Three + bedroom	Minimum 30%	666
<b>TOTAL</b>		<b>2223</b>

## **APPROVED DEVELOPMENT**

The original approval (DA-16/18) was granted on 9 June 2016 by the former Joint Regional Planning Panel (JRPP) for Stage 2A(2) Integrated Development Application for the construction of a mixed use development incorporating 487 apartments and a childcare centre within a building consisting of a 5 storey podium including 847 sleeved car spaces with apartments and 2 x 16 storey and 2 x 20 storey towers above.

## **PREVIOUS MODIFICATIONS**

A Section 96(1A) Application (DA-16/18/02) was recently approved on 3 May 2017 to increase the building height by 0.2 metres, which was sought by the applicant, given the method of construction. This modification requires small increases in the finished floor levels to upper levels within the building, which results in an overall increase in height of 0.2 metres.

## **DESCRIPTION OF PROPOSED MODIFICATIONS**

The current Section 96(2) application seeks the following modifications:

- Inclusion of a roof terrace addition with glass balustrade and low weight roof above Level 19 of Buildings A and D, and above Level 16 of Buildings B and C. The roof terrace is proposed to be setback a minimum of 2.7 metres from the edge of the building and to be surrounded with astroturf within 150mm low edge hob walls;
- New internal staircases from units No. 15.15, 15.16, 15.19, 15.26, 15.27, 15.30, 19.01, 19.02, 19.05, 19.06, 19.37, 19.38, 19.40, and 19.41 to access the roof top terraces;
- Change in unit mix and internal layout by deleting 2x2 bedrooms units and converting 3 bedrooms units into 4 bedrooms units from Level 19 Buildings A and D;
- Plant screening over concrete roof, plant and lift overrun of Building B and C roof;
- New pergolas over the approved communal open spaces above level 16 of Building A and D;
- Changes to the extent of glazing to the building facades; and
- Reorientation of a car park exhaust stack.

## **ASSESSMENT OF PROPOSED MODIFICATIONS**

An assessment of the modifications is as follows:

### Modification No. 1- Addition of roof terraces and associated structures on the roof and changes to unit mix

The modification relates to the addition of roof terraces and associated structures on the roof and changes to unit mix. The proposal is inconsistent with the aims and objectives of Clause 2(3)(d) of SEPP 65, and Objective 4E-4 of the ADG in relation to amenity, safety and security for the benefits of its occupants and the wider community.

The application fails to address the requirements of Part 9D.3.6, 9D.5.3.6, 9D.6.3 and 9D.6.13 of the Botany Bay DCP 2013 in relation to the desired future character, roof top open spaces, wind mitigation measures and solar protection. As the original wind assessment report for UB5W recommended wind breaks to the roof top gardens above the proposed roof top terrace above Level 19 is likely to also require wind and solar protection. The current proposal does not address these requirements and the additional structure required would further exceed the height limit. Refer to assessment below.

The proposed modification is not supported.

No details submitted relating to elevation plans, solar access provision, cross ventilation and BASIX requirements for the proposed changes to unit mix and private roof top terrace addition. The proposed modification required additional information to be provided.

Modification No. 2- Reorientation of a car park exhaust stack and pergolas over the communal open space of Building A and D

The modification relates to the reorientation of a carpark exhaust stack and pergolas over the communal open space of Building A and D. Further details on the submitted plans and further supporting documentation is required to allow assessment.

The proposed modification requires additional information to be provided.

## **ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979 CONSIDERATIONS**

### **SECTION 96(2) CONSIDERATIONS**

In accordance with Section 96(2), a consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the Court and subject to and in accordance with the regulations, modify the development consent if:

- (a) it is satisfied that the development to which the consent as modified related is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and;*
- (b) it has notified the application in accordance with:*
  - *the regulations, if the regulations so require, and*
  - *a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and*
- (c) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.*

#### **(a) Substantially the same development**

The Section 96(2) Modification Application relates to amendments predominantly to the roof area, and as such, the modifications will result in substantially the same development as approved under DA-16/18 and then subsequently modified.

**(b) Notification**

The Section 96(2) application was required to be notified and advertised for a fourteen day period between 24 May 2017 to 7 June 2017 as the development was defined as an advertised development in accordance with the *Environmental Planning and Assessment Regulations*.

**(c) Submissions**

Two (2) submissions were received, objecting to the modification application. Refer to the discussions below.

**SECTION 79C CONSIDERATIONS**

The relevant matters for consideration pursuant to Section 79C are addressed as follows:

**(a) The provisions of any EPI and DCP and any other matters prescribed by the Regulations.**

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

Amended BASIX has not been submitted with the application to demonstrate the changes regarding to new layout of level 19 units in Building A and D, and the private roof top terrace addition. The proposed modification requires additional information to be provided.

State Environmental Planning Policy 65- Design Quality of Residential Apartment Development

The modifications have been assessed against SEPP 65 and the ADG. The proposal will continue to satisfy the communal open space provision, as it exceeds the minimum 25% required by the ADG. Nonetheless, it is inconsistent with the aims and objectives of Clause 2(3)(d) of SEPP 65, and Objective 4E-4 of the ADG in relation to maintaining amenity, safety and security for the benefits of its occupants and the wider community. Poor amenity of roof top terrace, and safety and security issues associated with accessing the roof top area have failed to be addressed.

No details submitted relating to the solar access provision and cross ventilation for the proposed changes to the unit mix and private roof top terrace addition. The proposed modification required additional information to be provided.

Botany Bay Local Environmental Plan 2013

The subject site is zoned B4 Mixed Use in accordance with the provisions of the Botany Bay Local Environmental Plan (BBLEP) 2013.

Principal Provisions of BBLEP 2013	Complies Yes/No	Comment
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Principal Provisions of BBLEP 2013	Complies Yes/No	Comment
Land use Zone	Yes	The site is zoned B4 Mixed Use under the BBLEP 2013.
Is the proposed use/works permitted with development consent?	Yes	The proposed modification would not change the approved land uses which are permissible with consent under the BBLEP 2013.
Does the proposed use/works meet the objectives of the zone?	No	<p>The proposed roof top terrace is not suitable for residential use. The proposed development is inconsistent with the following objectives in the BBLEP 2013:</p> <ul style="list-style-type: none"> <li>• <i>To provide a mixture of compatible land uses.</i></li> <li>• <i>To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.</i></li> </ul>
What is the height of the building?	No	Refer to Note 1.
What is the proposed FSR?	Yes – existing non compliance	Additional GFA of 4m <sup>2</sup> will provide for minor additional FSR for the site, but which continues to be 3.83:1 to two decimal places.
Is the proposed development in a R3/R4 zone? If so does it comply with site of 2000sqm min and maximum height of 22 metres and maximum FSR of 1.5:1?	N/A	The subject site is not located within an R3 or R4 zone.
Is the site within land marked “Area 3” on the FSR Map	N/A	The subject site is not identified as being within “Area 3” on the FSR map.
Is the land affected by road widening?	N/A	Road widening has been addressed as part of the parent development application.
Is the site listed in Schedule 5 as a heritage item or within a Heritage Conservation Area?	N/A	The subject site is not identified as a Heritage Item or within a Heritage Conservation Area.
<p>The following provisions in Part 6 of the LEP apply to the development:</p> <p>6.1-Acid sulfate soils (ASS)</p> <p>6.2-Earthworks</p>	Yes	There is no change to the development relating to Clause 6.1, 6.2, 6.3, 6.8, 6.9 and 6.16. Refer to external referral section below relating to the airspace operations.

Principal Provisions of BBLEP 2013	Complies Yes/No	Comment
6.3-Stormwater management 6.8-Airspace operations 6.9-Development in areas subject to aircraft noise 6.16-Design excellence		

### Note 1- Height

The proposed height exceedance is stipulated in the table below. The submission of a Clause 4.6 request is not required for Section 96 applications, provided the modifications satisfy the provisions of Section 96, namely, the “substantially the same development” test.

Building	Storeys	LEP Height	Proposed Height	Additional Height	Overall LEP Height Non-compliances
A	20	W (44m)	65.88m (RL88.00)	2.34m	21.88m
B	16	V (39m)	54.04m (RL75.60)	2.59m	15.04m
C	16	U (32m)	54.18m (RL75.60)	2.59m	22.18m
D	20	W (44m)	65.91m (RL88.00)	2.17m	21.91m
B and C	6 (Podium)	32m – 39m	Car park exhaust louvre: 22.6m (RL44.60)	5.7m	Complies

The proposed breach to the LEP height limits is not supported for this modification, as it does not satisfy the objectives to Clause 4.3, which are reproduced below:

- (a) to ensure that the built form of Botany Bay develops in a coordinated and cohesive manner,
- (b) to ensure that taller buildings are appropriately located,
- (c) to ensure that building height is consistent with the desired future character of an area,
- (d) to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development,
- (e) to ensure that buildings do not adversely affect the streetscape, skyline or landscape when viewed from adjoining roads and other public places such as parks, and community facilities.

The structures proposed above over the approved height limit have not been designed to account for amelioration of solar and wind protection to maintain amenity of the roof top terrace. To address the amenity and safety requirements for the proposed roof top terrace, it is likely that an extensive enclosure to the existing non-trafficable roof area will be required, as well as the installation of wind breaks balustrade and wider sized pergola. This is likely to substantially change the building design and appearance. These details have not been provided in the documents submitted with the modification

application. As the height exceedance will not contribute to an improved design outcome for the site, the proposal does not satisfy the objectives of the LEP particularly in ensuring that the built form is developed in a coordinated and cohesive manner whilst maintaining the consistent height with the desired future character of the overall development, which was approved under a Stage 1 Masterplan. Further exceedance to the LEP height limits and Stage 1 Masterplan will not warrant support, as such height exceedance will also contribute to incremental increase of the FSR if any of the associated structures required for the roof terrace to improve amenity and safety of its occupants are to be included as GFA.

#### Botany Bay Development Control Plan 2013

The below table addresses relevant parts of Part 4C and 9D of the BBDCP 2013 in relation to the proposed modifications:

<b>4C.4.1 Dwelling Mix and Layout</b>		
<b>Apartment Size and Mix</b> <b>C1</b> Developments of ten or more apartments are to provide a range of apartment sizes, including studio, 1, 2, and 3+ apartments so as to meet the needs of residents and accommodate a range of household types.	The proposed unit mix provided below would continue to comply with Table 2 approved in Stage 1 Masterplan. 1 bed – 18% 2 bed – 50% 3+ bed – 32%	Yes
<b>9D.3.6 Mixed Use Urban Block No. 5 – Desired Future Character</b>		
The Desired Future Character of Urban Block 5 is: The Mixed Use Urban Block runs the entire width of the site from Bunnerong Road to the east along Westfield Drive to Banks Avenue to the west. The B4 - Mixed Use zoning allows for commercial, business and retail uses as well as residential high density development. The Mixed Use Urban Block acts as the focal point for the development with pedestrian shared zones, active retail frontages and direct access to the parkland adjoining Civic Avenue. The design and visual interest	The proposal will provide roof top area that is encouraged by the desired future character of UB5W, if it was constructed as gardens area and suitable development taking into consideration solar and wind protection.	No

<p>of the Mixed Use Urban Block will be significant with the built form stepping back from the Civic Square and Civic Avenue with passive surveillance from open terraces and roof top gardens.</p> <p>Setbacks to the existing Westfield's Complex have to consider residential amenity considerations, consistent with the design and outcome objectives of the Residential Flat Design Code:</p> <ul style="list-style-type: none"> <li>▪ Opportunity to suitably orientate development to address streets and corners;</li> <li>▪ Opportunity to flexibly configure dwellings;</li> <li>▪ Minimise opportunities for concealment of spaces;</li> <li>▪ Opportunity for quality vistas, outlooks and sight lines;</li> <li>▪ Ability to develop suitable landscaped, balcony, or podium or rooftop garden spaces;</li> <li>▪ Suitable visual privacy;</li> <li>▪ Suitable acoustic privacy;</li> <li>▪ Suitable solar access and wind environments;</li> <li>▪ Opportunity for improved natural ventilation within dwellings; and</li> <li>▪ Improve opportunities for casual surveillance</li> </ul>		
<b>9D.5.3.6 Private and Communal Open Spaces – Residential Development within Mixed Use Urban Block</b>		
<b>C2</b> Podiums and roof top communal open spaces are permitted.	Proposed roof top terrace is for private use.	No
<b>9D.6.3 Wind Mitigation</b>		
<b>C3</b> A Wind Report is to accompany the Masterplan DA required in <b>Part 9D.1.5 - Specific DA Requirements for the Site</b> and at all subsequent stages of the development.	The recommendation of the original wind report is to provide wind breaks balustrade to the height of 1.8 metres for the roof top gardens above Level 16 of Buildings A and D. as some of proposed roof	No

	terraces will be located above Level 19, a wind report is required and location details should be included in the amended plans. Consideration of compliance with the LEP height limit would also be required. The proposal fails to provide this information.	
<b>9D.6.13 Solar Access</b>		
<b>C7</b> Roof terraces are to be protected with shade cloths, planting and/or pergolas.	Smaller sized pergolas are proposed for the roof terrace, which will provide some degree of sun protection.	No

**(b) Likely impacts**

The proposed modification will adversely impact the design quality of the residential apartment development in that the amenity, safety and security for the benefits of its occupants and the wider community will not be maintained.

**(c) Suitability of the site**

The proposal has not demonstrated suitability of the site for the addition of roof terrace in terms of amenity and safety. In achieving satisfactory amenity and safety for the future occupants of the proposed roof terrace, it is likely that an extensive enclosure to the existing non-trafficable roof area will be required, as well as the installation of wind breaks balustrade and wider sized pergola, in which is likely to substantially change the building design and appearance.

**(d) Submissions**

Two (2) submissions were received for the modification application. Key issues that were raised in the submissions are listed below.

**- FSR and height exceedances**

**Comments:**

As discussed above, although additional GFA is proposed, it will not change the approved FSR on site. The height exceedance is not supported, as detailed within this report.

**- Additional habitable building space**

**Comments:**

The proposed roof terrace is not for a habitable area. However, given that the amenity, safety and security for the future occupants has not been

demonstrated within this application, approval is not warranted for the proposal.

**- Overshadowing and overlooking/visual impact**

**Comments:**

The location of the roof terrace is setback sufficiently and will not result in overshadowing and overlooking. The proposal is not supported due to height, amenity, safety and security concerns.

**- Dangers of falling objects**

**Comments:**

Agreed, as discussed above.

**- Undesirable precedent**

**Comments:**

Agreed, as discussed above.

**- Not substantially the same development**

**Comments:**

Assessment is carried under Section 96(2) and it is considered substantially the same development. The proposal however fails to satisfy Section 83D(2) below.

**(e) The public interest.**

The proposed amendments will result in significant adverse impact upon the public interest and it is therefore not supported.

**PART 4 DIVISION 2A – SPECIAL PROCEDURES CONCERNING STAGED DEVELOPMENT APPLICATIONS**

The Stage 1 Master plan consent DA-14/96 is the first of a Staged Development Application as per Section 83B of the Environmental Planning and Assessment Act. The subject application is a modification to the Stage 2 Development Application and as per the Section 83D(2) it cannot be inconsistent with the Stage 1 consent. Below is an assessment of the proposed development against the relevant requirements of the Stage 1 consent.

Building	Storeys	LEP Height	Approved Height Rooftop (masterplan and Stage 2 consent)	Proposed Height	Additional Height	Overall Height LEP Non-compliances
A	20	W (44m)	63.54m (RL85.40)	65.88m (RL88.00)	2.34m	21.88m
B	16	V (39m)	51.45m (RL73.00)	54.04m (RL75.60)	2.59m	15.04m
C	16	U (32m)	51.59m (RL73.00)	54.18m (RL75.60)	2.59m	22.18m

D	20	W (44m)	63.74m (RL85.40)	65.91m (RL88.00)	2.17m	21.91m
B and C	6 (Podium)	32m – 39m	16.9m (RL38.90)	Car park exhaust louvre: 22.6m (RL44.60)	5.7m	Height complies with the LEP. However further information is required to address changes to height approved in Stage 1 Masterplan.

Although the proposed height of the pergola for the roof terrace will be no higher than the height of the lift overrun, the proposed modification fails to comply with the approved building height. To address the amenity and safety requirements for the proposed roof top terrace, it is likely that an extensive enclosure to the existing non-trafficable roof area will be required, as well as the installation of wind breaks balustrade and wider sized pergola, which is likely to substantially change the building design and appearance. These details have not been provided in the documents submitted with the application. As any additional structure required could further exceed the height limit, deviation to the Stage 1 Masterplan will not warrant support. Incremental breaches of the approved Stage 1 Masterplan will not only affect the approved height of UB5W, but also the height of the overall development will set precedent to the other urban blocks in the approved BATA site. The proposed roof terrace addition would contribute to the contravention of the FSR and height development standards that is inconsistent with the approved Stage 1 Masterplan, and therefore it is not supported.

## OTHERS

### Internal Departments

The application does not require to be referred to Council's internal departments.

### External Authorities

The modification application was referred to Sydney Airport Corporation Limited (SACL) for comment. Comments received do not object to the development with conditions attached.

## CONCLUSION

The Section 96(2) Application seeks to modify Development Consent No. 16/18 which approved the Stage 2 for the construction of a mixed use development incorporating 487 apartments and a childcare centre within a building consisting of a 5 storey podium including 847 car spaces sleeved with apartments and 2 x 16 storey and 2 x 20 storey towers above. The development, as modified, is inconsistent with the Stage 1 Masterplan consent pursuant to Clause 2(3)(d) of SEPP 65, Section 79C and 83D(2) of the Environmental Planning and Assessment Act 1979. The proposed

modification will alter the approved built form and the character of the overall development, and will not contribute positively to the public interest. The proposal does not comply with the form, scale, FSR and height controls within the BBLEP 2013 and Stage 1 Masterplan consent. Therefore, the application is recommended for refusal subject to reason of refusal in the attached Schedule.

### **SCHEDULE OF REASON FOR REFUSAL**

It is RECOMMENDED that the Sydney Central Planning Panel, as the Consent Authority, resolve to **refuse** Section 96(2) Application to modify Development Consent No. 16/18 at 130-150 Bunnerong Road, Pagewood, for the following reasons:

1. Pursuant to Clause 2(3)(d) of SEPP 65, Council is not satisfied that the proposal will improve the design quality of residential apartment development as the amenity, safety and security for the benefits of its occupants and the wider community will not be maintained.
2. The proposed roof terrace exceeds the maximum Height of buildings for the site as provided by Clause 4.3(2) of the Botany Bay LEP 2013 and is inconsistent with the objectives of the clause. (*Environmental Planning and Assessment Act 1979 Section 79C(1)(a)(i)*).
3. The contravention of the FSR and height development standards will not be in the public interest and will potentially result in future incremental breaches of the overall development on site and the approved Stage 1 Masterplan. (*Environmental Planning and Assessment Act 1979 Section 79C(1)(a)(e)*).
4. The proposed roof terrace fails to address the requirements of Part 9D.3.6, 9D.5.3.6, 9D.6.3 and 9D.6.13 of the Botany Bay DCP 2013 in relation to the desired future character, roof top open spaces, wind mitigation measures and solar protection. (*Environmental Planning and Assessment Act 1979 Section 79C(1)(a)(iii)*).
5. The proposal has not demonstrated suitability of the site for the addition of roof terrace in terms of amenity and safety. (*Environmental Planning and Assessment Act 1979 Section 79C(1)(c)*).
6. The proposed modification is inconsistent with the extent of the approved development in the Stage 1 Masterplan. (*Environmental Planning and Assessment Act 1979 Section 83D(2)*).
7. The proposal has not provided adequate information regarding the details of the roof terraces and associated structures on the roof on the elevation plans, and the amended BASIX and wind assessment reports.