

COUNCIL ASSESSMENT REPORT

SYDNEY EASTERN CITY PLANNING PANEL

PANEL REFERENCE & DA NUMBER	PPSSEC-154 – DA-2021/450
PROPOSAL	Integrated Development for the demolition of existing structures and construction of a twelve (12) storey hotel comprising of parking, signage and specialised retail on the ground floor and associated restaurant and bar
ADDRESS	210 O’Riordan Street (also known as 133-137 Baxter Road and 118 Robey Street) Mascot – Pt Lot 1 DP 1190559
APPLICANT	Boston Atlas Hickory Hotels Pty Ltd
OWNER	Isak Investments Pty Ltd
DA LODGEMENT DATE	27 September 2021
APPLICATION TYPE	Integrated Development Application
REGIONALLY SIGNIFICANT CRITERIA	Clause 2, Schedule 6 of the Planning System SEPP: General Development over \$30 million
CIV	\$46,605,463 (excluding GST)
CLAUSE 4.6 REQUESTS	Clause 4.4 of the Bayside Local Environmental Plan 2021
KEY SEPP/LEP	• <i>State Environmental Planning Policy (Planning Systems) 2021</i> • <i>State Environmental Planning Policy (Biodiversity and Conservation) 2021</i> • <i>State Environmental Planning Policy (Resilience and Hazard) 2021</i> • <i>State Environmental Planning Policy (Transport and Infrastructure) 2021</i> • <i>State Environmental Planning Policy (Industry and Employment) 2021</i> • <i>Bayside Local Environmental Plan 2021;</i> • <i>Botany Bay Development Control Plan 2013.</i>
TOTAL & UNIQUE SUBMISSIONS KEY ISSUES IN SUBMISSIONS	Nil
DOCUMENTS SUBMITTED FOR CONSIDERATION	• Architectural Plans- Prepared by Rothe Lowman Architects Pty Ltd • Landscape Plans- Prepared by Site Image Landscape Architect • Clause 4.6 variation- Prepared by Mecone NSW Pty Ltd

	- Compliance Tables- Bayside Council - DRP Minutes- Bayside Design Review Panel
SPECIAL INFRASTRUCTURE CONTRIBUTIONS (S7.24)	N/A
RECOMMENDATION	Approval
DRAFT CONDITIONS TO APPLICANT	YES
SCHEDULED MEETING DATE	19 May 2022
PLAN VERSION	Version B
PREPARED BY	Angela Lazaridis, Senior Development Assessment Planner
DATE OF REPORT	5 May 2022

EXECUTIVE SUMMARY

Council received Development Application No. 2021/450 on 27 September 2021 for the Integrated Development for the demolition of existing structures and construction of a twelve (12) storey hotel comprising of parking, signage and specialised retail on the ground floor and associated restaurant and bar at 210 O’Riordan Street (also known as 133-137 Baxter Road and 118 Robey Street) Mascot.

The Development Application is required to be referred to the Sydney Eastern City Planning Panel (SECPP) pursuant to Schedule 6 of the State Environmental Planning Policy (Planning Systems) 2021 as the Capital Investment Value of the proposal is greater than \$30,000,000.00.

The Development Application was advertised for a period of thirty (30) days between 6 October to 5 November 2021. No submissions were received.

The development application was nominated as Integrated Development under Section 90(2) of the Water Management Act 2000 as the development would encounter groundwater and require dewatering. The application was referred to Water NSW however as the proposal involves excavation for foundations/footings only and not for a basement, approval was not required from Water NSW and no GTAs were provided.

The key issues of the development include:

- Advertising Sign/Design Excellence
- Non-compliance in the Floor Space Ratio/Clause 4.6 variation
- Setbacks
- Sydney Trains/CASA referrals

The development proposes an advertising sign integrated within the north-western corner of Level 1 of the podium. The advertising sign is for third party advertising and will essentially replace the existing billboard advertising structure on the site, which has temporary approval for the use. As this is considered a new application, the merits of the sign are to be considered and effectively, the sign becomes a permanent structure on the building. The

sign will contribute to visual clutter in an area which is already dominated by freestanding or mounted advertising signs. The advertising sign on the building also erodes the design excellence of the building, and Council's stance is further supported by the Design Review Panel who have requested its removal. The applicant has provided justification for its retention on the building façade as well as providing Council with a letter of offer to enter into a voluntary planning agreement which is further discussed in the report below. This issue has not been resolved and a condition has been imposed requiring removal of the sign.

The proposal does not comply with the FSR of 3:1 applicable for the site in the Bayside LEP 2021. The proposal will have an FSR of 4.10:1, which excludes the area of road widening. This is a GFA exceedance of 2,195sqm and results in a variation of 36.55%. The applicant submitted a Clause 4.6 variation which has been assessed in the report and provided in Attachment D. It was found that it was unreasonable and unnecessary to comply with the standard and that there were sufficient environmental planning grounds to support the variation. The variation to the development standard is justified in this case.

Regarding setbacks, the proposal does not comply with the front setback requirement of 4 metres for the podium along the O'Riordan Street frontage. This is particularly relevant to the north-western corner of the site. There is also non-compliance with the setbacks established on the northern elevation relating to the ground floor awning which proposes an encroachment over the boundary line which is not supported. The proposed setbacks along O'Riordan Street are considered acceptable. A condition has been imposed to require amendments to the plans, setting back the awning so that it is encompassed within the boundary.

The application was referred to nine (9) external authorities to address key clauses within the EP&A Act and within the SEPPs. At the time of writing the report, two authorities' comments remain outstanding being Sydney Trains and CASA. Sydney Trains was referred to as the proposal involved some excavation, above and adjacent to the rail corridor (Section 2.98 of the Transport and Infrastructure SEPP), while CASA was referred as the building impacted the Obstacle Limitation Surface. It is noted that both authorities have requested from the applicant additional information which has been provided back for assessment. Sydney Trains is a concurrence body to the application as per Clauses 3 and 5 of Section 2.98 of the Transport and Infrastructure SEPP 2021. The consent authority may grant consent to development to which this section applies without the concurrence of the rail authority concerned if 21 days have passed since the consent authority gave notice under subsection (2)(a) and the rail authority has not granted or refused to grant concurrence within this period. Sydney Trains did request additional information within this period however as it has been approximately 7 months since notice from Council was issued and no approval/refusal conditions have been provided, then the Panel has the jurisdiction to determine the application. Notwithstanding, conditions have been imposed requiring approval to be given from both authorities prior to the issue of any Construction Certificate.

In summary, the proposed development application has been assessed against the relevant controls and on balance, Council is generally supportive of the proposal, with the exception of the advertising sign. It is recommended that the application be issued with an approval, subject to the conditions within the draft Notice of Determination within Attachment A.

1. THE SITE AND LOCALITY

1.1 The Site

The subject site is identified as 210 O’Riordan Street (133-137 Baxter Road and 118 Robey Street) Mascot and is legally known as Lot 1 in DP 1190559. The subject site is located on the eastern side of O’Riordan Street with street frontages to Baxter Road to the south and Robey Street to the north.

The subject site in its entirety is approximately 2,095sqm and is irregular in shape. The site has a total frontage of approximately 53.89 metres to O’Riordan Street (including arc), 30.64 metres to Robey Street, and 37.59 metres to Baxter Road. The site is relatively level and is located within the B5 – Business Development zone under the Bayside LEP 2021.

The site currently contains an advertising billboard located on the north-western side of the site as well as a temporary covid testing clinic. The site is situated within the Mascot Business Development Precinct of which is a large consolidated industrial/commercial area immediately north of Sydney (Kingsford Smith) Airport and provides the main area for employment growth within the Council area. The precinct is affected by a road reservation of which is situated along the eastern side of O’Riordan Street between High Street and Baxter Road.

The site is affected by TfNSW road widening along its O’Riordan Street frontage of which comprises a width of approximately 2.9 metres, and a sewer easement runs east-west through the centre of the site. Traffic islands front the site along O’Riordan Street and Robey Street.

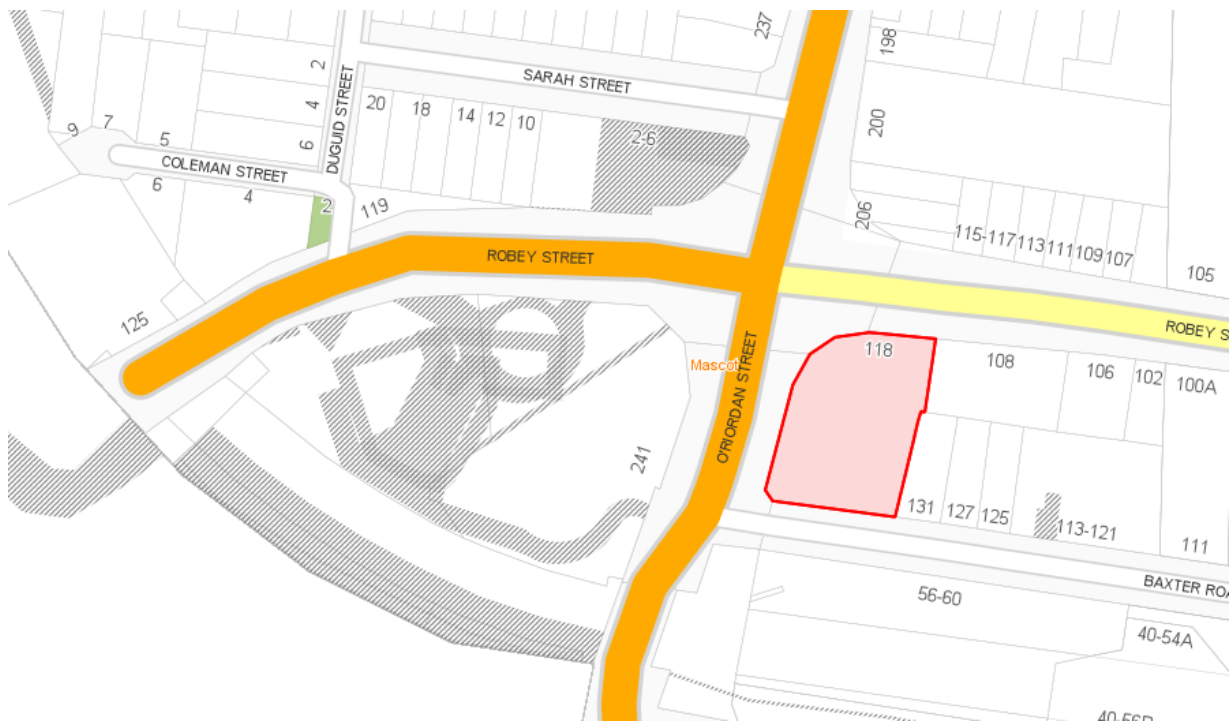


Figure 1. Locality Plan



Figure 2. Aerial Map of subject site



Figure 3. Subject Site (viewed from Robey Street)



Figure 4. Subject Site (viewed from Baxter Road)

1.2 The Locality

The surrounding area has been zoned B5 Business Development zone. Development surrounding the site is predominantly hotels and commercial development, existing warehouses along O’Riordan Street. To the north, there is a mixed-use building which included ground floor commercial and residential apartments above. There are existing low density residential dwellings found along Robey Street and High Street east of the site. The area is undergoing transition from residential/industrial to commercial and office development.

The subject site is located in a prominent position with three street frontages, of which forms one of the major arterial gateways to Sydney (Kingsford Smith) Airport. The site sits approximately 890 metres south of Mascot Railway Station and an approximate distance of 500 metres north of the domestic terminal of Sydney (Kingsford Smith) Airport. The railway line tunnel is linked with the airport and runs directly west of the site underneath O’Riordan Street, in a north-south direction. The zone of influence from this rail tunnel encroaches the subject site. The Sydenham/Botany Goods Rail Line is situated approximately 40 metres south of the site.



Figure 5. Hotel site opposite at 2-8 Sarah Street



Figure 6. Hotel and office site opposite at 241 O'Riordan Street



Figure 7. Hotel adjoining at 108 Robey Street



Figure 8. Hotel neighbouring at 113-121 Robey Street

Development immediately adjoining the site has a building height of nine (9) storeys with the development across O’Riordan having a building height ranging between nine (9) to fourteen (14) storeys. The area is undergoing transition from predominantly former industrial to commercial/office premises and hotels. There are some low-density residential dwellings located to the east of the site along Robey Street.

The area has already undergone improvement works to O’Riordan Street with road widening having been undertaken by Transport for NSW to create a wider road. The rail duplication project and works related to the Sydney Airport infrastructure has been approved and is under construction.

This section of O’Riordan Street is considered the gateway into the area coming from Sydney Airport. The site is in a prominent location and will be very visible when travelling along O’Riordan Street or along Qantas Drive.

2. THE PROPOSAL AND BACKGROUND

2.1 The Proposal

The proposal seeks consent for the integrated development for the demolition of existing structures and construction of a twelve (12) storey hotel comprising of parking, signage and specialised retail on the ground floor and associated restaurant and bar.

Specifically, the proposal involves:

- Removal of existing billboard signage located on the north-western side of the site and any other structures,
- Construction of a twelve (12) storey hotel development containing the following:
 - 224 hotel rooms
 - Hotel reception lobby
 - Ground floor specialised retail measuring 144.8sqm
 - Above ground car parking with four levels of podium car parking comprising 126 spaces incl. 4 porte cochere spaces, 22 bicycle spaces, 1 loading dock and 1 coach parking space
 - Reception, meeting rooms, sky lounge, bar, restaurant, employee room and shop on the top level
 - Billboard advertising structure to be mounted on the northern/western elevation of the development.
- An internal driveway will be provided with ingress off Baxter Road and egress from Robey Street. Drop off/pick up is located directly adjoining the hotel reception area and loading bay.

Table 1: Development Data

Control	Proposal
Site area	2,095sqm (before road widening) 2,001.7sqm (after road widening)
GFA	8,200.1sqm
FSR	3.91:1 (before road widening) 4.10:1 (after road widening)
Clause 4.6 Requests	Yes – Clause 4.4 of the BLEP 2021
Max Height	44 metres
Landscaped area	736.5sqm (35.15%) (before road widening) 623.4sqm (31.15%) (after road widening)
Car Parking spaces	126 spaces (incl. 4 porte cochere)

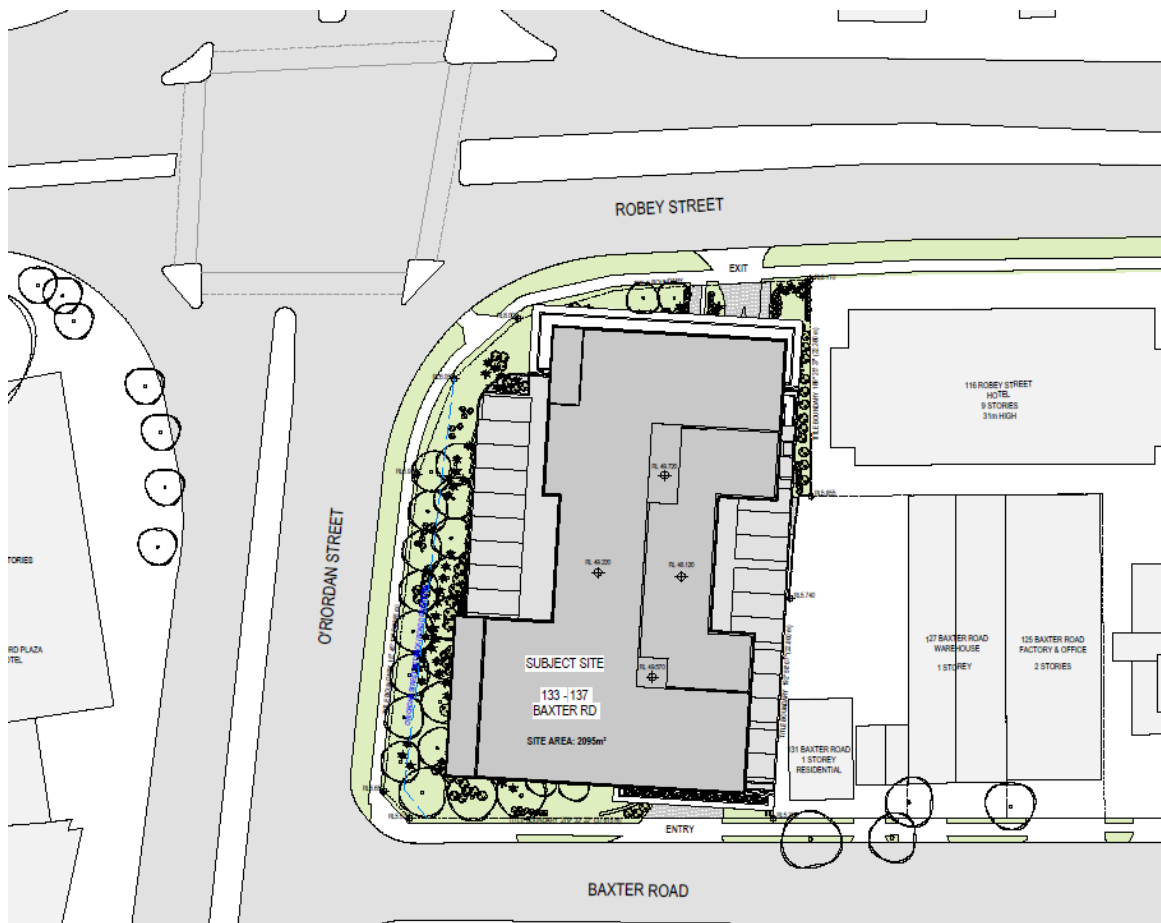


Figure 9. Proposed Site Plan

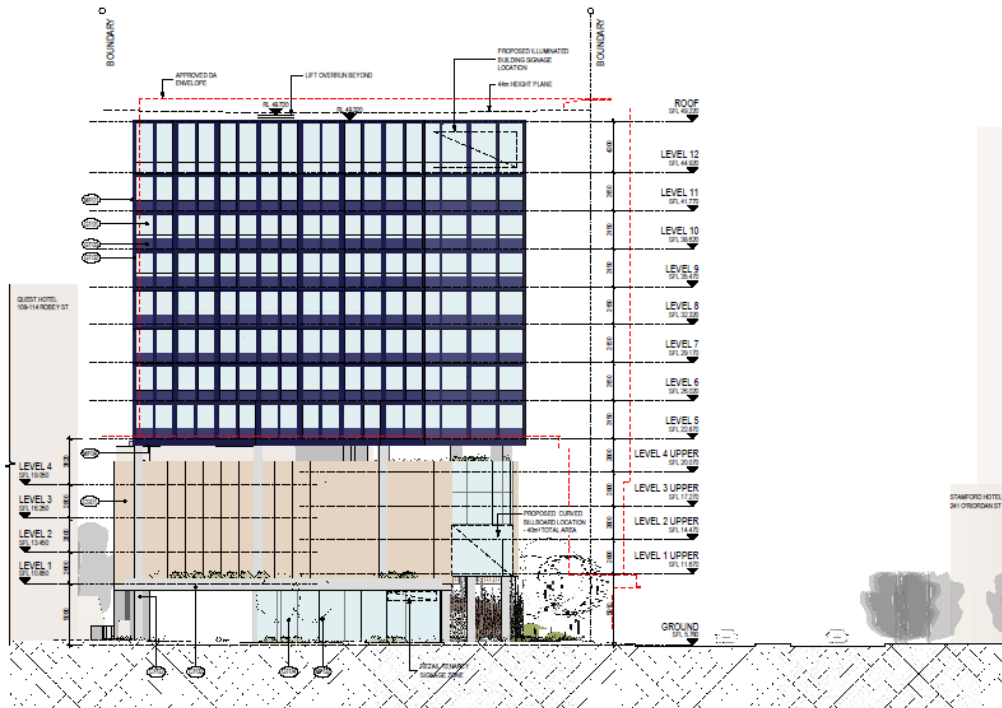


Figure 10. Proposed Northern Elevation

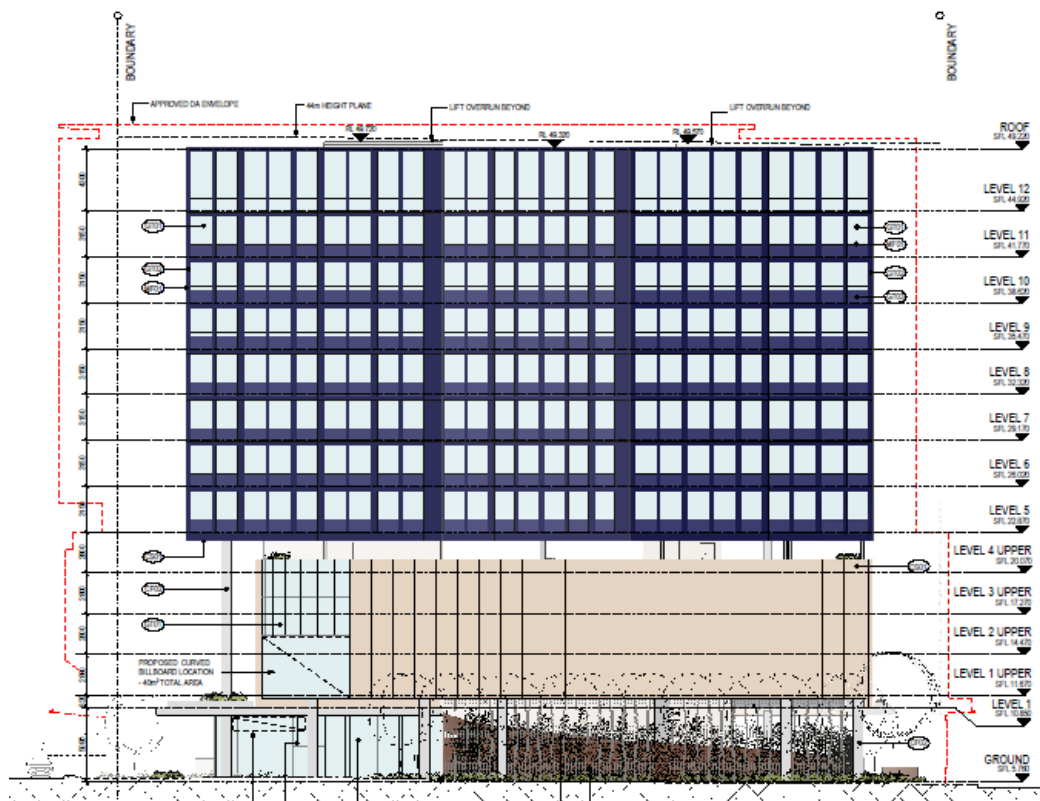


Figure 11. Proposed Western Elevation

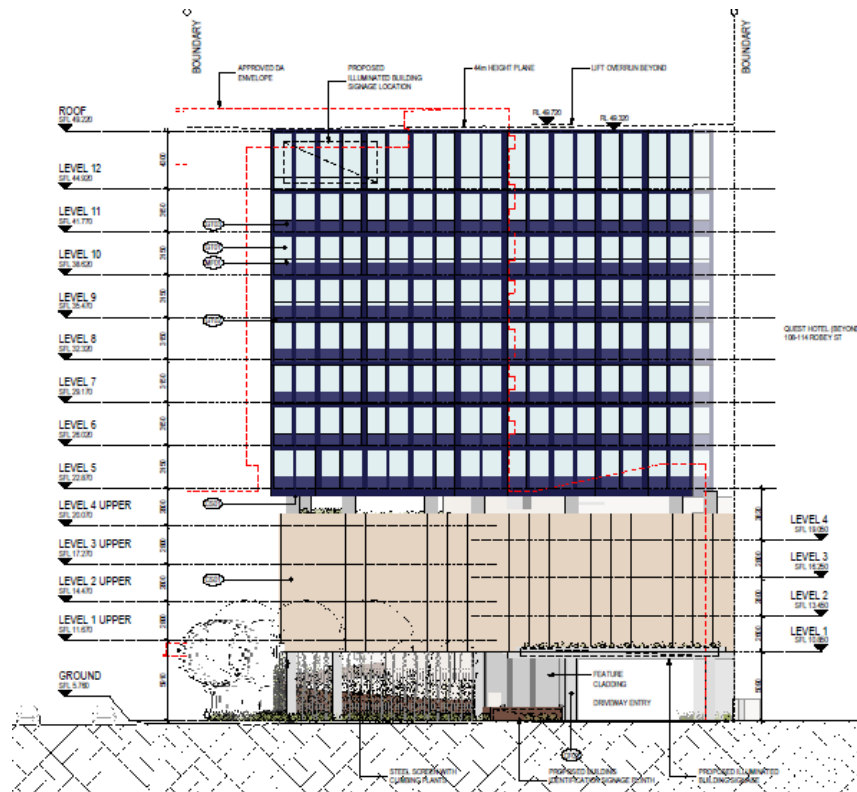


Figure 12. Proposed Southern Elevation

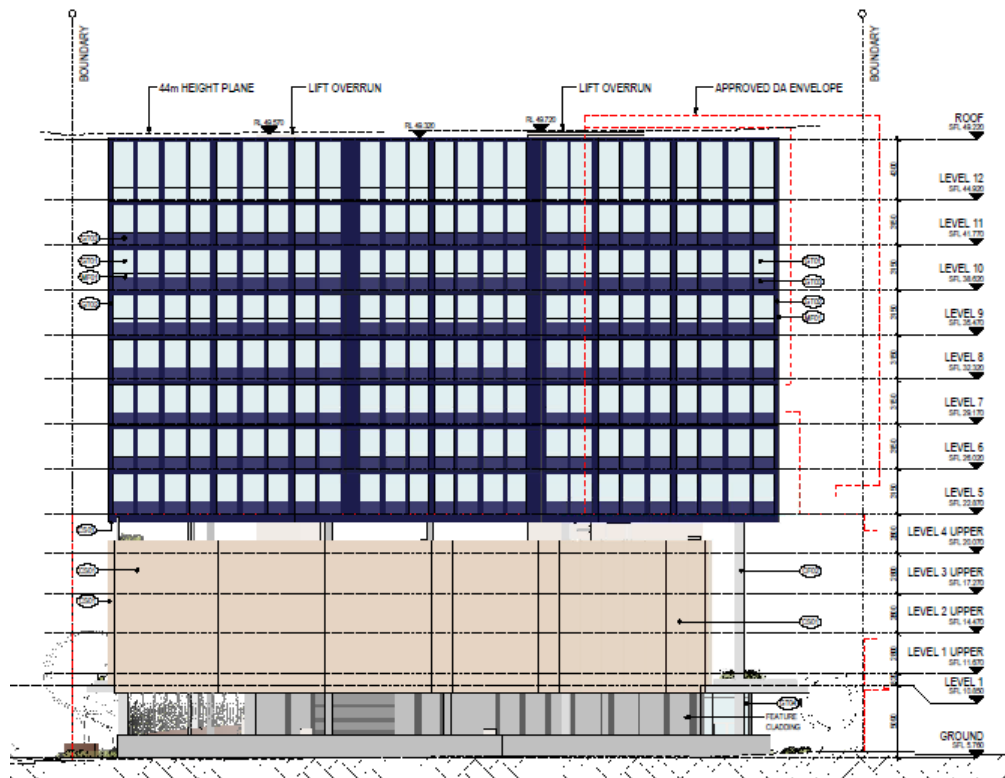


Figure 13. Proposed Eastern Elevation



Figure 14. Photomontage of the development viewed from north-western side

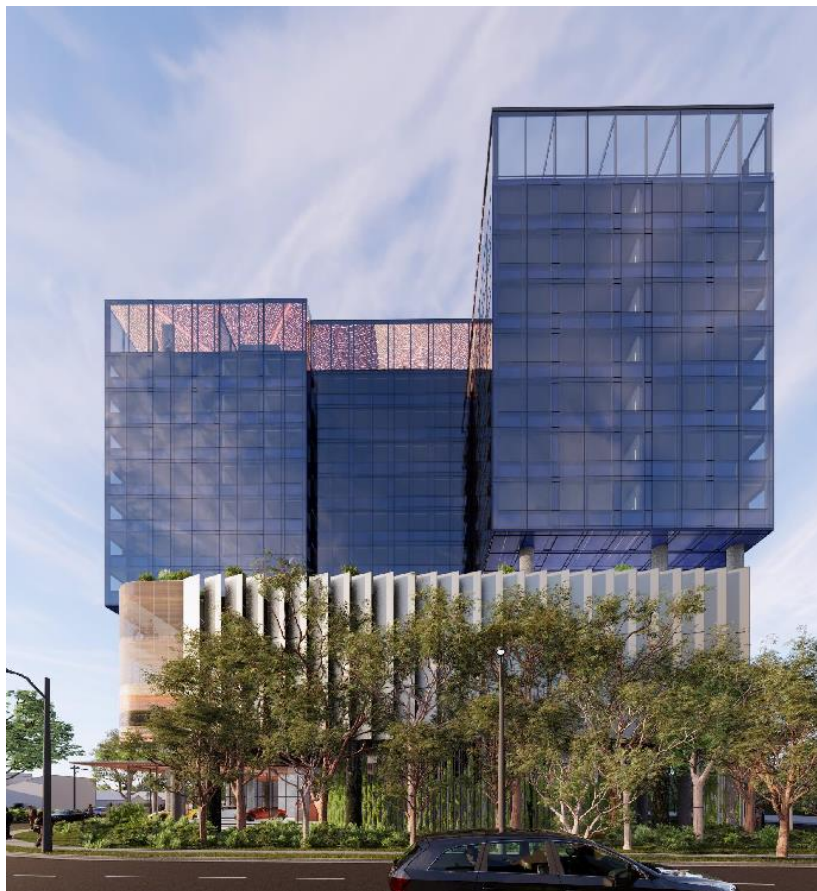


Figure 15. Photomontage of the development viewed from O'Riordan Street (west)



Figure 16. Photomontage of the development viewed from Robey Street (north)



Figure 17. Photomontage of the development viewed from south west corner

2.2 Background

A pre-lodgement meeting was held on 11 December 2019 where various issues were discussed. A summary of the key issues and how they have been addressed by the proposal is outlined below:

- FSR

The preliminary proposal was conceptual in nature however the proposed FSR of 3.64:1 was raised as an issue with the lack of Clause 4.6 justification presented with the application. The applicant has amended their scheme however the refined design has resulted in an increased FSR of 4.10 (after road widening). The Clause 4.6 variation has been considered later in the report.

- Car Parking

Car parking allocation had not been provided and there being a shortfall with the car parking requirement in the DCP by 37 spaces. However, it was noted in the pre-DA that Council could consider a departure in the amount of parking on site based on its location. The applicant has amended their scheme reducing the overall car parking on site to 126 spaces (incl. 4 porte cochere spaces).

- Setbacks

Issue was raised with the proposed front setback along O’Riordan Street. The preliminary scheme had proposed a setback less than the 4-9 metres required under the DCP. There were concerns raised that the proposal was built over the area that would have been dedicated to road widening which was not supported. The plans demonstrate that the proposal has been setback so that it is away from the road widening area. While there are some non-compliances with the front setback, the applicant has appropriately justified the non-compliance.

- Landscaping

The proposal provided a total landscaped area of 22.2% which is less than the requirement within the DCP. Additionally, Council recommended that further trees/landscaping is provided at the western elevation. The applicant has increased the amount of landscaped area on the site to 31.15% following road widening which is acceptable.

In addition to the pre-DA application, the applicant submitted the proposal, in concept form, to the design review panel for consideration. The meeting was held on 5 December 2019 and design changes were recommended by the Panel for consideration.

The development application was lodged on **27 September 2021**. A chronology of the development application since lodgement is outlined below including the Panel’s involvement (briefings, deferrals etc) with the application:

Table 2: Chronology of the DA

Date	Event
27 September 2021	DA lodged
1 October 2021	DA referred to external agencies
6 October – 5 November 2021	Exhibition of the application
18 October 2021	Sydney Trains request for additional information sent to Applicant
20 October 2021	Application was presented to Bayside Traffic Advisory Committee Meeting for recommendations
22 October 2021	Kick-off briefing meeting between the Panel, Council and the Applicant held
25 November 2021	Application was presented to the Design Review Panel for Design Excellence assessment
17 December 2021	Request for Information from Council to applicant
25 January 2022	Amended scheme provided by the Applicant to address some issues raised in the DRP meeting
3 February 2022	Application was re-referred to the Design Review Panel to satisfy Design Excellence.
23 February 2022	Email to applicant sent requesting amended plans to address DRP minutes and outstanding Council issues in original RFI letter
3 March 2022	Briefing meeting between the Panel, Council and the Applicant held.
30 March 2022	Amended plans and documents submitted to Council by the Applicant

2.3 Site History

The following applications were assessed and determined on the site:

- **DA-2008/10132-** Demolition of two existing residences and construction of a new thirteen (13) storey commercial office building including car parking and open plaza area was approved on 18 March 2009. The application was approved with an FSR of 7.29:1. This was assessed under the Botany LEP 1995 and approved by Council. This consent has been enacted and not lapsed

- **DA-2008/10132/A-** Modification to construct four (4) levels of basement car parking, replace the approved levels of above ground car parking with commercial floor space (increasing the total commercial floorspace from 11,069sqm to 14,802.4sqm), and minor external modifications to the building façade and design was refused on 12 January 2015
- **DA-2008/10132/B-** Modification to amend Condition Nos. 3, 3a, 4, 5, 11, 15, 26, 71, 117, 124 and to add a new Condition No. 2a was approved on 27 August 2013
- **DA-2012/10230-** Construction of a 12 storey (195 room) hotel with ancillary facilities (restaurant, bar, gymnasium, pool and retail space) together with two levels of basement car parking and associated landscaping and public domain works was refused on 4 December 2014
- **DA-2019/403-** Continued operation of existing LED advertising structure approved under DA-10/244 for a further 10 years was approved on 27 April 2021
- **DA-2019/403/A-** Modification to correct the size of the sign and extend the timeframe for compliance with relevant conditions of consent is currently under assessment

3. STATUTORY CONSIDERATIONS

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

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

These matters are further considered below.

It is noted that the proposal is considered to be:

- Integrated Development (s4.46) (Water NSW)
- Requiring concurrence/referral (s4.13) (Sydney Trains/CASA)

Section 4.46 – Integrated Development of the Environmental Planning and Assessment Act 1979

The applicant has nominated the development as integrated development under Section 90(2) of the Water Management Act 2000 as the proposal would intercept the groundwater and would require dewatering. The application was referred to Water NSW for general terms of agreement. Water NSW responded on 4 February 2022 and did not provide any general terms of approval as they were not required. As there is no basement proposed and the

excavation is primarily limited to footings, no approvals or licenses are required from Water NSW. It has been advised that during the construction process, if groundwater is encountered, then the developer is to consult with Water NSW.

Section 4.13 – Consultation and Concurrence of the Environmental Planning and Assessment 1979

Section 2.98(3) and (5) requires concurrence with Sydney Trains as the proposal involves excavation in, above and adjacent to the Airport Tunnel Rail Corridor. The application was referred to Sydney Trains just after lodgement and on 18 October 2021 additional information in the form of geotechnical and structural reports and drawings as well as additional survey plans and modelling. It is noted that the Applicant has been corresponding with Sydney Trains however there has been delays within their discussions. As per Section 2.98(5), a consent authority can grant consent to a development application if no approval/refusal has been granted by the concurrence body within 21 days of the date which Council notified Sydney Trains. While a request for additional information was presented in this time period, no further correspondence to Council regarding approval conditions/refusal reasons have been provided for a 7-month period. A condition has been imposed in the draft notice of determination requiring approval from Sydney Trains prior to the issue of the Construction Certificate.

Regarding CASA, the proposal has been referred for concurrence relating to the development impacting the Obstacle Limitation Surface. At the time of writing the report, correspondence from CASA was imminent relating to approval of crane installation and use during construction.

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

The following Environmental Planning Instruments are relevant to this application:

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

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

Table 3: Summary of Applicable State Environmental Planning Policies
(Preconditions in **bold**)

EPI	Matters for Consideration	Comply (Y/N)
Planning System SEPP	• Part 2.19(1) declares the proposal as regionally significant development pursuant to Clause 2 of Schedule 6.	Y

Resilience and Hazard SEPP	• Section 4.6 - Contamination and remediation has been considered in the Contamination Report and the proposal is satisfactory subject to conditions.	Y
Transport and Infrastructure SEPP	• Section 2.48- (Determination of development applications- other development) – electricity transmission - the proposal is satisfactory subject to conditions. • Section 2.98- Excavation in, above, below or adjacent to rail corridors • Section 2.118- Development with frontage to classified road • Section 2.119- Impact of road noise or vibration on non-road development	Y
Industry and Employment SEPP	• Part 3.3 – Advertisement relates to the proposed digital advertising sign to be located on the north-western corner of the site	N
Biodiversity and Conservation SEPP	Chapter 2 of the SEPP relates to vegetation	Y
Bayside LEP 2021	Clause 4.4 – Floor Space Ratio Clause 4.6 – Exception to the development standard	N
Botany Bay DCP 2013	Part 3 and Part 6 of the Botany Bay DCP	Y

State Environmental Planning Policy (Planning Systems) 2021

State Environmental Planning Policy (Planning Systems) 2021 applies to the proposal as it identifies if development is regionally significant development. In this case, pursuant to Clause 2.19(1) of the SEPP, the proposal is a regionally significant development as it satisfies the criteria in Clause 2, Schedule 6 of the SEPP as the proposal has a CIV over \$30 million. Accordingly, the Sydney Eastern City Planning Panel is the consent authority for the application. The proposal is consistent with this Policy.

State Environmental Planning Policy (Resilience and Hazard) 2021

The provisions of Chapter 4 of the SEPP have been considered in the assessment of the development application. Section 4.6 of the SEPP requires Council to be satisfied that the site is or can be made suitable for its intended use at the time of determination of an application.

The applicant provided the following two reports associated with the application:

- Preliminary Site Investigation (Stage 1) report, prepared by JK Environments
- Detailed Site Investigation (Stage 2) report, prepared by JK Environments

It was noted from a previous site investigation that records exist indicating that up to six underground storage tanks have been installed at various times at the site. Records also indicate that only two of those tanks have been removed while the other four have been decommissioned. The detailed site investigation report indicated that the site needs

remediation, particularly in relation to asbestos and that a remedial action plan must be prepared. The report indicates that the following matters need to be addressed for the site to be made suitable for the proposed development:

- Temporary measures should be implemented to reduce the risks associated with asbestos until such time as remediation commences
- A remediation action plan must be prepared to outline measures to remediate and validate the site
- An AMP must be prepared to manage the current risk, and all works up to the time that fill containing asbestos is removed, or the new pavement is constructed (whichever comes first)
- A hazardous materials assessment should be undertaken on the existing buildings prior to commencement of any demolition works
- A specialist human health-risk assessor should be engaged to provide further advice in relation to appropriate criteria for assessing the trace VOCs identified in some soil vapour samples, for which there were no Tier 1 criteria
- A validation assessment should be undertaken during/following remediation works.

Both reports demonstrate that the site could be made suitable for the intended use of a hotel development. The application was referred to Councils Environmental Scientist who had no objections to the proposal subject to conditions within the draft notice of determination. It is considered the proposal satisfies the requirements of the SEPP.

State Environmental Planning Policy (Transport and Infrastructure) 2021

The relevant sections of the SEPP that are related to the development proposal are discussed in detail below:

Section 2.48- Determination of development applications relating to electricity transmission or distribution network

Section 2.48 relates to development likely to affect an electricity transmission or distribution applies to the development application. The development provides for a kiosk substation which is located at ground level fronting Robey Street. The site also is in close proximity to underground powerlines. The application was referred to Ausgrid for comment and a response was received on 3 November 2021 relating to underground powerlines. These conditions have been imposed in the consent within the attached Schedule.

Section 2.98- Excavation in, above, below or adjacent to rail corridors

The proposal is near the Airport Train Tunnel with half of the site impacted by its zone of influence. The application was referred to Sydney Trains for conditions as the development seeks to excavate for foundations/footings. No basement car parking level is proposed therefore the extent of excavation is not considered significant. Sydney Trains sent through a request for information to the applicant on 18 October 2021. To this date, the applicant and Sydney Trains are in discussions relating to compliance with Sydney Trains requirements. Conditions have been incorporated within the draft Notice of Determination requiring approval from Sydney Trains prior to the issue of the Construction Certificate.

Section 2.118- Development with frontage to a classified road

The proposal is located on O'Riordan Street which is a classified road. The development proposes two driveways on the site with entry off Baxter Road and exit off Robey Street. There are no openings proposed along O'Riordan Street. The western side of the site is

affected by road widening along O’Riordan Street which is approximately 2.9 metres at its widest section. The application was referred to TfNSW for conditions and on 22 October 2021, TfNSW provided correspondence to the proposal. The following commentary was provided:

“TfNSW has reviewed the submitted application and notes that TfNSW has previously resumed and dedicated a strip of land as road along both the O’Riordan Street and Robey Street frontages of the subject property. TfNSW raises no objections to the proposed development provided that any new building or structures (including signage), together with any improvements to the future use of the site are clear of the land required for road (unlimited in height or depth).”

Conditions have been attached to TfNSWs’ correspondence which have been incorporated within the draft Notice of Determination.

Section 2.119- Impact of road noise or vibration on non-road development

The applicant has provided an acoustic report for the proposed development. The report has considered traffic noise and the recommendations provided in the report has been included as part of the draft Notice of Determination.

State Environmental Planning Policy (Industry and Employment) 2021

This policy applies to all signage that is visible from a public place or public reserve except for signage that is exempt development. Part 3.2 of the SEPP requires the following:

A consent authority must not grant development consent to an application to display signage unless the consent authority is satisfied:

- a) that the signage is consistent with the objectives of this Policy as set out in Section 3.1(1) (a), and
- b) that the signage the subject of the application satisfies the assessment criteria specified in Schedule 5.

The proposal seeks consent for the following signs:

- Two (2) building identification signs located on the hotel tower located on the western and southern elevations at the top floor
- One (1) building identification sign for the specialised retail premise, located on the northern elevation at ground level
- One (1) advertising sign integrated within the building on the north western corner of the podium and measures approximately 40sqm.

There are no details of the building identification signs’ display as they have not been confirmed at this stage and will be dependant on the operator. All signs will be illuminated.

An assessment of the proposed signage against the SEPP assessment criteria has been undertaken. There are no objections to the building identification signs however Council does not support the advertising sign.

Advertising sign

The applicant has proposed an advertising sign/screen for third party advertising integrated within the north-western corner of the podium. The sign will be clearly visible when travelling south bound along O’Riordan Street and is approximately 40sqm in area. The figure below is a photomontage of the development with the advertising sign identified in red.



Figure 18. Location of Advertising Sign

The location and inclusion of the advertising sign on the north-western corner is not supported. Councils’ stance requires limitations on the amount of advertising signage within the Mascot Business Development Precinct, particularly mounted on buildings. The advertising sign location impedes any significant landscaping from being planted on this part of the site due to the Applicant seeking unrestricted sightlines to the sign from pedestrians and vehicles travelling along O’Riordan Street and Robey Street. Additionally, the inclusion of the sign adds to visual clutter within the area and is not suited for a gateway building into Mascot from the airport. It is considered a distracting influence at a busy section of the road leading up to the airport which could contribute to safety issues for any vehicle travelling along O’Riordan/Robey Streets.

Whilst it is acknowledged that there is an existing billboard located on the site, the billboard is there temporarily with approval being sought to extend the period of operation till 2026. The application is under assessment with Council and is yet to be determined. However, in the subject application, the advertising sign will be integrated into the building façade which will make the sign a permanent structure with continual use. Councils’ stance for advertising signs mounted on buildings, in particular third party advertising, has generally been rejected within this precinct with only one sign permitted on the ‘Park and Fly’ car park building which

is located approximately 650 metres (as the crow flies) away and not within the visual catchment of the site.

Concern is also raised with the number of billboards and third party advertising signs in close proximity to the site located on the rail overpass, on billboards along Qantas/Joyce Drive, and within the vicinity of Sydney Airport. The addition of more signs to the area further contributes to visual clutter which Council seeks to avoid.

The application was referred to the Design Review Panel who have maintained the advertising signs' removal from the site as it diminishes the buildings' design excellence. This further supports Council's stance.

The applicant had the opportunity to brief Council, the Panel, and the DRP on the proposed sign with the following commentary provided:

"Advertising Signage is a permissible use in the B5 Business Development Zone of the Bayside Local Environmental Plan 2021 (the LEP). The subject site falls within the Mascot Business Development Precinct as identified in the Botany Bay Development Control Plan 2013 (the DCP). The DCP provides no specific guidance for signage in the precinct, either positive or negative.

There is a consent for the existing sign on the site. The most recent DA approved by Council is DA-2019/403 with a 5-year renewal period. The sign has existed on the site for approximately 15 years, originally a static sign but more recently updated to digital signage.

The proposed digital advertising signage has been considered as an integral part of the architectural composition, and as part of the presentation of the development in its highly active, commercial context.

The gap in landscaping on this part of the site is consistent with other hotel developments in the precinct where open view of the entrance and business identification are commercially necessary and relatively expected. The gap would be required to provide visibility to the ground floor tenancy and the gym regardless of whether the sign is proposed. This aids the active street frontage to the specialised retail premises, a requirement in point 3 of Council's RFI..

*The site lies amongst a relatively high concentration of billboard signage, the vast majority being traditional static images, on large rectilinear mountings. Digital signage has also been erected on nearby sites with recent approvals still to be constructed in the precinct. This is characteristic of many airport precincts both in Australia and globally. Existing advertising signage in the locality is highlighted in red on the Aerial map in **Figure 19** below, with nearby examples shown in **Figure 20, 21 and 22**.*



Figure 19. Aerial view showing existing advertising signage in the locality



Figure 20. From the intersection of O'Riordan Street and Joyce Drive, looking North toward the site



Figure 21. Signage along Joyce Drive, South-east of the site



Figure 22. Signage along the railway corridor south of the site

The proposed response to the existing site context consolidates existing signage into the building form which reduces visual clutter. This is shown with a side-by-side of the existing site and a photomontage of the proposal.



Figure 23. Side-by-side of existing site and photomontage of proposal

The project seeks to create an innovative design response that makes the signage an urban object that dynamically changes and shifts over time and creates colour and vibrancy in what is a busy and visually active precinct. This is a design response that has been achieved both nationally and internationally where integrated advertising signage has provided positive outcomes in urban landscapes.

Further to the above, a Letter of offer and draft Voluntary Planning Agreement has been provided. The VPA is proposed for the purpose of satisfying Clause 3.13 of the State Environmental Planning Policy Industry and Employment) 2021 and the Transport Corridor Outdoor Advertising and Signage Guidelines for the provision of a public benefit to be provided in connection with the display of advertisements in relation to the DA.

The VPA provides that the Developer is to make monetary contributions to Council calculated by reference to the digital display area (39.95m²) used for the display of advertisements. Boston Atlas Hickory is also prepared to offer the Council use of the signage for 5% of the display time."

Discussion relating to the draft VPA and the letter of offer is provided later in the report however the application at this stage is rejected. The applicants' response does not appropriately justify the issues which would contribute to visual clutter as well as safety concerns and the sign continues to not be supported. A condition has been imposed within

the draft Notice of Determination to delete the sign and the building façade at that level to be redesigned as per the corner treatment to the podium above.

If the Panel considers accepting the advertising sign in its proposed location, a condition of consent is to be included that approval from TfNSW is to be sought prior to the issue of any Construction Certificate relating to size, illumination, dwell times and any other matter of concern.

State Environmental Planning Policy (Biodiversity and Conservation) 2021

State Environmental Planning Policy (Biodiversity and Conservation) 2021 applies to the proposal. The application seeks consent for the removal of two (2) trees from the site. The species of trees are as follows:

- Two (2) x *Callistemon viminalis* (Bottlebrush)

The following tree is to be retained within the public domain:

- One (1) *Tristaniopsis laurina* (Watergum)

An arboricultural impact assessment report was not provided as part of the application due to the size of the site trees to be removed. An assessment by Council's Tree Management Officer was carried out and no objections were raised to their removal subject to appropriate conditions imposed within the Notice of Determination relating to tree retention of the street tree.

Subject to compliance with the conditions of consent, the proposal is satisfactory in relation to the Biodiversity and Conservation SEPP 2021.

Bayside Local Environmental Plan 2021

The relevant local environmental plan applying to the site is the *Bayside Local Environmental Plan 2021* ('the LEP'). The proposal is consistent with the aims of the BLEP 2021.

Zoning and Permissibility (Part 2)

The site is located within the B5 Business Development Zone pursuant to Clause 2.2 of the LEP.

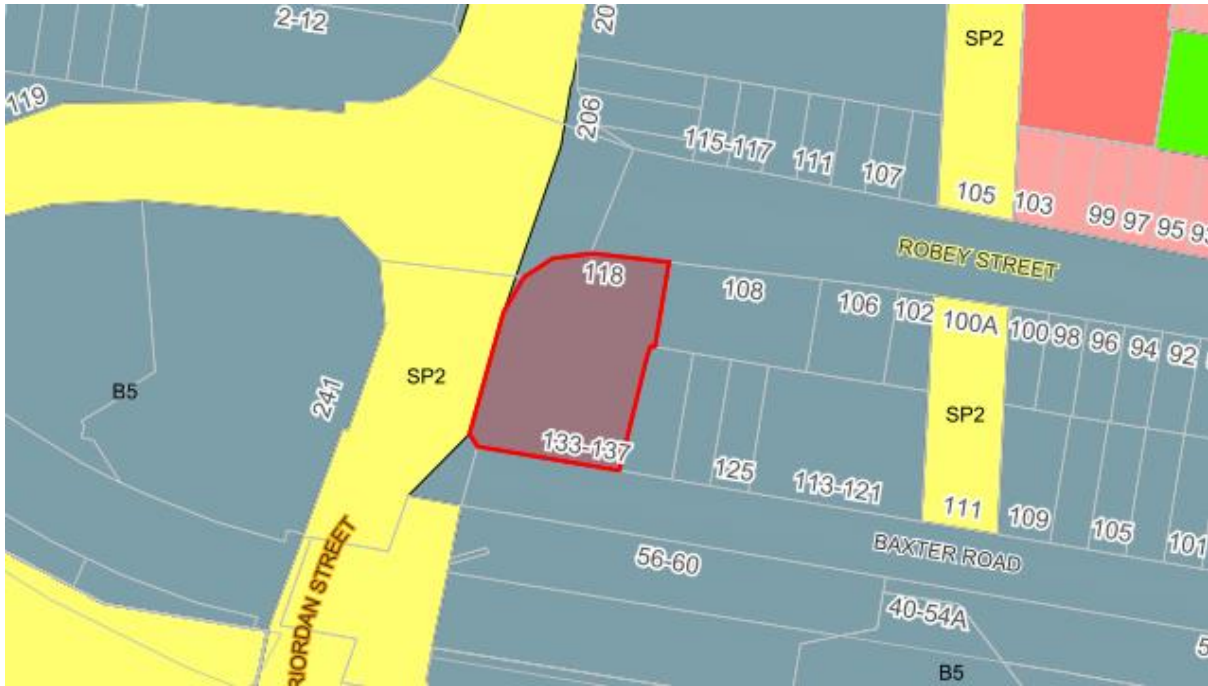


Figure 24. Zoning Map of subject site

According to the definitions in Clause 1.4 (contained in the Dictionary), the proposal satisfies the definition of tourist and visitor accommodation, specialised retail premises and signage which are permissible uses with consent in the Land Use Table in Clause 2.3.

The zone objectives include the following (pursuant to the Land Use Table in Clause 2.3):

- To enable a mix of business and warehouse uses, and specialised retail premises that require a large floor area, in locations that are close to, and that support the viability of, centres.

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

- The development proposes a mix of uses that supports the local community and Sydney Airport as a place for short term accommodation.

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

The LEP also contains controls relating to development standards, miscellaneous provisions and local provisions. The controls relevant to the proposal are as follows:

2.7 - Demolition

The proposal seeks consent for demolition of all existing structures on site including removal of the existing advertising sign, dwelling houses, existing vehicular crossings and two (2) site trees. In this regard, the proposal satisfies the provisions of this Clause.

4.3 - Height of Buildings

A maximum height standard of 44 metres applies to the subject site.

The proposal has a maximum height of 44 metres (RL 49.7 metres AHD) which complies with the provisions and objectives of this clause.

4.4 – Floor Space Ratio

A maximum FSR standard of 3:1 (GFA of 6,005.1 sqm) applies to the subject site. This is based on a site area of 2,001.7sqm, deducting the area of road widening from the site area. Should road widening not be discounted, the site area would be 2,095sqm.

The proposal has a maximum GFA of 8,200.1sqm and equates to an FSR of 3.91:1 (before road widening) or 4.10:1 (after road widening) which does not comply with the provisions of this clause. For the purposes of this proposal, the assessment has been carried out on the GFA/FSR after road widening. This is a GFA exceedance of 2,195sqm and results in a variation of 36.55%. The non-compliance is discussed in Clause 4.6 – Exceptions to Development Standards below.

4.6 – Exceptions to Development Standards

Clause 4.6 allows a variation to a development standard subject to a written request by the applicant justifying the variation by demonstrating:

Clause (3)(a)- that compliance with the standard is unreasonable or unnecessary in the circumstances of the case, and

Clause (3)(b)- that there are sufficient environmental planning grounds to justify the variation.

In considering the applicant's submission, the consent authority must be satisfied that:

- i. Clause 4(a)(1)- the applicant's written request is satisfactory in regards to addressing subclause (3) above, and*
- ii. Clause 4(a)(ii)- the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives of the relevant zone.*
- iii. Clause 5(a)- The consent authority must also consider whether contravention of the development standard raises any matter of significance for State or Regional environmental planning, and*
- iv. Clause 5(b)- the public benefit of maintaining the development standard.*

The assessment of Clause 4.6 below has been undertaken in accordance with the principles established by the Chief Judge in ***Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*** where it was observed that:

- in order for there to be 'sufficient' environmental planning grounds to justify a written request under clause 4.6, the focus must be on the aspect or element of the development that contravenes the development standard and the environmental planning grounds advanced in the written request must justify contravening the development standard, not simply promote the benefits of carrying out the development as a whole; and

- there is no basis in Clause 4.6 to establish a test that the non-compliant development should have a neutral or beneficial effect relative to a compliant development.

For the purposes of this assessment, the Applicant has carried out an assessment on floor space ratio on the site area after road widening. The site area is 2,001.7sqm.

The applicant is seeking to vary the floor space ratio development standard by 2,195sqm and equates to a variation of 36.55%. A Clause 4.6 variation to justify the non-compliance has been prepared by Mecone NSW Pty Ltd.

The applicants' Clause 4.6 variation argues that there are sufficient environmental planning grounds to support the non-compliant Floor Space Ratio. The variation is templated to address at least one of the five tests including whether the variation is unreasonable or unnecessary and provides environmental planning grounds to argue their case. The applicant has chosen the first test for their assessment. These components are summarised below with Councils response provided:

Clause 4.6(3)(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case,

Applicant Comment:

*The **first test** of Wehbe requires demonstration that the objectives of a development standard can be achieved notwithstanding non-compliance with that particular standard. The objectives of the standards are achieved as detailed below.*

a) to establish standards for the maximum development density and intensity of land use

Clause 4.4 of the LEP seeks to achieve this objective through the establishment of the maximum FSR numerical development standard. Whilst this numerical standard is one way of achieving this objective, Clause 4.6 of LEP provides an alternative avenue of achieving an FSR outcome, notwithstanding numerical non-compliance, where it can be demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and that there are sufficient environmental planning grounds to justify contravening the development standard.

b) to ensure that buildings are compatible with the bulk and scale of the existing and desired future character of the locality

The site falls within the 'Mascot Business Development Precinct' under the Botany Bay Development Control Plan 2013 (DCP). The objectives of the precinct seek to encourage and provide for business development that has an affinity or locational need to be near to Sydney Airport and to ensure that the scale, design and material of construction; and nature of the development contributes positively to the visual amenity and the gateway function of the area.

The existing character of the locality consists of a mix of buildings comprising tourist and visitor accommodation, commercial premises and mixed-use buildings of a large bulk and scale to the north and west, and transitions to buildings with smaller bulk and scale, and typically residential uses, towards the east.

The locality consists of some developments that are up to 14-storeys in height and have FSRs around 4:1, such as:

- **5-11 Ewan Street** (to the west of the site): A hotel and commercial building was approved with an FSR of 4.35:1 whilst the FSR control was 3:1.
- **256-280 Coward Street** (to the north of the site): A DA was approved for a residential flat building with an FSR of 4.41:1 whilst the site had an FSR control of 3.2:1.
- **289-293 King St** (to the north-west of the site): A 13-storey hotel and office, and separate 5-storey carpark was approved with an estimated FSR of 3.94:1.

The proposal will have a substantially lower FSR than the 2008 commercial/office consent (DA-2008/132) and the 2012 hotel development (DA-2012/230) for the site

...

In this regard, when determining the desired future character of the area, the existing and approved developments have been considered. The proposal will comply with the 44m height control and while it varies from the FSR control, there are other developments in the locality that are of a similar bulk and scale and have a greater FSR as outlined above. Overall, the proposed bulk and scale is consistent with existing developments along O’Riordan Street and will create an important gateway building for the Airport Precinct. Furthermore, the design includes varying building setbacks at the ground floor, carpark podium levels and upper levels which allows for modulation of the façade to break up the building’s perceived bulk and scale.

c) to minimise adverse environmental effects on the use or enjoyment of adjoining properties and the public domain

The site adjoins public roads to its north, south and west, and adjoins two properties to its east. The proposal minimises environmental effects on the use or enjoyment of the public domain by providing appropriate deep soil landscaped setbacks to the street frontages which allow for deep soil landscaping to improve the visual appearance of the development and soften the impact upon the streetscape. This includes a second row of mature trees that can be retained post road widening.

The two adjoining properties to the east are 108 Robey Street, Mascot which contains a 9-storey hotel ‘Quest Mascot’; and 125-131 Baxter Road, Mascot which currently underutilised, accommodating very low scale, outdated development, but is subject to the same zoning and development standards as the site.

The existing adjoining hotel building at 108 Robey Street contains landscaping and services at the ground level and hotel rooms above. The hotel room windows are generally oriented to the north and the only windows along the side elevation with the subject site appear to be from lift lobby areas. The proposed boundary interface with the hotel is that of a side boundary with landscaping at the ground floor level with fire stairs on the carpark levels and hotel room windows at the upper levels. It is not considered that the proposal will create any visual or privacy concerns for the adjoining neighbour as the hotel rooms will not look into any of the adjoining hotel rooms.

For the adjoining site at 125-131 Baxter Road, a concept building envelope has been prepared (refer to SEE) which demonstrates a potential building envelope for the site that complies with built form controls. The concept building envelope demonstrates that the site can be redeveloped in isolation whilst providing suitable setbacks between the sites. The proposed car parking podium will have a nil setback along the eastern boundary

whilst the hotel rooms and ancillary hotel facilities (to Level 12) will be setback between 2.4m-4.2m. The proposal will comply with the setback controls in the DCP (which are between 0-3m) and will provide a suitable setback to the site to ensure an appropriate design and amenity outcome for both sites.

There is no residential accommodation either side of the site and the site is mainly surrounded by tourist and visitor accommodation and the Botany Goods Route Train Line to the south. The proposal will not result in any overshadowing to surrounding residential sites or public open space.

The proposal minimises environmental effects on the use or enjoyment of the public domain by providing appropriate landscaped setbacks to improve the visual appearance of the development and soften the impact upon the streetscape.

The proposal is consistent with objective (c) in that it will minimise adverse environmental effects on the use or enjoyment of adjoining properties and the public domain.

(d) to maintain an appropriate visual relationship between new development and the existing character of areas or locations that are not undergoing, and are not likely to undergo, a substantial transformation

The site, and surrounding land, is zoned B5 Business Development. The existing character of the location is characterised by a mix of large scale, higher density commercial, tourist and visitor accommodation and mixed-use developments designed in response to the applicable 44m height control under the LEP. This is a marked departure from the previous development pattern of the area, which was very low in scale.

The proposed mixed-use hotel/commercial development is consistent with this emerging character. The nearest area to the site that is unlikely to undergo a substantial transformation is residential zoned land approximately 90m to the east along Robey Street. The separation distance to this land and the location of the existing intervening nine-storey hotel development (108 Robey St) provides a buffer between the proposal and that residential area.

(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 site is not in proximity to public places such as parks and community facilities however does adjoin public roads to the north, south and west, including O’Riordan Street, a classified road providing a principal route to the airport. The proposed building features increased street setbacks at ground level which allows for greater deep soil landscaping to street boundaries. This includes 2 rows of mature trees fronting O’Riordan Street such that one full row of trees would be maintained even if road widening were to occur. A green wall is proposed to the car park ramp to contribute to further greening of the streetscape, with planter boxes proposed to the top of the car park podium to soften the build form and a glazed tenancy of specialised retail floor space included to activate the ground plane.

The proposal is 44m in height which complies with the maximum building height limit and provides a skyline consistent with that of existing and proposed tourist and visitor developments adjoining to the west. The proposed building will provide a positive visual landmark to the airport and Joyce Drive (refer to the figure below) and will not adversely affect the streetscape, skyline or landscape when viewed from the adjoining public roads and is consistent with objective (e).

Officer Comment:

The applicant has satisfied at least one of the tests outlined within *Wehbe v Pittwater Council* in that it is considered that the non-compliance has achieved the objectives of the standard therefore compliance is unnecessary.

The argument that the *precinct seeks to encourage and provide for business development that has an affinity or locational need to be near to Sydney Airport and to ensure that the scale, design and material of construction is achieved* has been demonstrated. The proposal will provide for an increased employment opportunity as well as high-quality short-term accommodation that services and benefits from Sydney Airport. The proposal is generally consistent with the existing character established in the DCP and other approvals immediately surrounding the site.

Discussion relating to the previous approval on the site having an FSR of 7.29:1 should not form a basis of supporting the subject development application. The merits of the non-compliance should be assessed within the subject Clause 4.6 variation. The Clause 4.6 variation is to provide justification on the element of the development that is non-compliant and not the overall development as a whole. The previous approval would not have been supported today with a significant FSR as approved.

It is considered that both the LEP and DCP controls set the standard building envelope for the site. The proposal requires a maximum building height of 44 metres and setbacks of 4 to 9 metres for the front setback, 2 metres for the side setbacks and a nil to 3 metre setback at the rear. The proposal is compliant with the building height requirement, provides greater side and rear setbacks and a slight departure to the front setback. It is key to note the FSR control does not speak to the remaining controls with regard to the building form and general modelling of building envelopes for a site with an area greater than 1,000sqm. To develop to its full potential results in a higher FSR and yield provided than if the site required setbacks greater than 6 metres and a lower height. This is evident by the height proposed. The proposal has four levels of car parking above ground. Should these be located below ground, the development, with the current FSR proposed, would be eight storeys in height. This is almost half the maximum number of stories allowed within the maximum building height of 44 metres or 13-14 storeys.

Clause 4.6(3)(b)- Are there sufficient environmental planning grounds to justify contravening the development standard?

Applicant Comment:

In the case of the subject development, there are sufficient environmental planning grounds to justify contravening the development standard for the following reasons:

Complies with the Building Envelope Prescribed by Applicable Height and Setback Controls

- The proposal will provide an appropriate building envelope for the site, complying with the 44m building height limit in the LEP and not approaching the maximum height of the nearby Stamford Hotel at 51mAHD.*
- The proposal complies with the DCP setback controls. This mainly surrounded by commercial development and the Botany Goods Route Train Line to the south. The*

proposal will not result in any overshadowing to surrounding residential sites of public open space.

- *While not strictly adhering to all quantitative setback standards in the DCP, the proposal reflects the setback patterns of the character prescribed by surrounding development in the immediate context and therefore generally complies with the setback controls and objectives in the DCP.*

Reflects the Built Form Context Established by Adjoining Development

- *Creates an important gateway building into the Airport Precinct along O’Riordan Street. The proposal will comply with the 44m building height limit in the LEP and will not exceed the maximum height of the Stamford Hotel at 51mAHD.*

The development has been divided into separate modules including the ground floor plane, the car parking podium and distinct hotel tower modules which creates a highly articulated built form. The ground floor plane has generous deep soil landscaping zones along all street frontages and the eastern boundary. The ground floor retail component will activate the north-western corner with its floor to ceiling glazing and incorporate a landscaped roof top. Refer to the figure below.



The car parking podium has been suspended off the ground floor with an undercroft area for landscaping. Furthermore, the hotel gym is to incorporate glazing to the car parking podium which will provide street activation, opportunities for passive surveillance and reduce the perceived bulk and scale of the building.

- *The proposal will be compatible with the existing and desired future character of the locality. It is reiterated that in the recent case, Big Property Pty Ltd v Randwick City Council [2021] (Big Property), Commissioner O’Neil held that the desired future character of an area is not determined solely by the development standards that control building envelopes for the area and existing and approved developments in the locality (amongst a number of other items) should be taken into consideration.*

There are a number of similar developments that are up to 14-storeys in height and have FSRs of around 4:1 which include 5-11 Ewan Street, 256-280 Coward Street, and 289-293 King Street. Overall, the proposal is consistent with the desired future character and is similar to existing and approved developments within the locality.

Negligible Traffic Impact

- *The proposal will not have any adverse traffic impacts on the surrounding road network. A Traffic Impact Assessment including updated traffic advice has been prepared by TTPP (refer to **Appendix 8** of the SEE and **Attachment 9** of the response to Council Request for Further Information) which provides traffic modelling results with and without the development for 2021 and 2031. The report concludes that while unrelated background traffic growth would occur, the additional development-generated traffic is expected to have a negligible impact on the road network in the AM and PM peak.*

Consistent with Relevant Strategic Planning

- *The proposal will align with local, district and regional strategies. The proposal will facilitate an employment generating development which will provide job opportunities in hotel and specialised retail uses and align with the planning priorities of the Bayside Local Strategic Planning Statement (the **LSPS**). The development will contribute to employment numbers within the 'Eastern Economic Corridor' in the Greater Sydney Regional Plan and on the edge of the 'Green Square - Mascot Strategic Centre' under the Eastern City District Plan.*

The site falls within the 'Mascot Business Development Precinct' under the DCP. The objectives of the precinct seek to encourage and provide for business development that has an affinity or locational need to be near to Sydney Airport and to ensure that the scale, design and material of construction and nature of the development contributes positively to the visual amenity and the gateway function of the area. The development will also provide important hotel accommodation which supports the operation of the Sydney Airport whilst it will provide a building that creates a gateway to the Airport Precinct.

Site Constraints Require Inclusion of Areas Normally Excluded from FSR

- *The site is highly restricted by a number of environmental constraints which are outlined below:*
 - *Ground water table: The site is affected by groundwater close to the surface (at approximately 2m below ground level).*
 - *Site contamination: Site contamination as identified in the Preliminary Site Investigation.*
 - *Sydney Airport rail tunnel: The site is adjacent to the Sydney Trains T8 Airport Line train tunnel which runs below O'Riordan Street.*

These environmental constraints have restricted the potential to excavate any basement levels and therefore the placement of the entire building above ground level has contributed to its perceived bulk and scale. It is highlighted that the site is also restricted by a height of 44m under the LEP 1, the prescribed airspace and a portion of land along O'Riordan Street which is to be dedicated to RMS for future road widening purposes.

As shown below in the LEP definition of gross floor area, any storage, garbage, and services are only excluded from GFA calculations if they are located within a basement (Note. Vehicular car parking and access, and loading areas are excluded from GFA whether within a basement or not where they meet the requirements of the consent authority – see (g) and (h), (our emphasis)).

gross floor area means the sum of the floor area of each floor of a building measured from the internal face of external walls, or from the internal face of walls separating the building from any other building, measured at a height of 1.4 metres above the floor, and includes—

- (a) the area of a mezzanine, and*
- (b) habitable rooms in a basement or an attic, and*
- (c) any shop, auditorium, cinema, and the like, in a basement or attic,*

but excludes—

- (d) any area for common vertical circulation, such as lifts and stairs, and*
- (e) any basement—**
 - (i) storage, and**
 - (ii) vehicular access, loading areas, **garbage and services**, and**
- (f) plant rooms, lift towers and other areas used exclusively for mechanical services or ducting, and*
- (g) car parking to meet any requirements of the consent authority (including access to that car parking), and*
- (h) any space used for the loading or unloading of goods (including access to it), and*
- (i) terraces and balconies with outer walls less than 1.4 metres high, and*
- (j) voids above a floor at the level of a storey or storey above.*

The proposal contains storage, garbage, and services areas which ordinarily would be located within the basement and excluded from GFA calculations. However, the refuse/garbage rooms, bulky waste rooms, luggage storage rooms, linen storage and engineer's office to the ground floor, and the housekeeping and office to Level 1, have been included in the GFA and FSR calculations and contribute to the perceived bulk and scale of the development. These areas account for ~108m² of the GFA.

Officer Comment:

The applicant has also demonstrated that there are sufficient environmental grounds to support varying the standard. It is acknowledged that the proposal provides a considered built form response that will deliver a positive urban design outcome. It is acknowledged that strict compliance with the floor space ratio control would likely lead to a less satisfactory outcome as it would result in a development which would result in an inferior built form that would be contextually inappropriate with the surrounding development.

The applicant has stated that the proposal complies with the building setbacks in the DCP however that is not accurate. The proposal does not comply with the front and side setbacks however these setbacks are appropriate subject to changes in the consent conditions.

The argument that there are other developments that have been approved over the FSR in the area is not an environmental planning ground to justify the development standard therefore this comment is not supported.

However, the applicants argument relating to site constraints restricting the service areas to above ground due to the inability of a basement level does generally raise the overall gross floor area on the site. The road widening acquisition area also contributes to a higher FSR on the site as it facilitates the new site area and not the current site area. As demonstrated in the correspondence by TfNSW, it is unlikely that the area earmarked for road widening will be resumed soon. Should road widening not have impacted the site, the overall FSR would result in 3.91:1. While it is still over the development standard, the building envelope has not changed.

Clause 4.6(4)(a)(i)- Consent authority satisfied that this written request has adequately addressed the matters required to be demonstrated by Clause 4.6(3)

Officer Comment:

An assessment of Clause 4.6(3) as outlined above has been undertaken. The justification provided by the applicant is satisfactory in addressing each point relating to planning grounds and unreasonableness.

Clause 4.6(4)(a)(ii)- Consent authority satisfied that the proposal is in the public interest because it is consistent with the zone and development standard objectives

Officer Comment:

It is supported that the proposal will successfully achieve the objectives of the clause and zone and provide a considered built form response that will deliver a positive urban design outcome. The site is located within the B5 zone where the objective is 'to enable a mix of business and warehouse uses, and specialised retail premises that require a large floor area, in locations that are close to, and that support the viability of, centres'.

The proposal is a gateway site into the LGA from Sydney Airport and vice versa. It provides specialised retail premise at the ground floor as well as provide short term accommodation in association with the Airport. The site is located in close proximity to Mascot Train Station and is directly north of the airport precinct. The site location and proposal are in the public interest as it provides greater employment opportunities within the area. As discussed above, the proposal is consistent with the objectives of the development standard clause and the variation is supported in this instance.

5.1 – Relevant Acquisition Authority

A portion of the site has been identified within the Land Reservation Acquisition Map as land reserved for road widening along O’Riordan Street. The relevant acquisition authority in this instance is TfNSW. A referral has been issued to TfNSW and comments were provided on 22 October 2021. As mentioned above under the Transport and Infrastructure SEPP, TfNSW have already resumed and dedicated a strip of land as road along both the O’Riordan Street and Robey Street frontages of the subject property. At this stage, TfNSW has indicated that no further road widening works are to be carried out on site. A condition has been imposed within the draft Notice of Determination requiring no structures to be built within this area.

Therefore, the provisions of Clause 5.1 have been satisfied.

5.21 – Flood Planning

Council records indicate that the lot is subject to flooding in a PMF event. The floor level of the hotel arrival and specialised retail are required to be set at least 200mm above the adjacent

ground level to avoid shallow flow entering the building.

A flood report was not provided with the development application. The plans were reviewed by Councils Development Engineer who has raised no objection to the proposed floor levels and flood management plans subject to appropriate conditions to be imposed within the draft Notice of Determination.

The proposal has been designed to adhere to the relevant minimum flood levels and is satisfactory with respect of the provisions of this clause.

6.1 – Acid Sulfate Soils

The site is identified as being affected by Class 2 and 4 Acid Sulfate Soils (ASS). Development Consent is required as the proposed works is within 500 metres of adjacent Class 1, 2, 3 or 4 that is below 5 AHD and the works may lower the watertable beyond 1m of adjacent Class 1, 2, 3 or 4 land.

An Acid Sulfate Soils Assessment was carried out within the Preliminary (Stage 1) and Detailed (Stage 2) Site Investigation report prepared by JK Environments dated 17 September 2021. The report detailed that based on the testing, there is considered to be a low potential for ASS materials (AASS or PASS) to be disturbed during the proposed development. On this basis, an ASSMP is not considered necessary for the proposed development.

As discussed above, the development application was reviewed by Councils Environmental Scientist who had no objections to the proposal subject to the imposition of conditions of consent.

The proposal is consistent with the objectives and requirements of Clause 6.1.

6.2 – Earthworks

Earthworks are limited to facilitate the proposed development foundations. There is no basement parking level proposed as part of this application. The main reason for the limitation in excavation across the site relates to the zone of influence of the airport tunnel. Regardless, the applicant has submitted a geotechnical report prepared by JK Geotechnics dated 30 July 2021 where an investigation encountered groundwater approximately 2 metres below natural ground level. As the foundations will have a greater depth, the application triggers integrated development and a referral to Water NSW was sent. A response was received which did not require GTAs in this instance. The geotechnical report goes into detail relating to site preparation, footings, preliminary pavement design parameters, subgrade preparation, earthquake design, impacts to the rail corridor and further geotechnical input.

The objectives and requirements of Clause 6.2 of BLEP 2021 have been considered in the assessment of this application. It is considered that the proposed earthworks and excavation will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land. Notwithstanding this, relevant conditions are included to ensure that the environmental amenity of surrounding land is maintained, and soil erosion, sedimentation, and drainage impacts are minimised.

6.3 – Stormwater and WSUD

The development proposes an on-site detention system (OSD) and a 10,000L rainwater tank which is to be located underneath the car park ramp at ground level and above the proposed linen room. Amended stormwater plans were submitted with the application and were prepared by Rincovitch Consultants Pty Ltd and dated 25 March 2022. The application was reviewed by Councils Development Engineer who had no objections to the proposal subject to conditions imposed within the draft Notice of Determination.

The site also contains a stormwater pipe that traverses across the site which will be redirected to accommodate the development. Appropriate conditions have been imposed within the draft Notice of Determination.

6.7 – Airspace Operations

The site is located within an area defined in schedules of the Civil Aviation (Buildings Control) Regulations which limit the height of structures to 15.24 metres above existing ground height (AEGH) without prior approval of the Civil Aviation Safety Authority.

The application seeks approval for the redevelopment of the site to a maximum overall building height of 44 metres (RL 49.7 metres AHD).

The application was referred to Civil Aviation Safety Authority (CASA) who have throughout the process requested additional information relating to the building height, reflectivity and crane approval. The recent correspondence from CASA received requested from the applicant to provide a preliminary crane plan so that they could get a better understanding how construction will work. The information has been provided by the applicant and their response is imminent.

6.8 – Development in Areas subject to Aircraft Noise

The provisions of Australian Standard AS2021-2000 have been considered in the assessment of the development application, as the subject site is located within the 25-30 ANEF contour. Hotel development in these areas is considered acceptable under Table 2.1 of Australian Standard AS2021-2000 unless an acoustic report is submitted to Council, which demonstrates that the proposed dwelling can achieve the requirements under Table 3.3 of AS2021-2000.

The proposal was accompanied by an Acoustic Report prepared by Pulse White Noise Acoustics dated 10 September 2021 which recommended as follows;

The report demonstrates that the proposed development (when complete) will conform with the relevant requirements of AS2021-2000 provided the recommendations contained in the acoustic report are undertaken.

The standard requires that the external environment to the building be considered for aircraft noise impacts. This process has taken the following into account:

1. There are existing industrial dwellings on site that are currently vacated and the development proposes hotel/commercial development on the site;
2. The degree the land is affected by aircraft noise is related to the use and operation of the airport as it affects the subject hotel/commercial development;
3. Development in the immediate surrounding environment is commercial and industrial development; and

4. The outdoor environment, given the curfew and current operating patterns, are such that in daylight hours there will be sufficient opportunity to utilise the outdoor areas without the presence of aircraft noise.

The development consent will be conditioned to comply with the recommendations outlined in the acoustic report and the requirements of AS2021-2000.

6.10 – Design Excellence

Clause 6.10 of the BLEP 2021 relates to design excellence and the objective of this clause is to deliver the highest standard of sustainable architectural and urban design on the site. The provisions of the clause applies to Mascot Station and applies to the construction of new buildings or external alterations to existing buildings in which this clause applies.

The site is located within the Mascot Station Precinct as identified within the Key Areas Map within the BLEP 2021. Therefore, the site is subject to design excellence. The proposal was presented to three design excellence review panel meetings, with the first one lodged prior to the lodgement of the development application on 5 December 2019, the second meeting was held during the assessment of the development application on 25 November 2021 and the third was presented on 3 February 2022.

The below comments are provided by the Panel following the third meeting, the applicants response and Councils comments are provided below. The minutes from the meeting in full, including comments from the first and second presentation, is provided in Attachment F. The discussion relates to how they have redesigned certain elements of the development to achieve design excellence:

Context and Neighbourhood Character

Panels Comment:

The Panel does not support the ongoing use of advertising in the airport gateway precinct as it will be a detracting element to neighbourhood character. The Panel recommends active uses such as the gymnasium located on the corner podium be clearly expressed to contribute to street activation.

Further to the comments above, the panel considers the resolution of the expression of the gym within the facade is unresolved and conflicts with the surrounding architectural design response.

The ongoing use of advertising in the façade detracts from the gateway position and presentation of an otherwise well considered design response and is not supported.

Applicants Comment:

The gym has been reconfigured to meet setback requirements to O’Riordan and Robey Streets. This resulted in a minor reduction of GFA and an opportunity to further integrate the gym into the architectural expression of the building. As highlighted above, the corner expression of the podium has been significantly developed through the integration of the digital signage and activated gym space as a single architectural form. The gym presentation to the street has been increased with a longer, curved glazed facade that holds the street corner and creates views outwards.

Council Comment:

The proposal has been redesigned to address the Panels comments however it is noted that the awning along the northern side of the site at the ground level encroaches over the boundary which is not supported, and a condition of consent has been imposed requiring structures within the confines of the site.

The curved corner of the podium along the north-western side of the site is supported with the additional architectural expression presented to a key visible section of the site along O’Riordan Street. The gym presentation to the street is supported.

A discussion relating to signage and the retention of the advertising sign is provided under the Industry and Employment SEPP above. As previously mentioned, the advertising sign on the façade of the development is not supported by Council. It is recommended that the façade be amended to resemble the treatment and curvature established in other levels of the podium at this aspect.

Built Form and Scale

Panels Comment:

The Panel considers the design response proposed will deliver a well resolved built form and scale, subject to the above comments regarding the gymnasium and billboard.

The setback to the adjoining lot was proposed in two forms – 1500mm and 3000mm. The 3000mm setback was the preferred option

Applicants Comment:

The hotel tower element of the proposed building has been pushed 1.5m to the west, effectively lining up with the western edge of the podium element below and ensuring a 3m eastern side setback is maintained for the hotel tower.

Councils Comment:

The applicant has amended their plans to provide a minimum 3 metre setback to the tower form at the south-eastern side of the site. This allows for greater building separation between the site and any future development on the neighbouring site at 125-131 Baxter Road. The repositioning of the tower so that it is located closer to O’Riordan Street does not present any significant streetscape or bulk issues at the south-western side of the site.

Density

Panels Comment:

No issue of concern.

Applicants Comment:

Noted.

Councils Comment:

Noted.

Sustainability

Panels Comment:

The panel notes a range of sustainability initiatives have been explored and are intended to be integrated into the design response. The panel considers that the applicant needs to provide a detailed schedule that clearly indicates the range of sustainability initiatives proposed that deliver design excellence within the project.

Applicants Comment:

While it is the intention to provide maximum coverage area for the provision of Solar PV panels to the roof, this will be subject to approval from CASA and further detailed design. Early discussions with the Aeronautical Engineer indicated that there was a possibility these may be prohibited due to potential reflectivity issues for Airport operations. In this instance other methods of provision can be investigated such as increased car parking floor to floor height for 2 of the 4 levels of parking, EV charging for 10% of spaces etc

Councils Comment:

Noted regarding the solar PV panels requiring consent from CASA due to reflectivity. The applicant has amended their plans to increase the floor to floor of the car parking levels to allow for future adaptability in the event that these areas are converted to floor area. The use of EV charging stations as well as other ESD initiatives are supported and are appropriately conditioned within the draft Notice of Determination.

Landscape

Panels Comment:

The panel is supportive of the design response proposed and the further development of the landscape as a cohesive part of this gateway site.

The deletion of the upper carpark levels small landscape planters, and retention of larger more continuous podium planting, will resolve the green architectural response.

The interpretation of the Australian native landscape within a relatively harsh urban environment could explore further the use of locally endemic plant material, hybrids and cultivars. Lighting within the landscape, not yet detailed, would enhance the visual experience to compliment the architectural design response.

Applicants Comment:

Updated Landscaping Plans have been provided and include the lists of proposed species to be planted.

*The amended landscaping proposes a balance between what is aesthetically pleasing and suitable to the type of development, whilst still making use of native plant species. Some of the natives that are selected are indeed part of the locally indigenous list however the cultivar forms have been selected as they perform far superior to the 'straight species' and are able to satisfy the intended growth habit and forms in the given the heavily modified context ie. *Lomandra longifolia* vs. *Lomandra longifolia* 'Tanika'.*

The building lighting strategy will be investigated during the detailed design phase with a view to incorporating lighting into the landscaping to enhance the visual experience.

Councils Comment:

The applicant has increased the amount of landscaped area on the site particularly at the ground level plane. The planters that were proposed on the podium façade have been removed as their viability was previously questioned. The landscape planter over the awning on the

northern elevation is to be reduced in size slightly as there is an overhang outside the boundary of the site.

While there is an increase in planting and deep soil across the site, it is recommended that greater tree planting is provided on the north-west corner of the site. The reason this has not occurred previously was that any future planting would obstruct views to the billboard advertising sign. As this sign is not supported, appropriate conditions will be imposed requiring more tree planting in this area.

Amenity

Panels Comment:

The panel considers elements of the above issues have been resolved, the opportunity for a visual treatment to the upper carpark as seen from above and overlooking windows could be explored further.

Applicants Comment:

The uppermost floor of the carpark has been enhanced through the addition of several consolidated planting opportunities. These locations have been chosen where they provide the opportunity for creating a softer, verdant outlook from the lower level, north facing rooms, as shown in the figure. In addition, these landscaped areas create the opportunity to enhance the landscaped character of the development when viewed from the street level.



Councils Comment:

The applicant has demonstrated in the figure above the view that they would see from the hotel rooms down onto the podium. The additional planting on the podium to soften the car park is supported.

Safety

Panels Comment:

No concerns.

Applicants Comment:

Noted.

Councils Comment:

Noted.

Housing Diversity and Social Interaction

Panels Comment:

Not applicable.

Applicants Comment:

Noted.

Councils Comment:

Noted.

Aesthetics

Panels Comment:

The panels position is that the billboard advertising should not be incorporated.

Applicants Comment:

No formal response to this principle has been provided however would be similar to the justification provided throughout the report relating to the sign retention.

Councils Comment:

The advertising sign, in general and more particularly its integration within the building, is not supported by Council and its removal has been conditioned.

Overall, the Panel have determined that the proposal has achieved design excellence, subject to the removal of the billboard advertising and cohesive integration of the gymnasium into the façade.

6.11 – Essential Services

Services are generally available on site. Additional conditions have been incorporated in the draft Notice of Determination requiring consultation with relevant utility providers with regard to any specific requirements for the provision of services on site.

3.2 Section 4.15 (1)(a)(ii) - Provisions of any Proposed Instruments

There are no draft instruments that are relevant to this development application.

3.3 Section 4.15(1)(a)(iii) - Provisions of any Development Control Plan

The following Development Control Plan is relevant to this application:

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

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

Part 3A- Parking and Access

The proposal generates a total of 148 car spaces which is broken down as 1 space for the hotel manager, 28 spaces for staff, 90 spaces for hotel guests, 26 spaces for the restaurant and 3 spaces for the specialised retail. Table 1 of Part 3A of the DCP also requires the site to provide one (1) coach space per 100 rooms and 2 pick up/drop off spaces which were provided. The original set of plans provided a total of 128 spaces (excl. 4 porte cochere spaces). This was a departure of 20 spaces.

Comment was made by Councils Development Engineer on the car parking rate. The RMS Guide to Traffic Generating Developments was taken into consideration over the DCP rate. The guide stated that tourist hotels for 3, 4 and 5 star would generate a reduced car parking rate. The proposal is categorised under this definition of hotel. Therefore it was recommended that the car parking rate be reduced further and due to its location would be more suitable to a rate of 1 space per 4 rooms for the hotel guest occupancy. This would generate a car parking rate of 114 spaces on the site. The applicant amended their plans to have an overall car parking rate of 122 spaces broken down as 14 staff spaces, 37 visitor/restaurant spaces, 68 hotel guest spaces and 3 retail spaces including 4 porte cochere spaces and one coach space. This parking allocation is between the RMS rate and the DCP rate. It is noted that there will be a total of 56 full time staff employed on the site however at any one time, it is assumed that there will be a total of 26 full time staff.

The site contains two driveways- an ingress driveway off Baxter Road and egress from Robey Street. This will allow for less conflict with traffic movement within the site. As O'Riordan Street is a classified road, all access is contained off the side streets. The ground floor comprises of a porte cochere which accommodates four (4) drop-off and pick-up spaces. There is also a space allocated for coach parking. Loading and unloading from within the site will be carried out from a dedicated HRV loading bay which is directly adjoining services and waste rooms.

An amended traffic report prepared by The Transport Planning Partnership and dated 7 April 2022 was provided with the application.

The proposal and traffic report were reviewed by Council Development Engineer who initially had issues with the car parking allocation between staff, hotel occupants and retail. The reduced car parking rate and allocation, as amended on the plans and in the traffic report, are now acceptable subject to conditions imposed in the draft Notice of Determination. This also includes conditions relating to shuttle bus on the site and green travel plan for staff.

The application was also referred to Councils Traffic Advisory Committee which generally did not have issues with the proposal subject to referral to TfNSW due to the location of the egress driveway along Robey Street and the deletion of airport directional signage which is subject to approval from TfNSW. The application was referred to TfNSW who did not raise

any objections relating to road widening area and the proposed development and have imposed conditions within the draft Notice of Determination.

The proposal is considered acceptable in addressing parking and access.

Part 3C – Access and Mobility

The applicant has provided an access report prepared by Design Confidence (Sydney) Pty Ltd and dated 13 September 2021. The plans demonstrate that there are twelve (12) accessible parking spaces within the podium with access to lifts travelling up to the hotel tower as well as ten (10) accessible hotel rooms between Levels 5 and 9. All common areas at ground floor and top floor are accessible by lift and the ground floor is generally topographically flat and does not rely on unnecessary ramping. Appropriate conditions have been imposed within the draft Notice of Determination.

Part 3G – Stormwater Management

An assessment against stormwater management has been discussed in Clause 6.3 of the BLEP 2021 above.

Part 3H – Sustainable Design

An ESD report prepared by Norman Disney and Young and dated 15 March 2022 accompanied the development application. The report and the amended plans include the following ESD initiatives:

- Increased car parking floor to floor height for two of the podium levels
- Car parking to be designed to consider future flexibility
- Solar to be maximised
- EV charging for 10% of the parking spaces
- Environmental targets have been developed through the NABERS benchmark
- Landscaping to shade frontages and hard paved areas
- Lighting control
- Additional outside air and CO2 sensors
- High performance façade and suitable adhesives/sealants to cope with extreme weather
- Stormwater peak to be controlled and pollution reduced in line with best practice standards

The proposal does intend to provide solar panels on the rooftop however this is subject to CASA approval and further detailed design as there is the potential for reflectivity and impact on airport operations.

The initiatives proposed are supported.

Part 3J – Aircraft Noise and OLS

An assessment against aircraft noise and OLS has been discussed in Clause 6.7 and 6.8 of the BLEP 2021 above.

Part 3K – Contamination

An assessment against contamination, acid sulfate soils and groundwater has been discussed in the Resilience and Hazards SEPP above.

Part 3L – Landscaping and Tree Management

The proposal has been amended to increase the landscaping on the site. This has been done by providing two rows of trees to the O’Riordan Street frontage with the ability to retain one row should land be required for road widening. The row within the future road widening are *Cupaniopsis Anacardiodes* (Tuckeroo). The row to be retained after road widening are *Corymbia Maculata* (Spotted Gum) which provide high canopy.

At the ground level, the retail breakout area is intended to be used as an outdoor exhibition space therefore given the overhead building, this area cannot be used for tall tree planting. Landscape treatment on the above structures has also been considered with planting proposed along the podium and over the awnings. The northern awning at the ground level extends over the boundary line and into the public domain. This encroachment is not supported and a condition has been imposed to reduce the extent of awning to within the site. No retaining walls are to be built within the road widening area as they are considered permanent structures.

There is an absence of tree planting on the north-western corner of the site and this is to allow for unobstructed views to the advertising sign proposed on the podium. As the sign is not supported, it is recommended that more planting is provided within this area. The application was referred to Councils Landscape Architect who had no objections subject to appropriate conditions within the draft notice of determination.

Tree removal and retention has been discussed in greater detail in the Biodiversity and Conservation SEPP above.

Part 3N – Waste Minimisation and Management

A waste management plan prepared by Sustainable Transport Surveys Pty Ltd dated 13 September 2021 was provided with the development application. The report and the amended plans demonstrate that the waste rooms are contained at the ground level with the loading bay located directly adjacent for ease of access. Waste collection will be carried out by private contractor. The plans also demonstrate a waste chute on each floor of the building.

The proposed waste arrangement and report was reviewed by Councils waste officer who had no objections to the proposal.

Part 6 – Employment Zones

The site is located within the Mascot Business Development Precinct which is bound by Coward Street to the north, Joyce Drive to the south and development on either side of O’Riordan Street. An assessment against the controls and objectives of the precinct are provided in detail below.

C1 Development is to encourage a higher public transport (including walking and cycling) use and include strategies to encourage and promote car sharing and car pooling strategies. In this respect a Workplace Travel Plan is to be lodged with the development application.

The site is located within 800 metres of Sydney Airport, and just shy of Mascot Station. The site is easily accessible by many forms of public transport as well as offering shuttle bus services to and from the airport and the city. A condition has been imposed requiring a workplace travel plan.

C2 Developments, including alterations and additions must:

- (i) Improve the appearance of buildings, particularly along the roads which serve a gateway function to Sydney Airport and the Sydney CBD; and***
- (ii) Comply with Sydney Airport's regulations in regard to safety, lighting and height of buildings.***

The design of the building has been considered and accepted as achieving design excellence by the Design Review Panel. The site and development serves a gateway function to the airport and the city.

Consideration of the development has been undertaken by CASA relating to height, safety, lighting and the impacts of the building relating to airport operations.

C3 Development which seeks the maximum building height under the Botany Bay Local Environmental Plan 2013 and is within land bounded by Coward Street, O'Riordan Street and Bourke Road; development along eastern side of O'Riordan Street; and development within land bounded by Baxter Road, O'Riordan Street, Joyce Drive and Botany Road, will penetrate the Obstacle Limitation Surface (OLS) and would need to be assessed by CASA, Airservices Australia & the Airlines before an application could be submitted to the Department of Infrastructure & Transport for their determination.

The application was referred to CASA for concurrence.

C4 Redevelopment of property must take into account any road widening affectation.

The site is impacted by road widening along O'Riordan Street. The design has factored this road widening when considering landscape and setbacks.

C5 Development must not adversely affect the operation of duplication of the Sydenham- Botany Good Railway Line.

The proposal is adjacent to the Sydenham-Botany Goods Railway Line however will not be impacted or impact upon the rail duplication works.

C7 Development shall be designed and constructed in accordance with Australian Standard AS 2021 (Acoustic Aircraft Noise Intrusion-Building siting and Construction).

The site is located within the 25-30 ANEF Contour. An acoustic report has been provided with the application and appropriate recommendations have been included in the draft Notice of Determination.

C8 The introduction of noise abatement measure to achieve compliance with current AS 2021 must be done in a manner that does not compromise the architectural design of a building or impact on the character of an existing streetscape.

Noise abatement measures have been included in the acoustic report as referenced above.

C9 All development that is in, or immediately adjacent to, the rail corridor or a busy road must be designed in accordance with NSW Department of Planning 'Development Near Rail Corridors and Busy Roads - Interim Guidelines, December 2008'.

The guideline has been considered in both traffic and acoustic reports. Appropriate conditions have been imposed within the Notice of Determination.

C11 Any new development proposals (regardless of scale) which are located along O'Riordan Street or Robey Street (within the area defined within Figure 4 – Mascot Business Development Precinct) must be referred to Roads and Maritime for consultation at the Pre-DA stage.

The application was referred to TfNSW and appropriate conditions have been provided.

Part 6.3 – General Provisions

An assessment against the general provisions of the employment zone has been summarised below:

- **Building Layout, Design and Form**

An assessment on the building layout has been carried out in the design excellence section of the report above. The controls within the DCP coincide with the LEP clause and has resulted in a high-quality designed building that utilises a range of materials and articulation.

To accommodate the required above ground parking arrangement, the development has been divided into separate distinct volumes with the podium element of the hotel located above the activated ground floor of the hotel. Set back above the podium level, the hotel extends to the maximum height limit of 44 metres. The overall composition and built form of the development reinterprets the conventional tower and podium form.

The proposal utilises a variety of materials and finishes including cladding, glass, aluminium frame and render. This is differentiated at each volume of the development starting with blue tonal colours for the hotel towers and then leading down to sandstone and earthy colour tones for the podium and ground floor level.

- **Setbacks**

The controls relating to setbacks require a front 4 metre setback to a classified road, a 2 metre side setback and a nil to 3 metre setback at the rear. The front setback should be completely landscaped.

The setbacks proposed for the development are as follows:

- Front (O'Riordan Street):
 - Ground Level: 4 metres to 13 metres
 - Level 1 to Level 4: 2.8 metres to 5 metres
 - Level 5 to Level 12: 4 metres to 12.5 metres

- Side (Robey Street):
 - Ground Level: 4 metres to 7 metres
 - Level 1 to Level 4: 4 metres to 11.4 metres
 - Level 5 to Level 12: 2 metres to 6.2 metres
- Side (Baxter Road):
 - Ground to Level 4: 2.7 metres to 4.8 metres
 - Level 5 to Level 12: 2.5 metres to 4.3 metres
 - Level 1 planter: 0.6 metres to 4.8 metres
- Rear (eastern boundary):
 - Ground Level to Level 4: Nil to 2 metres
 - Level 5 to Level 12: 2.4 metres to 8.2 metres

The key area of non-compliance is the setback along the O’Riordan Street frontage at the north-western corner of the site. The podium has a setback of 2.8 metres therefore departs the control by 1.2 metres.

The northern elevation proposes an awning at the ground level directly adjacent to the specialised retail premise. The awning encroaches over the boundary line which is not supported and a condition has been imposed in the draft notice of determination for the structure to be redesigned to be set within the boundary of the site.

The applicant amended their design to provide a greater rear setback along the eastern boundary. While the DCP requires a nil to 3 metre setback, the plans initially demonstrated a 1.5 metre and less setback for the hotel tower on the south-eastern side of the site. This was not supported by Council as the development did not provide appropriate building separation between the site and any future development on 125-131 Baxter Road therefore a request to increase the overall setback along that boundary to 3 metres was issued. The applicant has amended their plans and a 3 metre setback has been demonstrated however this has resulted in the tower shifting closer to O’Riordan Street. Tower component continues to comply with the 4 metre setback control.

It is considered that the departure to the setbacks, in this instance, is acceptable.

• **Site Facilities**

The amended plans have carefully considered the location of services on the site. The latest revision has demonstrated that the plant rooms and other services are located at the ground floor of the development. The development proposes a kiosk substation that fronts Robey Street. The fire hydrant booster has been incorporated along the Baxter Road frontage.

There are no overhead powerlines directly adjacent to the subject site however there are underground powerlines that are to be considered as part of the development. Appropriate conditions have been incorporated in the draft Notice of Determination that have been provided by Ausgrid.

• **Landscaping and Fencing**

The proposal incorporates 736.5sqm (35.15%) landscaped area prior to any road widening. Should TfNSW resume the land for road widening, the amount of landscaped area remaining is 623.4sqm (31.15%) which continues to be acceptable. The proposal provides 299.2sqm (14.95%) of deep soil when excluding the area of road widening and the front setback along O’Riordan Street which is satisfactory.

The ground floor provides ample tree planting along the O’Riordan Street frontage with the exception of the north-western corner. This is further discussed in Part 3L of the DCP. There are no retaining walls proposed within the road widening area however the landscaped treatment on the south-western side of the site has been designed with a terraced element.

There is no fencing proposed within the development.

- **Noise and Hours of Operation**

The proposal will operate as a hotel development with specialised retail premise at the ground level. The development is not considered to be a noise generator to surrounding developments. All operations will be encompassed within the building with the loading dock at ground level away from side boundaries. Any mechanical ventilation and air conditioning units have been conditioned to comply with noise criteria and the building has been designed based on the recommendations in the acoustic report.

The nature of the development will allow for 24/7 operations. The hours are consistent with other hotel developments nearby.

Part 7F – Hotel and Motel Accommodation

An assessment against the controls for hotel accommodation has been undertaken and is provided in a compliance table in Attachment B. Overall, the development complies with the requirements under Part 7F of the DCP.

Section 7.11 Development Contributions

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

- *City of Botany Bay Section 7.11 Contributions Plan 2016- Amendment 1*

It is considered that the proposed development will increase the demand for public amenities within the area, and in accordance with Council’s Section 7.11 Contribution Plan 2016- Amendment 1. The site is located within the Mascot Station Precinct Area therefore contributions are based on the number of workers generated by the use.

No credit has been provided for the existing site as it is currently vacant. It was previously used as a COVID testing clinic. The contribution levies the 224 hotel rooms at 1.37 workers per room as well as the commercial space levied as a specialty shop.

The total amount of contributions that is generated by the development is **\$1,603,815.64** This is indexed to July 2022.

The contributions are broken down as follows:

Community Facilities – \$131,285.17

Recreation and Open Space – \$1,354,489.19

Transport Facilities – \$106,363.60

Administration - \$11,677.69

3.4 Section 4.15(1)(a)(iia) – Planning agreements under Section 7.4 of the EP&A Act

On 25 March 2022, the Applicant sent Council a letter of offer to enter into a voluntary planning agreement (VPA) on the site. The terms of the VPA stipulate that the VPA is proposed for the purpose of satisfying Clause 3.13 of the State Environmental Planning Policy (Industry and Employment) 2021 and the Transport Corridor Outdoor Advertising and Signage Guidelines for the provision of a public benefit to be provided in connection with the display of the advertisements in relation to the proposal, specifically the advertising billboard proposed on the north-western façade of the building.

Prior to the submission of the letter of offer and terms of the VPA, no discussion or negotiation on this planning agreement was undertaken. The owner of the site and Council had previously reached an in-principle agreement on a revised draft planning agreement relating to DA-2019/403 for the existing billboard advertising sign. The applicant has used the in-principle terms of this agreement without consideration by Council. The terms should reflect the merits of the subject application and not the other application. Due to the lateness in submitting this offer within the DA process, and Council's stance in not supporting the advertising sign generally integrated within the building facade, the offer has been rejected.

3.5 Section 4.15(1)(a)(iv) - Provisions of Regulations

All relevant provisions of the Regulations have been taken into account in the assessment of this proposal.

3.6 Section 4.15(1)(b) - Likely Impacts of Development

The likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality must be considered. As outlined in the assessment above, the proposed development will not have significant adverse environmental, social or economic impacts in the locality.

Plan of Management

The development application was accompanied by a plan of management which details the operations of the hotel. Appropriate conditions have been imposed within the draft notice of determination.

3.7 Section 4.15(1)(c) - Suitability of the site

The site is affected by aircraft noise being situated within a 25-30 ANEF Contour. The proposal was accompanied by acoustic report which has been reviewed and is acceptable subject to conditions imposed in the consent for the development to comply.

Adequate information has been submitted to demonstrate that the site can be made suitable for the proposed development. Further discussion relating to this issue has been carried out within the Resilience and Hazards SEPP section of the report above. Appropriate conditions have been recommended in Attachment A.

Regarding the traffic generated from the development, the departure in car parking is acceptable as the development is within close proximity to Mascot Train Station. Traffic impacts have been considered and are satisfactory. TfNSW raised no objection to the proposal and has not requested any additional information.

It has been advised from TfNSW that there are no imminent plans to resume the area subject to road widening on the site however the proposal has been designed around this area in the event that it is acquired.

Impacts relating to aviation and the rail corridor are being considered by Sydney Trains and CASA and conditions have been imposed requiring approval from both authorities.

The proposed use as a hotel development and specialised retail premise is permissible within the B5 – Business Development zone as identified within the BLEP 2021 and achieves the objectives and controls of both the BLEP 2021 and BBDCP 2013. It is considered that the development is suitable for the site.

3.8 Section 4.15(1)(d) - Public Submissions

In accordance with Part 2 of the Botany Bay DCP 2013 – Notification and Advertising, the application was placed on public exhibition for a thirty (30) day period from 6 October to 5 November 2021. No submissions were received.

3.9 Section 4.15(1)(e) - Public interest

The proposal has been assessed against the relevant planning policies applying to the site having regard to the objectives of the controls. As demonstrated in the assessment of the development application, the proposal will allow the development of the site in accordance with its environmental capacity. The proposed building is a high-quality building that will add architectural value to the existing streetscape. Furthermore, the proposal does not create unreasonable impacts on surrounding properties. This is further emphasised by no submissions being received. As such it is considered that the development application is in the public interest.

4. REFERRALS AND SUBMISSIONS

4.1 Agency Referrals and Concurrence

The development application has been referred to various agencies for comment/concurrence/referral as required by the EP&A Act and outlined below in Table 4.

Table 4: Concurrence and Referrals to agencies

Agency	Concurrence/	Comments	Resolved
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	referral trigger	(Issue, resolution, conditions)	
Concurrence Requirements (s4.13 of EP&A Act)			
CASA	Section 183 of the Airports Act and referral under Regulation 11(2) of the Airports (Protection of Airspace) Regulations 1996	Currently under assessment	N
Sydney Trains	Section 2.98 of the Transport and Infrastructure SEPP	Currently under assessment	N
Referral/Consultation Agencies			
Sydney Water	Sydney Water Act 1994 Section 78	No issues presented. Conditions to be included in consent	Y
SACL	Clauses 6.7 and 6.8 of the BLEP 2021	Currently under assessment. Waiting on CASA response	
Ausgrid	Section 2.48 of the Transport and Infrastructure SEPP	No issues presented. Conditions to be included in consent	Y
NSW Police		Advisory conditions have been imposed	Y
ARTC	Sections 2.48 and 2.98 of the Transport and Infrastructure SEPP	No issues presented. Conditions to be included in consent	Y
TfNSW	Sections 2.118 and 2.121 of the Transport and Infrastructure SEPP	No issues presented. Conditions to be included in consent	Y
Integrated Development (S 4.46 of the EP&A Act)			
Water NSW	Water Management Act 2000 s90(2)- Water Management Work Approval	Agency did not consider the application to be integrated development	Y

4.2 Council Referrals

The development application has been referred to various Council officers for technical review as outlined **Table 5**.

Table 5: Consideration of Council Referrals

Officer	Comments	Resolved
Engineering	Conditions provided for determination	Y
Landscaping	Conditions provided for determination	Y
Traffic	Recommendations provided to Development Engineer	Y

	for consideration	
Environmental Scientist	Conditions provided for determination	Y
Environmental Health	Conditions provided for determination	Y
Waste	Conditions provided for determination	Y
Tree Management	Conditions provided for determination	Y
Development Contributions	Conditions provided for determination	Y

5. CONCLUSION

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

It is considered that the key issues as outlined in the executive summary have generally been resolved satisfactorily through amendments to the proposal and/or in the recommended draft conditions at **Attachment A**.

6. RECOMMENDATION

That the Development Application DA No 2021/450 of Integrated Development for the demolition of existing structures and construction of a twelve (12) storey hotel comprising of parking, signage and specialised retail on the ground floor and associated restaurant and bar at 210 O’Riordan Street (also known as 133-137 Baxter Road and 118 Robey Street) Mascot be APPROVED pursuant to Section 4.16(1)(a) of the *Environmental Planning and Assessment Act 1979* subject to the draft conditions of consent attached to this report at Attachment A.

The following attachments are provided:

- Attachment A: Draft Conditions of consent
- Attachment B: Tables of Compliance
- Attachment C: Architectural Plans
- Attachment D: Clause 4.6 Request
- Attachment E: Landscape Plans
- Attachment F: DRP Minutes