

COUNCIL ASSESSMENT REPORT

Panel Reference	PPSSEC-133
DA Number	DA-2019/386/A
LGA	Bayside Council
Proposed Development	Modification to Condition 47 – Car Parking to increase residential car parking rate
Street Address	128 Bunnerong Road & 120 Banks Avenue, Eastgardens
Applicant/Owner	KARIMBLA CONSTRUCTION SERVICES (NSW) PTY LTD
Date of DA lodgement	23 March 2021
Number of Submissions	Two (2)
Recommendation	Approval
Regional Development Criteria (Schedule 7 of the SEPP (State and Regional Development) 2011)	S4.55(2) – Modification Application
List of all relevant s4.15(1)(a) matters	<ul style="list-style-type: none"> Environmental Planning & Assessment Act 1979 <ul style="list-style-type: none"> S7.4 - Planning Agreements S4.55(2) – Modification Environmental Planning & Assessment Regulation 2000 State Environmental Planning Policy (State and Regional Development) 2011 State Environmental Planning Policy (Infrastructure) 2007 Botany Bay Local Environmental Plan 2013 Botany Development Control Plan 2013
List all documents submitted with this report for the Panel's consideration	<ul style="list-style-type: none"> Planning Assessment Report Draft Conditions
Clause 4.6 requests	<ul style="list-style-type: none"> N/A
Summary of key submissions	<ul style="list-style-type: none"> Adverse Traffic Impacts Adverse Parking Impacts Golf Club User and Pedestrian Safety Impact on groundwater
Report prepared by	Fiona Prodromou Senior Assessment Planner
Report date	June 2021

Summary of s4.15 matters

Have all recommendations in relation to relevant s4.15 matters been summarized in the Executive Summary of the assessment report?

Yes

Legislative clauses requiring consent authority satisfaction

Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarized, in the Executive Summary of the assessment report?

Yes

e.g. Clause 7 of SEPP 55 - Remediation of Land, Clause 4.6(4) of the relevant LEP

Clause 4.6 Exceptions to development standards

If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report?

Not Applicable

Special Infrastructure Contributions

Does the DA require Special Infrastructure Contributions conditions (S7.24)?

Not Applicable

Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions

Conditions

Have draft conditions been provided to the applicant for comment?

Yes

Note: in order to reduce delays in determinations, the Panel prefer that draft conditions, notwithstanding Council's recommendation, be provided to the applicant to enable any comments to be considered as part of the assessment report

BAYSIDE COUNCIL

Planning Assessment Report

Application Details	
Panel Reference:	PPSSEC-133
DA Number:	DA-2019/386/A
Date of Receipt:	23 March 2021
Property:	128 Bunnerong Road & 120 Banks Avenue, Eastgardens
Owner:	
Applicant:	Mr Walter Gordon
Applicant Address:	Level 11, 528 Kent Street, Sydney
Proposal:	Modification to amend condition 47 regarding residential car parking rates
Recommendation:	Approval
Value:	Nil
No. of submissions:	Two (2)
Author:	Fiona Prodromou - Senior Assessment Planner
Date of Report:	June 2021

Key Issues

Development Application, (DA-2019/386) was approved by the Regional Panel on 26 November 2020 and established the Concept Plan controls for the subject site to guide future redevelopment.

During the original assessment of the Concept Plan, it was found that the Metropolitan Sub-Regional Centres car parking rate as imposed by Condition 47, was the best fit for future development upon the BATA 2 site.

Additionally as a design excellence measure, consideration was given to sustainability of the site into the future, of which conditions sought to ensure the provision of sustainable transport options and encouragement of a mode shift towards non private vehicular transport i.e. cycling, walking, buses, car share etc.

Condition 47 established the applicable maximum car parking rates for the subject site, to be applied to future development upon the property. Maximum residential car parking rates for the site were approved and are proposed to be amended as follows.

Development Type	Approved Rates	Proposed Rates
<i>Residential Flat Building</i>		
1 Bedroom apartment	0.6 space per apartment	1 space per apartment
2 Bedroom apartment	0.9 space per apartment	1 space per apartment
3 Bedroom apartment	1.4 spaces per apartment	2 spaces per apartment

The proposal was referred to Transport for NSW (TfNSW) who raised no objection to the proposed increase to residential car parking rates as sought by the Applicant.

A revised Ecologically Sustainable Design Report dated 9 June 2021 was submitted which confirms additional sustainability measures proposed on site to offset an increase in the

provision of residential carparking for future development. The following additional ESD measures are proposed.

- a) *Increase in the rate of bicycle space provision. i.e. 1 space per 1.5 dwellings in lieu of 1 space per 2 dwellings as currently approved, with the exception of Lots B, E & G.*

Lot B is under construction and not suited. Lot G would require even further excavation which is not environmentally suitable with the ground water level.

- b) *Provision of unbundled parking spaces to 50% of the additional parking supplied. Such car spaces will be provided as "utility lots", capable of being leased / sold separately to future residents.*

These spaces can be leased or sold separately to residents, which reduces the future demand of parking spaces when more public transportation is provided as outlined in strategic planning reports issued by the NSW State Government.

A total of two (2) submissions were received during the public notification of the proposal, issues raised have been considered in this assessment report.

The proposal is recommended for Approval.

Recommendation

- A. That the Sydney Eastern City Regional Planning Panel, exercising the functions of the Council as the consent authority, pursuant to S4.55(2), of the Environmental Planning and Assessment Act 1979 be satisfied that the proposed modification:
- a. is substantially the same development as the development for which consent was originally granted and before that consent was modified;
 - b. has been notified; and
 - c. has been assessed having regard to the relevant matters in s4.15 of the Environmental Planning and Assessment Act 1979.
- B. That the Sydney Eastern City Regional Planning Panel consider any submissions made concerning the proposed modification and take into account the reasons of the consent authority that granted the consent that is sought to be modified.
- C. That modification application DA-2019/386/A seeking to modify development consent DA-2019/386 to amend condition 47 regarding residential car parking rates at 128 Bunnerong Road & 120 Banks Avenue, Eastgardens be APPROVED and the proposal is modified in the following manner;

Condition 4 – Approved Plans & Documentation is to be modified as follows:

4. The development shall be undertaken in accordance with the documentation listed below and endorsed with Council's stamp, except where amended by other conditions of this consent.

Document	Author	Dated
Pagewood Green (Stage 2) Stage 1 DA Design Report Pages 1 of 33 to 33 of 33	SJB Architects	6 October 2020

Pagewood BATA 2 (North) Landscape Stage 1 Concept Master Plan Report (31 pages)	Meriton	6 October 2020
Indicative Staging Plan A0110 Rev 14	SJB Architects	01 October 2020
Site Setbacks Plan A0105 Rev 14	SJB Architects	01 October 2020
Building Heights Plan A0201 Rev 14	SJB Architects	01 October 2020
Road Plan A0103 Rev 14	SJB Architects	01 October 2020
Public Domain Plan A0104 Rev 14	SJB Architects	01 October 2020
Lot Subdivision Plan A0102 Rev 14	SJB Architects	01 October 2020
Ground Non Residential Use A0111 Rev 14	SJB Architects	01 October 2020
Ground Levels A0106 Rev 14	SJB Architects	01 October 2020
Lot C Ground Floor Interface A0202 Rev 14	SJB Architects	01 October 2020
Deep Soil Plan A0109 Rev 14	SJB Architects	01 October 2020
Site Analysis Plan (Built Character Hierarchy) A0101 Rev 14	SJB Architects	01 October 2020
Building Envelopes Plan A0108 Rev 14	SJB Architects	01 October 2020
Block Sections 1 A0601 Rev 14	SJB Architects	01 October 2020
Block Sections 2 A0602 Rev 14	SJB Architects	01 October 2020
Block Elevations 1 A0501 Rev 14	SJB Architects	01 October 2020
Block Elevations 2 A0502 Rev 14	SJB Architects	01 October 2020
Site Flood Assessment for Concept Development Assessment	WMA Water	09 October 2020
<u>ESD Report Issue G</u>	<u>Efficient Living</u>	<u>9 June 2021</u>
Detailed Site Investigation for Contamination Pagewood Green Stage 2 Rev 0	Douglas Partners	11 September 2020
Interim Audit Advice #04: Detailed Site Investigation for Contamination, Draft B	senversa	11 September 2020
Quantity Surveying Cost Report, Pagewood BATA North Stage 1 DA	Steven Wehbe	24 October 2019
Aeronautical Impact Assessment LB00142 Final Version 1.0	Landrum & Brown Worldwide (Aust) Pty Ltd, 2018	25 July 2018
Stormwater Management Report Rev 9	Aurecon	19 December 2011
Summary of Geotechnical Conditions Pagewood Part II – Due Diligence	Douglas Partners	14 October 2019
Qualitative Wind Statement SLR Ref: 610.13932-R15 Version No: - v1.0	SLR Consulting Australia Pty Ltd	5 August 2019
Indicative Review of Noise Intrusion and Emissions	Acoustic Logic	24 July 2019

Stage 1 Concept Development Application, Transport Impact Assessment Issue 02	ARUP	23 October 2019
Site Survey	JBW Surveyors	30 July 2019

[Amendment A – S4.55(2) inserted on 1 July 2021]

Condition 36 – Public Domain Upgrades is to be modified as follows:

36. Public Domain Upgrades

a) Pedestrian Crossing – BATA 1 to BATA 2

- i. Plans and information depicting the location and design of a pedestrian crossing between Lot B and Chauvel Green (Penguin) Park are to be submitted to Council with the first Development Application for the site, being Lot B, DA-2020/303.
- ii. The pedestrian crossing shall be aligned with open space 5, to the satisfaction of Bayside Council, prior to any occupation certificate for lot B.
- iii. The pedestrian crossing connecting Lot B and Open Space 5, to Chauvel Green (Penguin) Park (Lot 43 DP 1256461) shall be constructed and completed, prior to the issue of any Occupation Certificate for Lot B or Open Space 5.

b) Intersection Upgrade - Banks Avenue / Tingwell Boulevard

Design and construct traffic calming devices to the intersection of Banks Avenue and Tingwell Boulevard prior to the issue of any occupation certificate in Lot A and Lot D (WESTERN STAGE).

The traffic facility (excluding traffic lights) must be provided at the intersection of Banks Avenue and Tingwell Boulevard to cater for the increased movements to and from the development but also maintain the north-south movements along Banks Avenue.

This intersection needs to be investigated, analysed and addressed in detail to ensure that all road safety issues at Tingwell Boulevard & Banks Avenue are resolved.

Traffic calming shall be incorporated into the design of this intersection along with improved sightlines. The design of the traffic facility must incorporate the provision for a future dedicated two way separated cycleway along the western side of Banks Avenue, if necessary. The design will require endorsement by Bayside Councils Local Traffic Committee.

The design of this intersection is to reinforce that north-south movements of pedestrians and cyclists along Banks Avenue have priority in this area. Any design is to ensure that when walking along the eastern side of Banks Avenue and crossing Tingwell Boulevard, pedestrians have the right of way. This will require a raised pedestrian crossing along with appropriate line markings, colourings and texturalisation to the crossing and its approach. This is to improve pedestrian safety and ensure pedestrian movements are supported as part of the development.

The design of this intersection upgrade is to be to the satisfaction of Bayside Council. Bayside Council's current preference is for a roundabout to be implemented at this intersection.

All works within the road reserve, which are subject to approval pursuant to Section 138 of the Roads Act 1993, shall be completed to the satisfaction of Bayside Council at the applicant's expense.

Inspection reports for the works on the road reserve shall be obtained from Bayside Council's authorized officer and submitted to the Principal Certifying Authority attesting that this condition has been appropriately satisfied prior to the issue of any occupation certificate for Lot A and D.

c) Bus Shelter – Bunnerong Road

Reconstruction of the existing bus shelter along Bunnerong Road to an increased size and quality is required. This shall be undertaken to the satisfaction of Bayside Council's Transport Planner (including local and state bus operators) and Public Domain team prior to the issue of any occupation Certificate for any development on LOT F (EASTERN STAGE).

d) Pedestrian Crossing – Heffron Road

Construct a pedestrian crossing to Heffron Road to the requirements as detailed in conditions of this consent and relevant approvals from Transport for NSW.

e) No-stopping signage shall be erected on the eastern side of Banks Avenue (at the intersection of Banks Avenue and Tingwell Boulevard) for a length of 10m from the Tangent Points of the intersection. Approval shall be obtained from the Bayside Local Traffic Committee and endorsed at Bayside Council meeting. The installation is to be to the satisfaction of Bayside Council prior to the issue of any Occupation Certificate for Lot B and Lot E. All costs are to be borne by the developer.

[Amendment A – S4.55(2) inserted on 1 July 2021]

Condition 45 - ESD is to be modified as follows:

45. ESD

Future Development Applications are to comply with *the Ecologically Sustainable Design (ESD) report prepared by Efficient Living, Issue G, dated 09/06/2021* and must demonstrate the incorporation of ESD principles in the design, construction and ongoing operation phases of the development to the satisfaction of Bayside Council. This is also to include the following:

- a) The provision of electric charging facilities for 10% of the required bicycle spaces.
- b) Extensive use of planters on interior and exterior to the buildings.
- c) Each development is to designate a podium area for community gardens for residents, and a composting facility.
- d) Increased floor to ceiling heights for above ground car parking.

[Amendment A – S4.55(2) inserted on 1 July 2021]

Condition 47 – Car Parking Rates is to be modified as follows:

47. Car Parking Rates

Future Development Applications shall provide on-site car parking in accordance with the table below;

<i>Residential Flat Building</i>	<i>Car Parking Rate</i>
<i>1 bedroom</i>	<i>Maximum 1 space per dwelling.</i>

	<i>A minimum of 20% of these spaces are to be provided as “unbundled” parking spaces.</i>
<u>2 bedroom</u>	<i>Maximum 1 space per dwelling. A minimum of 5% of these spaces are to be provided as “unbundled” parking spaces.</i>
<u>3 bedroom</u>	<i>Maximum 2 spaces per dwelling. A minimum of 15% of these spaces are to be provided as “unbundled” parking spaces..</i>
Residential Visitor Parking	Maximum 1 space per 20 dwellings
Town Houses	Car Parking Rate
Residential	Maximum 2 spaces per dwelling
Visitor	Nil
Non Residential	Car Parking Rate
Commercial Premises	1 space per 80sq/m GFA
Retail use in a standalone tenancy greater than 1,000sq/m GFA (i.e. Supermarket in Lot B)	1 space per 30sq/m GFA
Child Care	1 space per 2 Employees 1 pick-up and set-down space per 10 children

Where a residential development proposes less than the maximum number of car parking spaces permissible, any reduction in the number of spaces shall be shared proportionally between resident parking spaces and visitor parking spaces.

Parking provision greater than the maximum rate is not permitted.

Any serviced apartment development is to be provided with parking at the same rate required for residential development (this includes ancillary aspects such as bicycle parking etc.)

The required “unbundled” parking spaces are to be provided as utility lots on the subdivision plan. These unbundled parking spaces can only be leased to residents in the building, or sold separately to other lot owners in the building for which these unbundled parking spaces are located in.

These utility lots shall not form part of any specific residential unit(s) on the strata/stratum subdivision plan (i.e., the utility lots shall not be permanently allocated to any residential unit).

An 88B instrument or other required covenant shall be imposed upon the land to ensure that the utility lots are only sold to residential apartment owners in the building and only leased to residential apartment owners/residential tenants in the building. The terms of the instrument/covenant are to be to the satisfaction of Bayside Council.

[Amendment A – S4.55(2) inserted on 1 July 2021]

Condition 52 – Bicycle Facilities is to be modified as follows:

52. Bicycle Facilities

Future development applications shall adhere to the following minimum bicycle parking provision.

- A) Residential
- A minimum of 1 bicycle space per 2 dwellings (Lots B, E, H & G).
 - A minimum of 1 bicycle space per 1.5 dwellings (Lots A, C, D, F, J).
 - A minimum of 1 bicycle visitor space per 5 visitor car parking spaces
 - A minimum of 10% of the required spaces shall be fitted with electric bicycle charging stations.
- B) Non-Residential
- A minimum of 1 bicycle space per 150m2 GFA.
 - Appropriate 'end of trip facilities' for cyclists shall be provided to the satisfaction of Bayside Council.
 - A minimum of 1 visitor bicycle space per 450m2 GFA
 - A minimum of 10% of the required spaces shall be fitted with electric bicycle charging stations.
- C) Publicly Accessible
- 20 bicycle spaces within each open space area identified as 3 and 4 upon the indicative staging plan.
 - 10 bicycle spaces within each open space area identified as 1, 2, 5, 6, 7 and 8 upon the indicative staging plan.
 - A minimum of 10% of the required spaces shall be fitted with electric bicycle charging stations.
 - All bicycle parking facilities shall be located in safe, convenient and well illuminated locations.

[Amendment A – S4.55(2) inserted on 1 July 2021]

Background

DA	Description	Date	Decision
CDC 1423.92-01-2018	Demolition of industrial buildings on BATA 2	23 July 2018	PCA AED Group
DA-2019/386	Integrated Development and Staged Concept Development - land subdivision; building envelopes / height / setbacks for 13 buildings of between 2 and 20 storeys to accommodate a variety of residential dwellings and a minimum of 5,000m2 of non-residential land uses including child care centres, serviced apartments, supermarket and other commercial uses; landscaping and public domain works; proposed road layout; basement and podium level car parking; and car parking rates; resulting in a total floor space ratio of 2.35:1	Approved by Regional Panel on 26 November 2020.	
DA-2019/387	Civil Works involving the construction of roads, sewer, stormwater, water supply infrastructure and public domain landscaping in preparation for the future mixed use concept development application	Approved by Regional Panel 24 August 2020.	
DA-2019/426	Torrens title land subdivision into seventeen (17) lots comprising nine (9) development lots, five (5) public open space lots and three (3) public roads	Approved under Delegation 13 January 2021	
DA-2020/296	Integrated Development - Excavation, shoring and piling to accommodate basement levels	Approved Under Delegation 14 December 2020	

	associated with future buildings within DA-2020/303.	
DA-2020/408	Construction of basement slabs for Lot B in BATA 2	Approved Under Delegation 8 February 2021
DA-2020/303	Integrated Development - Construction of a mixed use development comprising two residential flat buildings of 20 and 21 storeys in height containing 411 residential units, communal recreational facilities, ground floor residential and retail including supermarket, basement parking, construction & embellishment of two private roads and landscaping.	Under Assessment
DA-2021/1	Lot E - Construction of a mixed use development comprising two residential flat buildings of up to 16 and 17 storeys in height containing 324 residential units, communal recreational facilities, ground floor residential and retail and basement parking; Publicly accessible through site pedestrian link; removal of three trees and, Construction and embellishment of two private roads.	Under Assessment
DA-2021/208	Construction of townhouse development comprising of forty-four (44) townhouses with detached garages, and associated landscaping, road and stormwater works.	Under Assessment

Proposal

The proposal seeks to amend condition 47 regarding residential car parking rates for the site.

Maximum residential car parking rates for the site were approved and are proposed as follows.

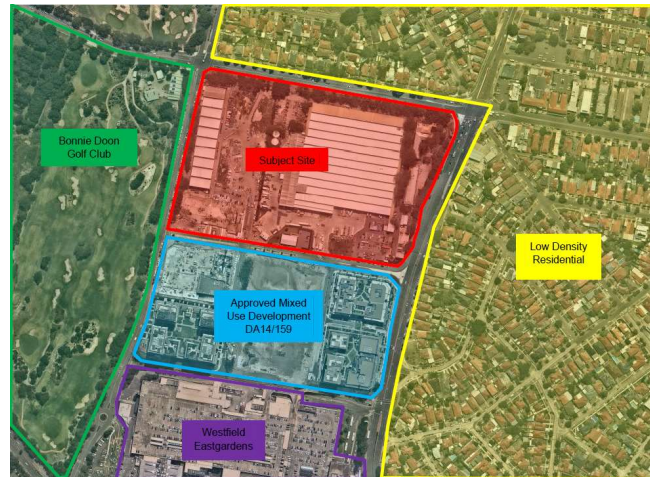
<i>Flat Residential Building</i>			
Development Type	Approved Rates	Proposed Rates	Difference
1 Bedroom apartment	0.6 space per unit	1 space per unit	+0.4 per unit
2 Bedroom apartment	0.9 space per unit	1 space per unit	+0.1 per unit
3 Bedroom apartment	1.4 spaces per unit	2 spaces per unit	+0.6 per unit

Site Location & Context

The subject site comprises a combined total site area of 89,583sq/m. The site is generally rectangular in shape, with an irregular eastern boundary along Bunnerong Road.

The site adjoins Heffron Road to the north, Banks Avenue to the west, Bunnerong Road to the east and Tingwell Boulevard to the south. The site has a frontage of 224m to Banks Avenue, 372m to Heffron Road, 218m to Bunnerong Road 337m to Tingwell Boulevard.

The site is identified below and is currently vacant, with buildings on site having been demolished under a separate consent. DA-11/272/6 - Removal of all buildings and structures.



The subject site has a cross fall, with the south eastern corner of the site being up to 3m lower than the footpath at the junction of Bunnerong Road and Tingwell Avenue. The north western portion of the site is raised up to 1.5m above the existing public footpath along Banks Avenue.



Looking north west from junction of Tingwell Avenue and Bunnerong Road



Looking south from junction of Bunnerong & Heffron Roads

A number and range of mature trees are positioned along the periphery of the subject site, with several trees scattered within the property and adjoining the boundary of the site within the public domain.



Looking east from intersection of Heffron Road & Banks Avenue

As existing, telegraph poles, power lines, Telstra pits and a substation along Bunnerong Road are located along all frontages of the subject site. Bus stops are located along Heffron and Bunnerong Roads.

Directly south of the site are a number of multi storey residential / mixed use buildings and a public open space area. This area was developed by the applicant as part of the Stage 1 Master Plan for the BATA site and is characterised by a mix of land uses and building forms of varying heights from 6-21 storeys. This redevelopment is nearing completion.

Directly to the north, opposite Heffron Road are a row of single and two storey detached dwelling houses, numbered 1 to 47. These properties are zoned R2 – Low Density Residential, comprise vehicular access via Heffron Road and street trees, power poles and street lights exist within the nature strip in front of these properties.



Properties along northern side of Heffron Road

Directly opposite the site to the west and also further to the north west across Banks Avenue lies the Boonie Doon Golf Club (BDGC), as outlined in green below. The subject site is outlined in orange. The golf course properties are zoned SP1 - Special Activities.



The BDGC is an 18 hole course with a number of buildings including a Clubhouse which is listed as a heritage item, scattered across upon the property. The golf club operates over two parcels of land, north and south, which are physically separated by Heffron Road.

The clubhouse, practice driving range and 13 golf holes (plus a spare hole) are situated on the northern parcel and 5 holes and the course maintenance facility (identified with a red X above), positioned within the property at the junction of Banks Avenue and Heffron Road, are situated on the southern parcel. BATA 2 adjoins the southern parcel of the golf course to the west.

Opposite the site to the east on the opposite side of Bunnerong Road are a mix of building forms, including a service station at the junction of Bunnerong and Heffron Roads, 4 storey shop top housing development adjoining, older style 2 storey flat buildings, single and two

storey detached dwelling houses. These properties are located within the Randwick Council local government area.

Council records identify that the subject site is affected by;

- Potential contamination
- 15-20 ANEF
- 1% AEP Flood affected
- Heritage items nearby (I155 & I66 – Local parkland)
- Road widening affectations along Tingwell Boulevard and the junction of Bunnerong & Heffron Roads

Statutory Considerations

Environmental Planning and Assessment Act, 1979

An assessment of the application has been undertaken pursuant to the provisions of the *Environmental Planning and Assessment Act, 1979*.

S7.4 - Planning Agreements

Regional Panel Operational Procedures require Council to detail any proposed Planning Agreement (PA) and its relationship to the application under assessment.

In accordance with the provisions of Section 7.4 of the EPA Act 1979 (as amended), the developer has proposed a draft Planning Agreement (PA) upon the subject site, with the following community benefits. The draft PA has not as yet been executed.

- i. Dedication of 45 Affordable Housing Units (AHU's), with a total of 100 bedrooms.
- ii. Embellishment and dedication for public use of over 20,000sqm of open space.
- iii. Dedication of public roads.
- iv. Monetary contribution of \$23,900,000 (GST exclusive), over three payments.
- v. Monetary contribution that was part of the BATA I PA but was not realised due to the development payment trigger being deferred to the BATA II development which consists of \$2,478,000 indexed in accordance with CPI from 2 March 2018.
- vi. Payment of local Infrastructure contributions.

The draft PA was reported to the 14 October Council meeting with the following recommendation which was adopted by Council.

“That Council resolves to assign delegation to the General Manager to make amendments to and finalise the amended draft Planning Agreement prior to placing the finalised amended draft Planning Agreement on public exhibition for a period of 28 days.”

Public Exhibition of the adopted draft PA commenced from 15 October. The PA remains in draft form at the time of finalising this assessment.

Conditions of consent imposed upon the original DA which seek to ensure the consent operates in conjunction with any executed Planning Agreement for the subject site are not proposed to be modified. The proposal is satisfactory in this regard.

S4.55(2) of the Environmental Planning and Assessment Act

S4.55(2) states:

A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to an in accordance with the regulations, modify the consent if:

a) it is satisfied that the development to which the consent as modified relates 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

Comment: The proposal as modified is deemed to be substantially the same development to that which consent was originally granted.

b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 4.8) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and

Comment: The relevant bodies were consulted during the assessment of the proposal as modified.

c) it has notified the application in accordance with:

(i) the regulations, if the regulations so require, or

(ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and

Comment: The application was publicly notified in accordance with the provisions of Council's DCP 2013.

d) it has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be.

Comments: Two (2) submissions were received in response to the notification of the proposal as modified. Issues raised by submitters have been address further in this report.

S4.55(3) of the Environmental Planning and Assessment Act

S4.55(3) of the Environmental Planning and Assessment Act 1979 states:

In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 4.15(1) as are of relevance to the development the subject of the application.

The consent authority must also take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified. Consideration has been given to the original assessment and reasons given for the granting of consent to the original scheme.

An assessment of the application has been carried out under the provisions of Section 4.15 of the Environmental Planning and Assessment Act, 1979. The matters of relevance to this application have been considered. The following is an assessment of the proposed development under the provisions of Section 4.15(1) of the Environmental and Planning Assessment Act.

S.4.15(1) - Matters for Consideration – General

S.4.15(1)(a)(i) - Provisions of Environmental Planning Instruments

The following Environmental Planning Instruments are relevant to this application:

State Environmental Planning Policy (State and Regional Development) 2011

In accordance with Clause 123BA of the Environmental Planning and Assessment Regulation, as the subject application proposes amendments to condition 47, which was recommended in the original assessment report, yet which was amended by the Regional Panel, the application is referred to the Regional Panel for determination.

State Environmental Planning Policy (Infrastructure) 2007

Clause 101 Development with Frontage to Classified Road

The site is located on land with two street frontages to classified roads i.e. Bunnerong & Heffron Roads. In this regard, clause 101 of the SEPP must be considered before consent can be granted.

As approved, the Concept Plan facilitates vehicular access to and from the site via Tingwell Boulevard, a local road and was established as part of the approval for the southern portion of the site, BATA 1.

Notwithstanding, given the frontages of the site to Heffron and Bunnerong Roads, the proposal as modified was referred to the TfNSW. The authority responded on 3 June 2021 confirming nil objection to the proposal as modified.

The proposal as modified is thus consistent with the provisions of the SEPP and is acceptable in this regard.

Clause 104 - Traffic Generating Development

The proposal is classified as 'traffic generating development' under Schedule 3 of State Environmental Planning Policy (Infrastructure) 2007, as the site will in future incorporate 50 or more car parking spaces and access to these spaces is via a road that is within 90m of a classified road.

In accordance with clause 104(3) of the SEPP, TfNSW were advised of the proposed development. TfNSW requested further information from the proponent, in the form of details regarding traffic generation rates and traffic modelling for the proposed modification to residential car parking rates for the site. This was subsequently prepared by ARUP in correspondence dated 14 May 2021 and provided to TfNSW for review

TfNSW provided the following response to Council;

'TfNSW has reviewed the modification which proposes to modify condition 47 of consent 2019/386, seeking to increase the approved parking rates of the development. In response to the previous TfNSW correspondence regarding the modification and request for additional information, TfNSW has been provided additional information from the applicant.

After review of the additional information, TfNSW advises that the modification will have a negligible impact on the surrounding classified road network.

In addition to the applicant's additional information, TfNSW advises that it has reviewed the traffic modelling and has revisited inputs and results of the extensive AIMSUN micro-simulation modelling previously undertaken as part of the masterplan development application. The modelling assessment indicated that the masterplan development yields would cause minor impacts on the surrounding classified network and that the traffic generation rates were overstated.

The generation rates for the proposed modification application will result in minimal impact to the surrounding classified road network when considering previously micro-simulation undertaken as part of the initial masterplan. As such, TfNSW raises no objections to the modification application and has no further comment.'

The above is concurred by Councils Development Engineer and nil objection was raised in relation to the modification to residential car parking rates as proposed.

The proposal as modified is unlikely to result in a detrimental impact upon the existing operation of the surrounding road network which is comprised primarily of classified roads which accommodate a high level of vehicular movement.

Given the above, the proposal is consistent with the provisions of the SEPP and satisfactory with regards to traffic generation.

Botany Bay Local Environmental Plan 2013 (BBLEP)

Clause	Requirement	Proposal	Compliance
2.3 – Zone	R4 – High Density Residential	Residential / commercial uses	Yes as previously approved.
6.2 – Earthworks	Ensure earthworks will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land.	The assessment of excavation and earthworks on site will be considered as part of all future development applications.	
6.16 - Design Excellence	1) The objective of this clause is to deliver the highest standard of sustainable architectural and urban design.		
	2) This clause applies to the BATA site in Eastgardens		
	3) Development consent must not be granted to development involving the construction of a new building or to external alterations to an existing building on land to which this clause applies unless the consent authority considers that the development exhibits design excellence.		
	4) In considering whether the development exhibits design excellence, consent authority must have regard to;		
	a) whether a high standard of architectural design, materials and detailing appropriate to the building type and location will be achieved,	N/A	N/A
	b) whether the form and external appearance of the development will improve the quality and amenity of the public domain,	N/A	N/A
	c) whether the development detrimentally impacts on view corridors,	N/A	N/A
	d) the achievement of the principles of ecologically sustainable development.	The proposal as modified was accompanied by a revised Ecologically Sustainable Design Report dated 9 June 2021 which confirms additional sustainability measures proposed on site to offset an increase in the provision	Yes – Conditions 4 & 45 to be revised to reflect revised report and additional ESD measures for the site.

Clause	Requirement	Proposal	Compliance
		<p>of residential carparking for future development.</p> <p>The following additional measures are proposed.</p> <p>a. Increase in the rate of bicycle space provision. i.e. 1 space per 1.5 dwellings in lieu of 1 space per 2 dwellings (excluding Lots B, E & G).</p> <p>Provision of unbundled parking spaces to 50% of the additional parking supplied. Such car spaces will be provided as “utility lots”, capable of being leased / sold separately to future residents.</p>	
6.18 – Development requiring preparation of DCP <i>(LEP Amendment 8 notified 22 November 2019)</i>	(1) The objective of this clause is to ensure that development on certain land occurs in accordance with a site-specific development control plan.		
	(2) This clause applies to land at 128 Bunnerong Road, Pagewood and 120 Banks Avenue, Eastgardens, being Lot 1, DP 1187426 and Lot 24, DP 1242288		
	(3) Development consent must not be granted for development on land to which this clause applies unless;		
	(a) a development control plan that provides for the matters specified in subclause (4) has been prepared for the land, or	An Approved Concept Plan applies to the site	Yes
	(b) guidelines and controls similar to those mentioned in subclause (4) already apply to the land, or	Relevant guidelines and controls apply to the land.	Yes
	(c) the development is of a minor nature and is consistent with the objectives of the zone in which the land is situated.	N/A	N/A
	(4) The development control plan must provide for all of the following;		
	(a) design principles drawn from an analysis of the site and its context,	As Approved – No changes sought.	Yes
	(b) the compatibility of the proposed development with the desired future character of the area,	As Approved – No changes sought.	Yes
	(c) the phasing of development and how it will provide for the social and recreational needs of a new community,	As Approved – No changes sought.	Yes
	(d) distribution of land uses, including open space (its function and landscaping) and environment protection areas,	As Approved – No changes sought.	Yes
	(e) the existing and proposed mix of land uses,		

Clause	Requirement	Proposal	Compliance
	(f) subdivision pattern and provision of services,	As Approved – No changes sought.	Yes
	(g) building envelopes and built form controls, including bulk, massing and modulation of buildings,		
	(h) housing mixes and tenure choices, including affordable and adaptable housing,		
	(i) heritage conservation, including both Aboriginal and European heritage,		
	(j) encouraging sustainable transport, including increased use of public transport, walking and cycling, road access and the circulation network and appropriate car parking provision, including integrated options to reduce car use,	Refer to Traffic / Parking discussion below in S.4.15(1)(b) - Likely Impacts of Development.	Yes
	(k) the overall transport hierarchy showing the major circulation routes and connections to achieve a simple and safe movement system for private vehicles, with particular regard to public transport, pedestrians and cyclists,	As Approved – No changes sought.	Yes
	(l) improvements to the public domain,	As Approved – No changes sought.	Yes
	(m) minimising adverse impacts on adjoining buildings or the public domain,		
	(n) achieving appropriate interface at ground level between buildings and the public domain,		
	(o) impacts on view corridors,		
	(p) the application of the principles of ecologically sustainable development,	ESD measures originally approved are to remain, with the addition of those stated in 6.16 – Design Excellence above.	Yes
	(q) environmental impacts, such as overshadowing and solar access, visual and acoustic privacy, noise, wind and reflectivity,	As Approved – No changes sought.	Yes
	(r) environmental constraints, including acid sulfate soils, flooding, groundwater, stormwater, aircraft movement and noise, contamination and remediation,		
	(s) opportunities to apply integrated water sensitive urban design,		

Clause	Requirement	Proposal	Compliance
	(t) no additional overshadowing to the residential buildings in Zone R2 on the eastern side of Bunnerong Road between 9 am and 3 pm on 21 June in each year		

S.4.15(1)(a)(ii) - Provisions of any Draft EPI's

Bayside Draft LEP 2020

The Bayside draft LEP 2020 was on public exhibition from 8 April to 1 June 2020 and applies to the subject site. The draft LEP reviews Council's current planning controls under three previous LEPs into one consolidated LEP. The draft LEP generally harmonises and updates planning controls for the Bayside Local Government Area. The proposal as modified is generally consistent with the objectives and requirements of the draft instrument.

S.4.15(1)(a)(iii) - Provisions of any Development Control Plan

The following is relevant to this application:

Botany Bay Development Control Plan 2013

The development proposal has been assessed against the controls contained in the Botany Bay Development Control Plan (BBDCP) 2013 as follows:

Part 8.8 - Eastgardens Character Precinct

The Desired Future Character referenced in this part was formulated prior to the rezoning of the subject site and its subsequent uplift.

Notwithstanding, the sections within this part, with respect of diversity, function, form, massing, scale, streetscape, setbacks, landscape, subdivision, acoustics, solar access, transport etc general broad based principles which in combination with the objectives and requirements set by the approved concept plan will guide the desired future character of the site within the subject precinct.

The proposal as modified does not alter the aforementioned and remains satisfactory in this regard.

Part 9D – Key Sites (130-150 Bunnerong Road Eastgardens)

This part is superseded given the rezoning of the site, uplift derived from the finalisation of LEP Amendment 8 and relevant clauses i.e. Clause 6.18 of BBLEP 2013 which required the preparation of a site specific DCP, albeit the approved concept plan in this instance.

S.4.15(1)(a)(iv) - Provisions of Regulations

The relevant provisions of the Environmental Planning and Assessment Regulations 2000 have been considered in this assessment. The proposal as modified is satisfactory in this regard.

S.4.15(1)(b) - Likely Impacts of Development

Traffic / Car Parking

The applicant has previously demonstrated through traffic modelling conducted by ARUP that that traffic modelling is not dependant upon parking provision, that traffic generation rates are overstated and the impact of the development upon the surrounding road network is negligible. This was confirmed by TfNSW.

In the original assessment of the Concept Plan, taking into consideration TfNSW submission on the prior Planning Proposal, and the requirements of Clause 6.18 of BBLEP which encourage sustainable transport, a reduced parking rate was implemented for the site.

This rate was based upon the parking rate applicable for metropolitan sub-regional centres in the RTA Guide to Traffic Generating Developments and was implemented along with a number of sustainable transport initiatives (i.e. implementing a maximum rate, increased bicycle provision, car share spaces, electric vehicle charging spaces etc.) to ensure the redevelopment of the site remains sustainable into the future.

ARUP undertook a car parking study of which its findings indicate that parking space utilisation has increased 16-18% to a peak of 60% which demonstrates that since the covid-19 pandemic, the car usage behaviour of owners is increasing on site, this report is considered to justify the proposed increase in residential parking provision for the site.

The S4.55 modification proposal involves an increase in the maximum number of residential car parking spaces to meet residential behaviour arising during the covid-19 pandemic and offers an increased minimum bicycle parking rate to compensate for the increased car parking provision. Additionally, the applicant has also updated the approved ESD report to correctly reflect the revised proposal. This is considered acceptable, and it is considered that the development still satisfies the relevant sustainable transport requirements of BBLEP 2013 as a reduced car parking rate is still evident, as opposed to that previously approved within BATA 1. i.e. 1 bed = 1 space / 2 bed = 1.5 spaces / 3 bed = 2 spaces.

Concern is raised in relation to the 'cost' implication to future residents with regards to the provision of additional parking on site. Therefore, as part of this modification, the proposal will be conditioned to require that 50% of the increased residential parking provision be provided as "unbundled" spaces which are not permanently attached to individual units in the strata/stratum plan.

Such spaces will appear on the strata plan as separate utility lots that can be owned by any residential lot owner in the building and rented out to any residential owner/tenant in the building. This will allow greater freedom and flexibility for units to be sold with more or less parking, making units more affordable. The proposal has been conditioned appropriately to ensure the aforementioned can occur.

The proposal as modified is satisfactory with respect of traffic and parking.

Tingwell / Banks Intersection

Council raises concern regarding existing road safety issues at the intersection of Tingwell Boulevard and Banks Avenue. As such, Council seeks to amend Condition 36 of the Concept Plan consent, which requires that this intersection be upgraded as development on the site is undertaken to reflect councils concerns, particularly given there is likely to be a greater number of residents that will have to use this intersection. The condition is proposed to be amended to reflect Councils preference for a round a bout at this location and further that no-stopping signage be erected on the eastern side of Banks Avenue (at the intersection of Banks Avenue and Tingwell Boulevard) for a length of 10m from the Tangent Points of the intersection.

S.4.15(1)(c) - Suitability of the Site

The proposal as modified is permissible and satisfies the objectives of the R4 High Density residential zone. The modified proposal satisfies the objectives of the relevant planning instruments applicable and there are no other known circumstances or site conditions which would deem the proposal as modified unsuitable for the subject site.

S.4.15(1)(d) - Public Submissions

In accordance with Part 2 of the Botany Bay Development Control Plan 2013 – Notification and Advertising the development application was required to be notified to surrounding property owners.

Following the public notification of the proposal a total of two (2) submissions were received by Council. The following issues were raised;

New depth of the development may significantly impact the local groundwater levels and quality for which the club (and other local users) is very reliant upon

Comment: Future DA's incorporating excavation which have the potential to penetrate the existing ground water table will be referred as required by the relevant legislation to Water NSW who will assess the proposal and ensure that any dewatering to be undertaken on site during construction will not result in adverse impact onto the ground water table.

Adverse traffic impacts / Council is unable to undertake a proper review of this application given the uncertainty as to the increase in parking spaces at the site / The consent authority must ensure that the level of service of intersections and road network surrounding the development site are not adversely affected and that the parking provision is adequate / Any variation to increase density and car parking will give rise to adverse flow-on traffic impacts on local residential streets and intersections in the Randwick City area.

Comment: The matter of traffic has been previously discussed within this report.

Golf Club, user and public safety on Heffron Road given increased traffic / Bonnie Doon Golf Club would support DA-2019/386/A with the proviso that funding be provided to install additional Traffic Control Signals at Heffron Road and Banks Avenue, Pagewood

Comment: The golf club has been informed that they cannot use a pedestrian crossing to drive heavy machinery and golf carts between their sites. The club is required need to have equipment registered as vehicles through Service NSW and a myriad other measures to manage the operation of golf club.

As previously advised to the objector via correspondence from the General Manager dated 27 August 2019, Council is not currently negotiating any Voluntary Planning Agreements (VPA) which would improve access for Golf Club members across Heffron Rd.

Transport for NSW, will not approve an 'at grade' crossing at the site previously used by golf carts and equipment on Heffron Rd.

The option of installing additional traffic control signals at Heffron Road and Banks Ave exceeds the financial capacity of any current VPAs being considered by Council, and would require both agreement and funding from Transport for NSW.



S.4.15(1)(e) - Public Interest

Granting approval to the proposal as modified will have no adverse impact on the public interest. The proposal as modified will facilitate the orderly development of the land.

S7.11

The proposal as modified does not result in an increase in residential yield on site, thus no further contributions are payable in this instance.

Conclusion

Development Application No. DA-2019/386/A has been assessed in accordance with the relevant requirements of the Environmental Planning and Assessment Act 1979 and is recommended for Approval as per the modified conditioned referred to in the Recommendation of this assessment report.