

BAYSIDE COUNCIL

Planning Assessment Report

Application Details

Panel Reference:	
DA Number:	DA-2021/637
Date of Receipt:	25/01/2022
Property:	50-52 Baxter Road Mascot Lots 2 and 3 of DP 1263396
Owner:	
Applicant:	Morehuman Pty Ltd Mr Greg Barr
Applicant Address:	1303/79 Grafton St, Bondi Junction
Proposal:	Demolition of existing structures, removal of trees and construction of two 2 x twelve (12) storey hotels, being a 300 room hotel on Lot 2 and a 288 room hotel on Lot 3; restaurant and bar on Level 11 of Lot 3, roof top terraces with associated site works, landscaping and signage zones and staging of construction
Recommendation:	Deferred Commencement Approval
Value:	\$84,583,327.00
No. of submissions:	Three (3)
Author:	Fiona Prodromou - Senior Assessment Planner
Date of Report:	November 2022

Key Issues

The site is an irregularly shaped property comprising two lots. The site adjoins a third lot directly to the west, Lot 1, of which a thirteen (13) storey hotel comprising 301 rooms, 3 levels of car parking, restaurant, cafe, gym, approved by the Regional Panel on 8 October 2020 is currently under construction.

Lot 1 directly to the west is in separate ownership and this property benefits from a Right of Carriageway (ROC) for vehicular access (i.e. manoeuvring area for coaches) upon Lot 2 of the subject site. The redevelopment of the subject site warrants the extinguishment of the aforementioned ROC and creation of a new ROC over the proposed Porte De Cohere benefitting Lot 1.

Given the ownership of Lot 1 (i.e. hotel under construction) differs from the ownership of Lots 2 and 3 (i.e. subject DA), the consent authority is not in a position to approve the current DA which will in essence extinguish the aforementioned ROC, without the consent of the Owner of Lot 1. In this regard, the proposal is subject of a Deferred Commencement Approval, requiring the obtainment of the relevant owners consent from Lot 1, to enable the current ROC on Lot 2 to be extinguished.

The site is significantly flood affected and constrained, particularly given that the lot is bisected horizontally by an existing freight rail line corridor which in essence splits the site in half horizontally. The freight rail line is in ownership of the Australian Rail Track Corporation (ARTC). The railway line leads to the Quenos Site at the Botany Industrial

Park, Denison Street, Banksmeadow. The aforementioned freight line is to at some point in the future be duplicated to adjoin the existing line directly to the south.

The significant flood affectation of the site requires the ground floor level of the proposed development to be raised 1.5m above existing ground level, in order to ensure safety for future users during a 1% AEP and PMF flood event. As a direct consequence of the flood affectation, the overall height of the development incorporates a minor breach to the height standard for the site, this is discussed below.

The proposal was referred to the Australian Rail Track Corporation (ARTC) given that the site is burdened by an existing freight rail line, its future duplication and as the requirements of *State Environmental Planning Policy (Infrastructure) 2007* (ISEPP) are triggered.

The ARTC responded to Council on 22 March 2022, with conditions of consent proposed in order to ensure the safe and effective operation of rail infrastructure, mitigate safety risks associated with the construction, design and use of the proposed development and require acoustic and vibration amelioration to the development. The proposal has been conditioned accordingly. As conditioned, the proposed development does not adversely affect the operation nor future duplication of the Sydenham-Botany Good Freight Rail Line.

The subject site is a key site within the Mascot Station Precinct, and as such the Design Excellence provisions of BLEP 2021 apply. The proposal was peer reviewed by the Design Excellence Panel on two occasions, The Panel confirmed in October 2022 that the revised scheme as presented satisfies the Design Excellence requirements of BLEP 2021.

Concept public domain works are proposed adjoining the front property boundary of the site i.e. footpath paving, driveway construction, street tree planting, seating and landscaping. These works are supported by Council, however would be subject to a separate Roads Act approval post determination, given they are located beyond the boundaries of the subject site. The proposal has been conditioned appropriately.

Three (3) submissions were received following the public notification of the proposal. Issues raised have been addressed in this report below.

The proposal is not considered to generate adverse impacts on site or to neighbouring properties, is suitably located upon the subject site, achieves design excellence and is therefore recommended for Approval subject to conditions of consent for the reasons outlined within this report.

Recommendation

1. That the Regional Planning Panel, exercising the functions of the Council as the consent authority pursuant to s4.16 of the Environmental Planning and Assessment Act 1979 approve a variation to the building height prescribed by Section 4.3 - Height of Buildings of Bayside Local Environmental Plan 2021, as it is satisfied that the applicant's request has adequately addressed the matters required to be demonstrated by cl4.6 of that Plan, and the proposed development would be in the public interest given it is consistent with the objectives of the standard and objectives for development within the zone.
2. That DEFERRED COMMENCEMENT consent be granted to Development Application No. 2021/637 for the demolition of existing structures, removal of trees and construction of two 2 x twelve (12) storey hotels, being a 300 room hotel on Lot 2 and a 288 room hotel on Lot 3; restaurant and bar on Level 11 of Lot 3, roof

top terraces with associated site works, landscaping and signage zones at 50-52 Baxter Road, Mascot (Lots 2 and 3 of DP 1263396) pursuant to s4.16(1)(a) of the Environmental Planning and Assessment Act 1979 in accordance with the deferred commencement conditions listed below, and subject to the conditions of consent attached to this report.

Deferred Commencement Condition

This consent is not to operate until the Applicant/Developer satisfies the Council, that it has obtained the relevant owners consent as to the following matter and written confirmation / evidence has been forwarded to Council.

- i. Owners consent must be obtained from 56 Baxter Road (Lot 1 DP 1263396) to change the location and terms of the existing Right of Carriageway 12.5 wide (D) easement as required in Stage 1 to support the development of Stages 2 and 3 of DA-2021/637.*

The period of the Deferred Commencement is twelve (12) months from the date of determination. It is important we hear from you about the outstanding matter above as soon as possible so as to avoid any other delay.

Upon receiving written notification from Council that the above requirement has been satisfied, your consent will become operable and will be subject to the following conditions.

3. That the submitters be notified of the decision of the Regional Planning Panel.

Background

DA	Description	Date	Decision
DA-2019/234	Torrens Title subdivision of Lot 506 of DP 1242707 into 3 lots	Approved February 2020	
DA-2019/233	Construction of a thirteen (13) storey hotel comprising 301 rooms, 3 levels of car parking, restaurant, cafe, gym	Approved Regional Panel 8 October 2020.	

State Significant Development Application (SSDA)

The Owner of the site wrote to the Department Planning in Nov 2020 to request the Secretary's Environmental Assessment Requirements (SEARs) for the preparation of an Environmental Impact Statement (EIS) to accompany a State Significant Development Application (SSDA) for the site. An EIS has not as yet been submitted to the Department of Planning and Environment.

Documents on the Department Planning and Environment website indicate that the proposed potential SSDA for the site was to improve pedestrian connectivity on the southern side of the railway line with travelators between the lots and connecting west towards Robey Street.

The proposal indicates travelators / platforms / walkways on the southern side of the site (identified as 'Site F' below) to link to the hotel development as proposed by this subject DA.

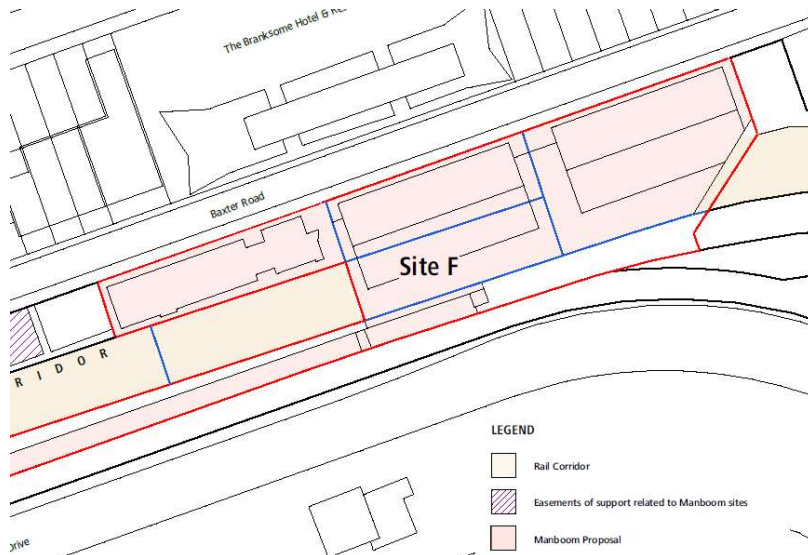


Figure 5 Indicative Massing

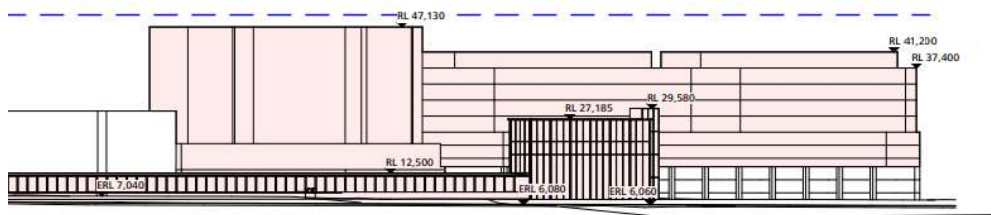
Source: Architectural Projects Pty Ltd



Figure 6 Indicative Form

Source: Architectural Projects Pty Ltd

Site F




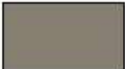




Proposal

The proposal seeks to undertake the demolition of existing structures, removal of trees and construction of two 2 x twelve (12) storey hotels, being a 300 room hotel on Lot 2 (western lot) and a 288 room hotel on Lot 3 (eastern lot); restaurant and bar on Level 11 of Lot 3, roof top terraces with associated site works, landscaping and signage zones. The proposal incorporates a shared vehicular entry and exit and independent on site loading, unloading and waste collection facilities.

The proposed development incorporates an on site detention system which seeks to connect and drain to an existing Council stormwater easement which traverses the site. Additionally it is proposed to extend this existing easement to a width of 5m and upgrade the size of existing stormwater infrastructure to a 1400mm wide x 800mm high culvert, to assist in accommodating increased stormwater flows from the proposed development and surrounding properties.

In more detail the proposal incorporates as follows.

Lot 2 - Western Hotel		Lot 3 – Eastern Hotel	
<u>Subfloor</u> Flood storage areas, stormwater (OSD) systems, access stairs and hatch for maintenance.			
<u>Ground Floor</u> A shared Porte cochere centrally located between the two x hotel lobbies with associated planters integrated into design, shared vehicular entry adjoining western boundary of Lot 2, shared vehicular exit adjoining eastern boundary of Lot 3, independent loading dock to each hotel, hotel lobby, café, back of house, office, waste storage, pedestrian circulation, office, luggage store, planters adjoining Baxter Road frontage, substation integrated into building envelope.			
<u>Ground Floor to Level 2</u> Inter tenancy walls and doors are provided between lots to allow cross site access to both hotels as required to levels			
<u>Level 1</u> 32 hotel car spaces including 8 x electric vehicle charging stations, 1 x car share space, 8 x accessible car spaces, 2 x hotel employee spaces, being 1 manager and 1 staff space, 4 x motorcycle spaces, 24 bicycle spaces, end of trip facilities, pedestrian / vehicular circulation, services i.e. fire control centre, glass awning to hotel lobby to Baxter Road, landscaped planter to Baxter Road.		<u>Level 1</u> 45 hotel car spaces including 9 x electric vehicle charging stations, 1 x car share space, 8 x accessible car spaces, 3 x hotel employee spaces, 1 x motorcycle space, pedestrian / vehicular circulation, services i.e. fire sprinklers pump room, glass awning to hotel lobby to Baxter Road, landscaped planter to Baxter Road.	
<u>Level 2</u> 36 hotel car spaces including 8 x electric vehicle charging stations, 4 x accessible car spaces, 1 x hotel employee space, 4 x motorcycle spaces, 30 bicycle spaces, pedestrian / vehicular circulation, refuse		<u>Level 2</u> 30 hotel car spaces including 8 x electric vehicle charging stations, 4 x accessible car spaces, 3 x hotel employee spaces, 1 x motorcycle space, 74 bicycle spaces, end of trip facilities, gymnasium and landscaped planter to Baxter Road	

/ hotel storage, landscaped planter to Baxter Road.	
<u>Level 3</u> Hotel rooms off a dual loaded corridor, periphery balcony access, periphery landscaped planters, triple lift, dual fire stair access, plant room, back of house / maintenance store.	<u>Level 3</u> Hotel rooms off a dual loaded corridor, periphery balcony access, communal landscaped balcony facing Baxter Road, periphery landscaped planters, triple lift, dual fire stair access, plant room, back of house / storage. 1.4m – 1.8m wind amelioration screening to periphery of balcony spaces.
<u>Levels 4 - 11</u> Hotel rooms off a dual loaded corridor, landscaped planters sporadically placed, triple lift, dual fire stair access, plant room, back of house / maintenance store.	<u>Levels 4 - 11</u> Hotel rooms off a dual loaded corridor, landscaped planters sporadically placed, communal balcony to Baxter Road on levels 5/7/9/11. triple lift, dual fire stair access, plant room, back of house / maintenance store. Level 11 incorporates a restaurant / bar in the eastern section of the hotel with amenities, bar, kitchen, seating. This space has direct stair / lift access to a rooftop terrace area incorporating a bar.
<u>Rooftop</u> Communal rooftop terrace with paving / decking, incorporating day bed, seating, planters with landscaping, 1.4m high wind screens to periphery, rooftop plant area incorporating fire sprinkler tanks, hot water heating plans, mechanical services, light protection finials, satellite / antennae etc. Solar panels incorporates to western and eastern portions of roof.	<u>Rooftop</u> Communal rooftop terrace / bar with paving / decking, incorporating outdoor tables / seating, day beds, planters with landscaping, 1.4m high wind screens to periphery, rooftop plant area incorporating fire sprinkler tanks, hot water heating plans, mechanical services, light protection finials, satellite / antennae etc. Solar panels incorporated to central portion of roof.
<u>Materials / Finishes</u> Aluminium vertical louvres, aluminium timber vertical battens, aluminium metal fins, sandstone wall, acrylic rendered finishes, rendered wall, vertical cabling for landscape growth. <div data-bbox="217 1615 748 1682"> DULUX - Medium Bronze Pearl YY23NA  </div> <div data-bbox="217 1749 748 1816"> DULUX - Champagne Shimmer YY24NA  </div> <div data-bbox="217 1883 748 1951"> Supametal Aluminium - Snow Gum  </div>	<u>Materials / Finishes</u> Aluminium vertical louvres, aluminium timber vertical battens, aluminium metal fins, sandstone wall, acrylic rendered finishes, rendered wall, vertical cabling for landscape growth. <div data-bbox="775 1615 1323 1682"> DULUX - Medium Bronze Pearl YY23NA  </div> <div data-bbox="775 1749 1323 1816"> DULUX - RiverGum Beige 9153143M  </div> <div data-bbox="775 1883 1323 1951"> STO - 31433  </div>

Supametal Aluminium - Spotted Gum		Supametal Aluminium - Spotted Gum	
STO - 37301, 15, C1		STO - 31431, 21, C2	
DULUX - White Duck Quarter A216		DULUX - Glenbrook NZ10G4	
		LOT 3 PAINTED SLAB EDGE	
DULUX - Grey Reflection SW1A5		DULUX - Beige Royal S15B1	
STO - 32243, 7, C3		DULUX -VANILLA QUAKE HALF S14A1H	
DULUX - Smoke and Mirrors SN3C2		DULUX - Milton Moon SN4G2	
DULUX -VANILLA QUAKE HALF S14A1H		DULUX - White Duck Quarter A216	
DULUX - Milton Moon SN4G2		STO - 31433, 35, C1	

Signage Zones

The proposed development seeks consent for signage zones upon the north / south building parapet elevations (9.5m length x 1.4m height), and to the front entrance of each hotel (5.7m length x 0.6m height above entrance awning / 0.5m length x 1m height / 0.8m projection adjoining entry).

Nil content is proposed within signage zones and such signage is intended to reflect the future hotel occupier and not be reflective of third party advertising.

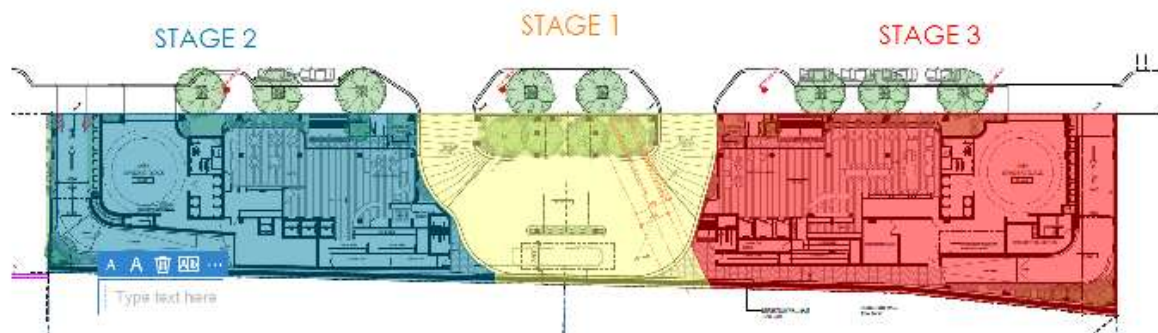
Staging of Works

The proposal is sought to be staged in construction as follows. It is understood that the staging is dependent upon the potential sale and timing of construction of each lot and hotel.

Stage 2 – 1 x Hotel

Stage 1 – Port DeCohere

Stage 3 – 1 x Hotel



Public Domain Works

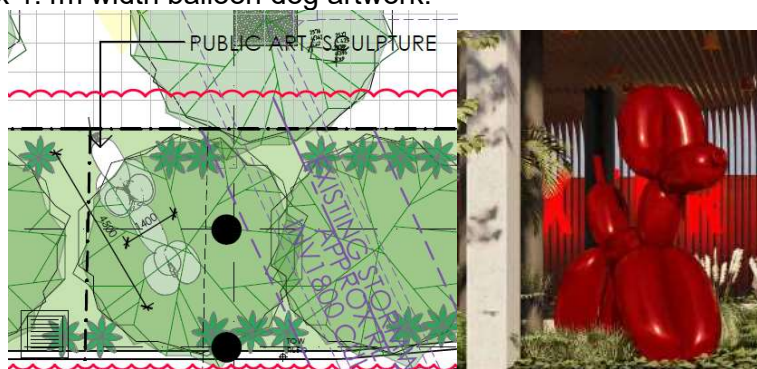
Architectural plans detail indicative public domain works beyond the site boundaries. Such works are indicative only and subject to a further application to Council under the Roads Act, post determination of this application.

Concept public domain plans depict the provision of;

- a) Removal of street trees in order to underground existing overhead power lines.
- b) Replacement street tree planting.
- c) New street lighting, kerb and gutter.
- d) Provision of a dedicated paved pedestrian footpath.

Artwork / Sculpture

Plans detail an indicative future sculpture at ground level within the landscaped planter adjoining the port de cohere. It is suggested that this shall be in the form of a 4.5m length x 1.4m width balloon dog artwork.



Right of Carriageway

Lot 2 currently includes a right of carriageway 12.5m wide to benefit adjoining Lot 1. The purpose of this right of carriageway is to provide an area for a Heavy Rigid Vehicle (coach) to turn around given that Baxter Road is closed to the east of the site.

The proposal seeks to extinguish the existing right of carriageway and create a new easement over the Porte-cochere driveway, noting that buses seeking to access Lot 1 will travel east along Baxter Road, turn around via the Porte-cochere and travel west to pull up kerbside in front of the Lot 1 hotel.

Tree Removal

A total of 30 trees within the site along the front property boundary and adjoining the freight rail line are proposed to be removed to accommodate the proposed development.





Site Location and Context

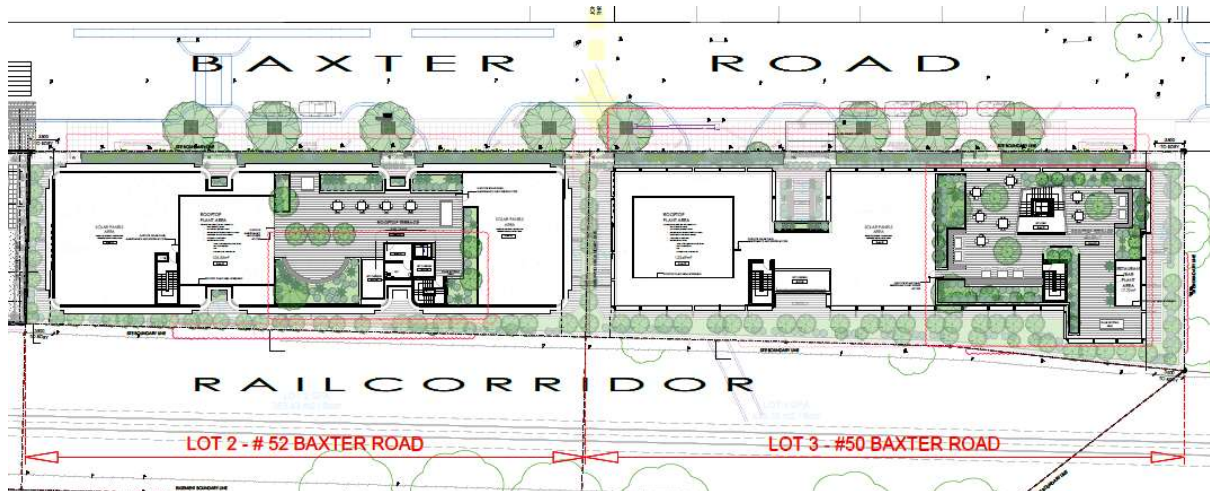
On 28 February 2020, development consent (DA-2019/234) was granted for the Torrens title subdivision of Lot 506 DP1242707 into three new lots i.e. Lots 1, 2 and 3. This subdivision was registered on 12 April 2021. On 8 October 2020, a thirteen storey hotel development was approved on Lot 1. This subject application relates to the remaining 2 lots within the subdivision, 2 and 3.



The sites are legally known as Lots 2 and 3 of DP 1263396, comprises two adjoining allotments with a direct frontage to Baxter Road and adjoining Joyce Drive to the rear. The site has a combined site area of 5,962sq/m, being 2,919sq/m for Lot 2 (52 Baxter) and 3,043sq/m for Lot 3 (50 Baxter).



Lot 2 has a frontage of 68.9m and Lot 3 has a frontage of 73m to Baxter Road. Vehicular and pedestrian access to the lots is via Baxter Road, which is a no through road, image provided below. Nil access is available via Joyce Drive which is a classified road.



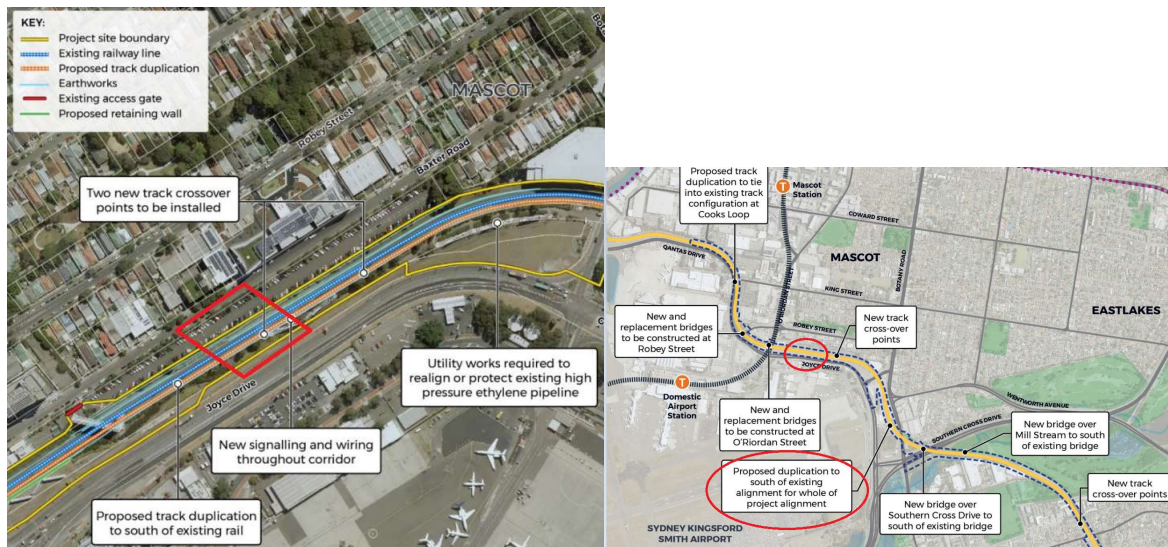
The subject site is burdened by a significant number of easements, restrictions and rights of carriage (i.e. flood emergency evacuation, Heavy Rigid Vehicle access, advertising, access, services, pipeline, drainage, sewerage, car parking), these are identified upon the submitted survey.



The property as a whole is currently utilised, via a private lease agreement, as an at grade long term car parking area for the adjoining 'Park n Fly' facility to the east, which is on a separate lot and in separate ownership.

A portion of both lots is physically separated from the area proposed to be redeveloped given the existing Port Botany Freight Rail line corridor which bisects the lots horizontally. The lots are irregular and benefit from 2,683sq/m in stratum above the freight rail corridor at a height of 12.4RL. It is not proposed to construct above the rail corridor as part of this application.

Approval to a State significant infrastructure application was granted in 2021 by the Department of Planning, Infrastructure and Environment (DPIE) for the duplication of the existing freight rail line at some point in the near future by the Australian Rail Track Corporation (ARTC). The duplication of the freight rail line is proposed to the south of the existing line on site. The site is identified below circled in red. The excerpts are derived from the October 2019 Environmental Impact Statement for the duplication of the freight rail line, by the ARTC and are subject to detailed design investigation.



The subject site is identified in red above. Along the nature reserve adjoining the site to Baxter Road, a range of vegetation exists, including but not limited to Spotted Gums, Swamp Oaks, Sydney Red Gums. Minimal landscaping exists on site.

Adjoining the site to the west, at 54 Baxter Road, (Lot 1) DA-2019/233 for the construction of a thirteen (13) storey hotel comprising 301 hotel rooms, above ground car parking for 85 vehicles, restaurant, cafe, gym and concept public domain works along the frontage of the site was approved by the Regional Panel on 8 October 2020. The site is burdened by a right of carriageway which permits HRV access for this approved hotel and was imposed to ensure the approved hotel could be serviced and provide for coach access, as it remained unclear at the time of that assessment when the subject site would be redeveloped, thus facilitating joint HRV access for all 3 hotels on the site.



Approved Hotel - Perspective view from Baxter Road and Joyce Drive

A number of existing advertising structures exist adjoining the frontage of the property to Joyce Drive. The height of the advertising structures is equivalent to the podium height of the proposed development. Several power poles and street trees are located along the turfed Baxter Road frontage of the property.

The subject site is zoned B5 – Business Development and benefits from a 3:1 FSR and 44m height limit. The site is located within the Mascot Station Precinct and is subject to the provisions of Clause 6.10 – Design Excellence Bayside LEP 2021.

The site is located to the east of Kingsford Smith Airport, to the south of Mascot Railway Station and is positioned within an area of diverse land use (i.e. residential, commercial and industrial) and built form character (i.e. vacant sites to 14 storey buildings).

To the east, north east, north west and opposite the site within Baxter Road, are a number of detached residential dwellings 1-2 storeys in height, light industrial buildings and an 8 storey serviced apartment building known as The Branksome hotel, which also comprises serviced apartments, retail spaces, commercial floor space and a child care facility.

The Botany Freight railway line and a series of large billboard signs along Joyce Drive are situated to the south of the site. Further to the south of the site is Joyce Drive, on the opposite side of Joyce Drive are various land uses and buildings, including fast food uses in single storey buildings, to hotels within 10 storey buildings. Kingsford Smith Airport is situated in close proximity to the site.

Land further to the west of the site comprises a range of hotel and commercial uses, including the 14 storey Stamford Plaza hotel, and eight (8) storey Quest Apartment building. The character and context surrounding the site is diverse and varied. Council records identify that the subject site is affected by the following constraints.

- Contamination
- Between 25 - 30 ANEF (2039) contours
- Botany Rail Line + 25m
- Acid Sulfate Soils
- OLS (obstacle limitation surface)
- Flood Affected
- Near a Heritage item
-

Statutory Considerations

Environmental Planning and Assessment Act, 1979

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

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

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

State Environmental Planning Policy (Planning Systems) 2021

In accordance with Schedule 6 subclause 2 of the SEPP, as the proposed development has a capital investment value of greater than \$30 million, it is referred to the Regional Planning Panel for determination.

Sustainable Buildings SEPP

The Sustainable Buildings SEPP commenced on 29 August 2022. Amendments to the Regulation will commence on 1 October 2023.

The new State Environmental Planning Policy (Sustainable Buildings) 2022 encourages the design and delivery of more sustainable buildings across NSW. It sets sustainability standards for residential and non-residential development and starts the process of measuring and reporting on the embodied emissions of construction materials.

Savings and transitional provisions have been included so that the SEPP will not apply to development applications or modification applications that have already been submitted, but not yet determined by the commencement date. In this regard the SEPP does not specifically apply to this application and the proposal is satisfactory in this regard.

State Environmental Planning Policy (Biodiversity and Conservation) 2021

The SEPP applies to the proposal as the site contains trees of which consent is required for their removal given they are not exempted by Botany Bay DCP 2013. A total of 30 trees within the site, along the front property boundary and adjoining the freight rail line are proposed to be removed to accommodate the proposed development.



Correspondence from the Applicants Arborist, “Growing My Way” dated 14/12/2021 was submitted with the application. The correspondence states as follows;

“From our basic investigation/site assessment to date perspective; it appears all trees present at the time of GMW onsite viewing are:

- a. planted specimens linked to previous site design/usage. Simply, they are not representative of any local functioning plant community by either species or profile and*
- b. only a part representation of vegetation/trees present prior to the commencement of common boundary property approved development in the early stages of construction at the time of viewing.”*

Council’s Tree Management Officer has considered the proposed removal of the affected trees and does not object to their removal given the remnant landscaping to remain on site south of the freight rail line, and landscaping proposed as part of the hotel redevelopment both on site and along the frontage within the public domain. Subject to compliance with the conditions of consent, the proposal is satisfactory in relation to the SEPP.

State Environmental Planning Policy (Resilience and Hazards) 2021

Chapter 4 – Remediation of Land

4.6 - Contamination and remediation to be considered in determining development application

A Preliminary Site Investigation Report (PSI) dated December 2021, Detailed Site Investigation (DSI) dated May 2022 and accompanying Acid Sulfate Soils Management Plan (ASSMP) dated June 2022, all prepared by Douglas Partners were submitted to Council for review, in order to confirm the suitability of the site for the proposed development and methods for the management of ASS on site.

The Preliminary Site Investigation (PSI) recommended the following investigations to assess the suitability of the site for the proposed development:

- *Intrusive soil investigation: An intrusive soil investigation with associated contamination sampling should be conducted to assess the contamination status of the site soils. A site walkover to observe current site conditions and to identify any additional potential sources of contamination, should be completed prior to the intrusive investigation. The intrusive investigation should also include an assessment of ASS conditions.*
- *Groundwater investigation: DP recommends installing at least 3 groundwater wells to establish the potential for contamination from offsite contamination sources.*

A detailed site investigation (DSI) was subsequently prepared given the above. The DSI reported on intrusive sampling from eleven boreholes on site, three of which were converted into groundwater wells with monitoring and sampling conducted from each well.

The results of the soil testing indicated no exceedances of site assessment criteria (SAC) for the samples analysed. No asbestos was observed during testing or detected by the laboratory, however, ash and concrete fragments were recorded at some test locations, which indicated that asbestos in building wastes may be present in fill in untested locations.

With regards to site suitability, the DSI concludes as follows.

“Accordingly, it is considered that the site may be made suitable for future developments conditional upon the following recommendations:

- *Implementation of an unexpected finds protocol to be implemented during civil and construction works;*
- *Further acid sulphate soil assessment to assess the extent of ASS present and determine the requirement for an Acid Sulphate Soils Management Plan for the disturbance, handling and disposal of ASS;*
- *The surplus soil requiring offsite disposal will require formal waste classification to inform their lawful disposal (if any); and*
- *Any soils, or aggregate and landscaping materials derived from recovered materials which is utilised as part of the proposed development must be validated as being legally able to be imported and suitable for use within the site by a qualified environmental consultant.”*

A preliminary acid sulphate soil (ASS) assessment was undertaken as part of the DSI. Results of the analysis indicated the presence of acid sulfate soils in natural deposits below a depth of approximately 2.4m below ground level. Subsequently an Acid Sulfate Soils Management Plan was prepared and submitted to Council.

Councils Environmental Scientist reviewed the submitted documents and concurs with the conclusions of the reports with respect of site suitability, subject to the implementation of the above recommendations and imposition of standard conditions of consent.

Therefore, in accordance with the SEPP, the consent authority can be satisfied that the land is suitable for the purpose for which the development is proposed to be carried out and standard conditions of consent have been imposed to ensure the site is appropriately managed during construction. The proposed development satisfies the requirements and objectives of the SEPP.

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 a signage that is exempt development. Section 3.6 - Granting of consent to signage, requires the following:

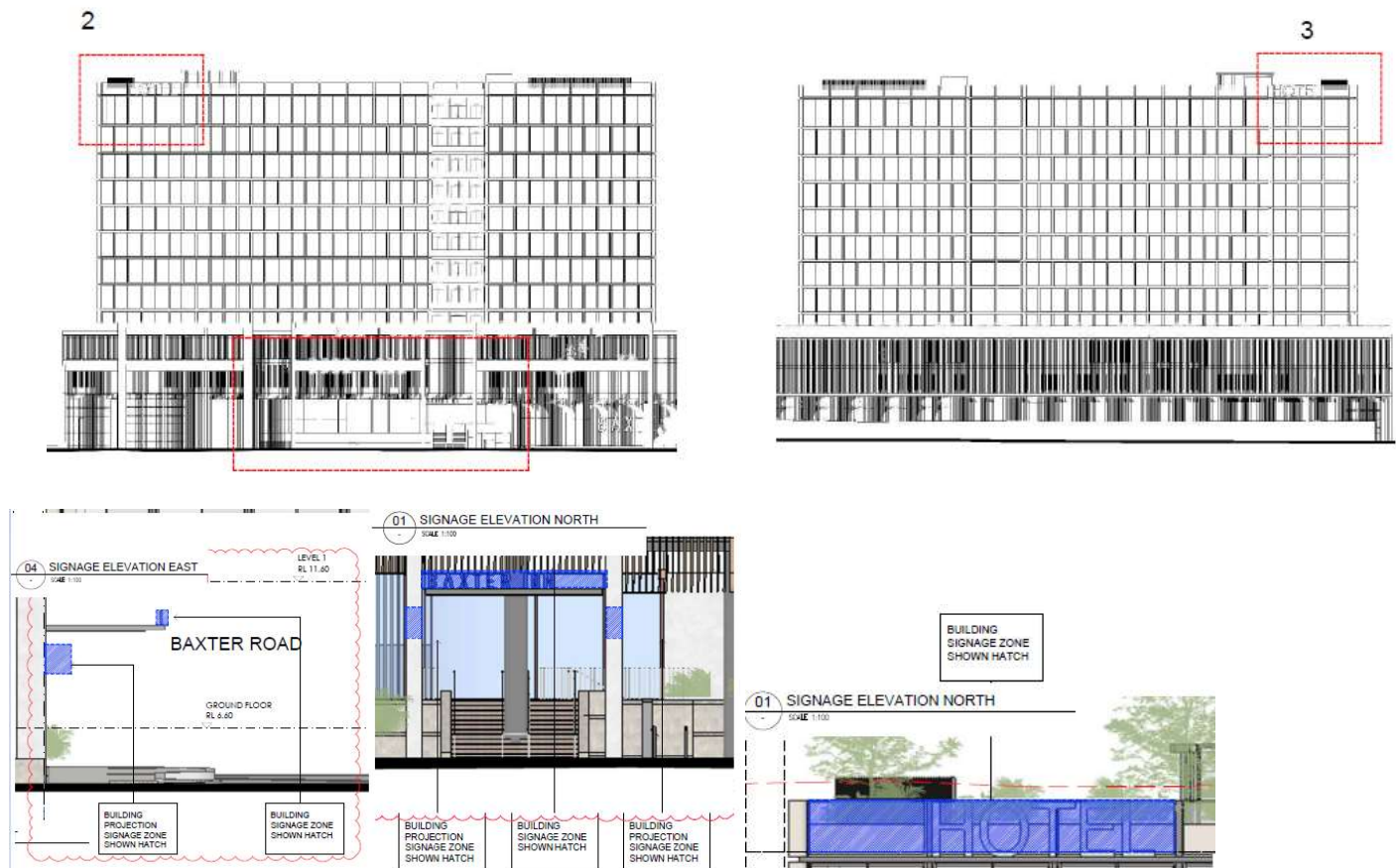
“A consent authority must not grant development consent to an application to display signage unless the consent authority is satisfied;

- a) *that the signage is consistent with the objectives of this Chapter 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."*

Further to the above, consideration has been given to the following relevant sections of the SEPP.

- 3.15 - Advertisements with display area greater than 20 square metres or higher than 8 metres above ground
- 3.18 - Location of certain names and logos
- 3.20 - Wall advertisements

The proposed development seeks consent for signage zones upon the north / south building parapet elevations (9.5m length x 1.4m height), and to the front entrance of each hotel (5.7m length x 0.6m height above entrance awning / 0.5m length x 1m height / 0.8m projection adjoining entry). Identified signage zones are in the proposed locations below.



It is important to state that nil content is proposed at this stage within signage zones and such signage is intended to reflect the future hotel occupier and not be reflective of third party advertising.

Signage within the nominated zones defined above, will be subject to a future development consent, where exempt or complying development requirements of SEPP (Exempt and Complying Development Codes) 2008 are not adhered to.

Notwithstanding the above and given the location of the site along adjoining the freight line and in view of Joyce Drive, the proposal was also referred to ARTC and TfNSW for comment.

Nil objections were received from the aforementioned authorities with respect of proposed signage.

Accordingly, the signage zones have been considered against the requirements of Schedule 5 of the SEPP. Signage zones as proposed are satisfactory in relation to the existing and future desired character of the area, do not compromise views / vistas, are of appropriate scale, proportion and form upon the proposed development and are unlikely to adversely impact upon the safety of pedestrians or vehicles given the aforementioned.

The proposal has been conditioned to ensure that future signage zones do not incorporate flashing lights, electronically changeable messages, animated display, moving parts or simulated movement or a method and level of illumination that distracts or dazzles.

Given the above, proposed signage zones are satisfactory with regards to the provisions of the SEPP.

State Environmental Planning Policy (Transport and Infrastructure) 2021

2.48 - Works within the vicinity of electricity infrastructure

The application is subject to clause 45 of the SEPP as the development proposes works within the vicinity of electricity infrastructure i.e. substation along frontage of the site, and therefore in accordance with clause 45(2) the consent authority must give written notice to the electricity supply authority for the area in which the development is to be carried out, inviting comments about potential safety risks, and take into consideration any response to the notice that is received within 21 days after the notice is given.

Accordingly, the proposal was referred to Ausgrid, nil objections were raised in response to the proposed redevelopment. Appropriate conditions of consent, which have been imposed on the draft Notice of Determination to safeguard and ensure the developer liaises with Ausgrid as required.

The following provisions apply to the development given the location of the proposed development adjoining the freight rail line to the rear of the building.

Subdivision 2 Development adjacent to pipeline corridors

2.77 Determination of development applications

The subject site is located approximately 800 metres from the Moomba to Sydney Ethane pipeline at the closest point. Additionally, a high pressure gas main exists in Joyce Drive and a low pressure gas main is located within Baxter Road.

As per the requirements of this section, the proposal was referred to the Australian Pipeline Authority and Jemena, to ensure there is no direct impact upon the pipeline as a result of the proposal. Both authorities responded with nil objection on 25 February and 4 April subsequently. Given the aforementioned, the proposal is satisfactory with regards to the SEPP.

2.97 - Development adjacent to rail corridors

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

2.99 - Impact of rail noise or vibration on non-rail development

With respect of the above it is noted as follows;

The proposal was referred to the Australian Rail Track Corporation (ARTC) given that the site is burdened by an existing freight rail line, its future duplication and as the requirements above are triggered.

The ARTC responded to Council on 22 March 2022, raising nil objection to the proposed development, subject to the imposition of specific conditions with respect of derailment protection, glare / reflectivity, fencing / safety, stormwater, noise / vibration, maintenance and the like. Conditions as requested by the ARTC have been imposed on the draft NOD. The proposal is satisfactory in this regard.

The following provisions apply to the development given the location of the proposed development adjoining a classified road to the rear of the site i.e. Joyce Drive.

2.119 – Development with Frontage to Classified Road

2.120 - Impact of Road Noise or Vibration on Non-Road Development

2.122 - Traffic-generating development

With regards to the above, the proposal was referred to the RMS. The RMS responded on 17 September 2022 stating that the proposed development is '*unlikely to have a significant traffic impact on the classified road network*' and thus raised no objection.

With respect of noise and vibration, it is noted that the proposal was accompanied by an Acoustic Report, prepared by Renzo Tonin and Associates dated 1 December 2021, which considered the potential impact of road noise / vibration upon the proposed development.

The report concludes that the development will satisfy the noise level requirements as outlined in the SEPP, should the recommendations in the report be incorporated into construction i.e. specific glazing and insulation to roof / ceilings. Accordingly, the recommendations have been incorporated as conditions in the draft Notice of Determination.

The application is consistent with the provisions of the SEPP and is acceptable in this regard.

Bayside Local Environmental Plan 2021 (BLEP)

Clause	Requirement	Proposal		Compliance
2.3 – Zone (B5 - Business Development)	Permissible with consent	<i>"tourist and visitor accommodation"</i> permissible with consent Consistent with objectives of zone, providing a greater range of tourist accommodation close to airport. Proposal serves both local and regional populations with respect to accommodation and employment opportunities generated.		Yes
4.3 – Height of Buildings	44m	Lot 2 - 44.53m Lot 3 - 44.828m		No (1) <i>refer to discussion below in 4.6</i>
4.4 – FSR	3:1 Lot 2 Max GFA - 8,757m ² Lot 3 Max GFA - 9,129m ²	<u>Lot 2</u> 2.95:1 8,624.89m ²	<u>Lot 3</u> 2.99:1 9,129m ²	Yes Yes
4.6 – Exception to Development Standards	To provide an appropriate degree of flexibility in applying certain development standards to particular development,	Arguments presented below in 4.6.		Yes (<i>refer to discussion below</i>)

Clause	Requirement	Proposal	Compliance
	To achieve better outcomes for and from development by allowing flexibility in particular circumstances.		
5.10 – Heritage Conservation <i>Commonwealth Water Pumping Station and Sewage Pumping Station No. 38n (State Item)</i>	To conserve the environmental heritage of Botany Bay.	Sufficiently distanced from heritage item i.e. 2km to the south and thus unlikely to result in any adverse impact upon item or its curtilage.	Yes
5.21 – Flood Planning	(a) To minimise the flood risk to life and property associated with the use of land, (b) to allow development on land that is compatible with the flood function and behaviour on the land, taking into account projected changes as a result of climate change, (c) to avoid adverse or cumulative impacts on flood behaviour and the environment, (d) to enable the safe occupation and efficient evacuation of people in the event of a flood.	Appropriate flood storage / mitigation	Yes – Refer to Flood discussion below.
6.1 – Acid Sulfate Soils	Class 4 - Works more than 2m below natural ground surface. Acid Sulfate Soils Management Plan required.	ASSMP prepared by Douglas Partners dated June 2022 submitted	Yes
6.2 – Earthworks	Ensure earthworks will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land.	Conditions of consent have been imposed to ensure minimal impacts on the amenity of surrounding properties, drainage patterns and soil stability. The proposal meets the objectives of this clause.	Yes
6.3 - Stormwater and WSUD	Minimise impacts of urban stormwater to adjoining properties, native bushland and receiving waters.	Appropriately designed and located On Site Detention proposed to mitigate and manage stormwater. WSUD incorporated into development i.e. rainwater used for toilet flushing, irrigation etc.	Yes
6.7 - Airspace Operations	The site is within an area defined in the schedules of the Civil Aviation (Building Control) Regulations that limit the	Sydney Airport Corporation Limited issued approval on 17/02/22 to a maximum overall height of 49.6m AHD. Proposal has a maximum height of 49.6RL to top of hydraulic lift	Yes

Clause	Requirement	Proposal	Compliance
	height of structures to 50 feet (15.24 metres)	core and adheres to the aforementioned. Proposal conditioned accordingly.	
6.8 - Development of Areas subject to Aircraft Noise	Between 25 - 30 ANEF (2039) contours	Acoustic attenuation measures proposed. DA conditioned appropriately.	Yes
6.10 - Design Excellence	Deliver the highest standard of sustainable architectural and urban design.	Design Excellence confirmed by Councils Design Review Panel	Yes
	Architectural Design Competition, unless otherwise certified by NSW Government Architect Office	NSW Government Architect Officer confirmed ADC not required as Design Excellence has been demonstrated.	Yes
6.11 – Essential Services	Essential services are or will be available	Existing sewer, water, electricity and gas connections are available.	Yes

4.6 – Exception to Development Standards

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

(3)(a) that compliance with the standard is unreasonable or unnecessary in the circumstances

(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. the applicant's written request is satisfactory in regards to addressing subclause (3) above, and*
- 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.*

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

5(b) the public benefit of maintaining the development standard.

In the assessment of this application, consideration has been given to a number of Land and Environment Court judgements in the assessment of the application, which specifically relate to variation's of development standards.

In *Wehbe v Pittwater Council* [2007] NSW LEC 827 (*Wehbe*), the Land and Environment Court set out 5 different ways in which an objection to a development standard may be well founded.

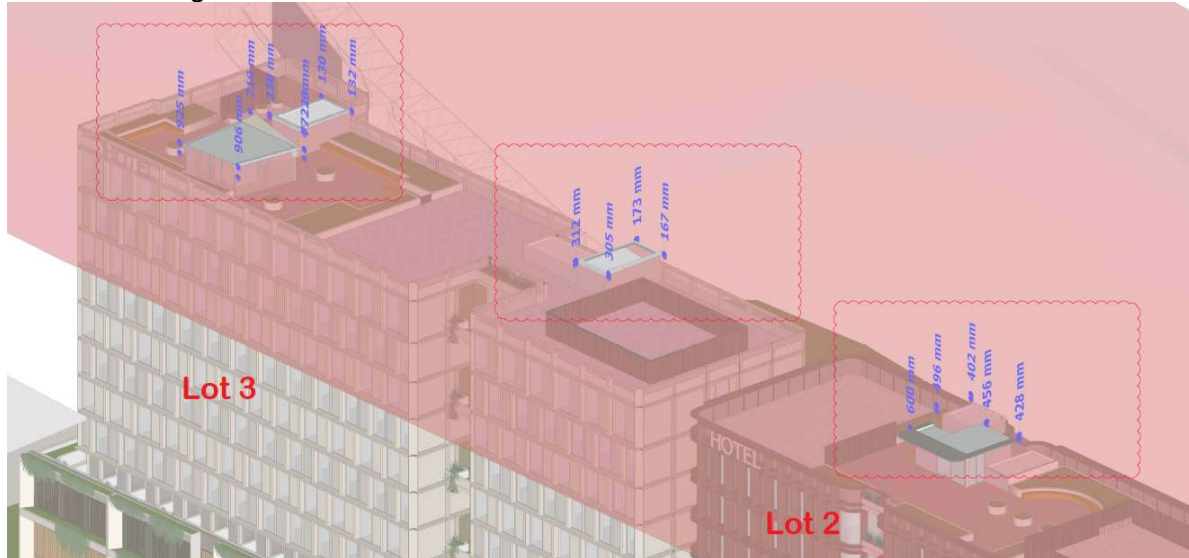
Consideration has also been given to the Land and Environment Court judgement *Four2Five v Ashfield Council* [2015] NSWLEC 90 where it was established that justification was required in order to determine whether the development standard was unreasonable or unnecessary on grounds other than whether the development achieved the objectives of the development standard. Consideration is to be given to the particular site circumstances of the proposal.

Finally, consideration has further been given to *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, which seeks to ensure that the applicants request

adequately addresses clause 4.6 and whether the proposed contravention is in the public interest.

Height Variation Sought

As previously stated, a maximum height standard of 44m applies to the site. The proposal incorporates a maximum height of 44.53m upon Lot 2 and 44.828m upon Lot 3. This is a 1.2% (0.53m) variation to the top of rooftop plant to Lot 2 and 1.8% (0.828m) variation to rooftop plant on Lot 3. The height of both hotels to the rooftop level is below the 44m height standard. Height breaches are identified below.



Applicants Height Discussion

A summary of the applicant's key arguments supporting the additional Height are as follows:

- *Exceedances are limited to minor elements of the overall built form.*
- *The departure from the maximum building height development standard is due to the site being located within a floodplain. The habitable floor level of the development has therefore been raised as required by Council's controls and to accommodate the flood overland flow paths. The raised floor level increases the overall height of the building but is required to minimise the flood risk to life and property associated with the use of land.*
- *The lift overruns providing equitable access to the rooftop terraces which have been included to provide additional amenity for the future guests and visitors.*
- *While the lift and stair overruns result in minor height exceedances of 0.130 m to 0.925 m, the majority of the building mass is well below or in line with the 44 m height standard. While the lifts could be deleted, it would result in inequitable access to the roof top recreation area. The stairs could also be deleted and replaced with alternate maintenance access, alternate access would not be as convenient.*
- *The elements of the building that exceed the height limit are minor and have no detrimental impact in terms of view loss, privacy or overshadowing. The proposed height departure would also not prevent any future redevelopment of the adjoining sites. Therefore, the impacts of the height departure on surrounding development is acceptable.*
- *The elements of the building that exceed the height limit are compatible with the desired character of the area and the surrounding buildings, specifically in terms of height, because the extent of the variations is limited to the lift and stair overruns only, are well setback from the edge of the building, and will not be discernible from the public domain. While the encroachments could be reduced/deleted, it would result in inequitable access to the roof which contains additional recreation areas for visitors and guests of the hotels.*
- *The portions of the building that contravene the height standard do not result in any incompatibility between developments in the surrounding area and would not be inconsistent with*

any future redevelopment permitted by Council's planning controls. The objectives of the standard are therefore achieved notwithstanding the non-compliance with the height standard.

- The shadow analysis confirms that the elements that encroach above the maximum 44 m height standard will cause no additional shadow impacts to the nearby residential properties to the east, with the additional shadows falling only on landscaped or hardstand/parking areas associated with the commercial uses to the south, on the Joyce Drive roadway, or on the grass verge on the side of the road.*
- In approving the hotel development to the west it was established that a building of this height is acceptable on the southern side of Baxter Road.*
- The proposed development is of a similar height and scale to the adjoining approved development and has been designed so that the podium height and towers marry those approved next door.*
- The building is consistent with the desired built form for the site, with the majority of the building complying with the 44 m height standard.*
- The taller buildings on the southern side of Baxter Road will provide a visual and acoustic screen to the rail, road and commercial/airport activities to the south, which may potentially improve the amenity of the lower scale developments to the north.*

Height Discussion

The applicants request has adequately addressed the provisions of this clause. Following a review of the application, it is deemed that the height variation as proposed is appropriate for the following reasons:

- The constrained flood affected nature of the site warrants the raising of the ground floor level up to 1.5m above the existing level of the site in order to ensure the proposed development is adequately safe guarded from potential future adverse flood inundation. As a direct consequence of this constraint and raising of the ground floor level and subsequent upper levels of the development, a breach to the height standard occurs. Given the aforementioned, it can be confirmed that there are sufficient environmental planning grounds in this instance which warrant a breach to the height standard on site.
- The proposed area of height non compliance is not considered to result in a mass, size or scale of development that is incompatible with the future desired character of the Mascot Character Precinct.
- The intensity of the development is consistent with the density anticipated for the site by the relevant planning controls. The variation to the height standard as proposed does not undermine the standard or detract from the quality of the urban form.
- Components of the development which penetrate the height standard are recessed from the street edge of the development and is not visually discernible from neighbouring properties or the public domain.
- The proposal provides a high quality urban form, demonstrates design excellence and represents a built form of scale and intensity that is consistent with the anticipated scale of development within the Mascot Character Precinct.
- The proposal as designed does not generate adverse overshadowing impacts which are directly correlated or contributable to the portions of the development subject of the height exceedance. Solar amenity to the public domain, nor adjoining sites is not compromised as a result of the proposed non compliance with the height standard.
- The development achieves the objectives of the height standard and is consistent with the objectives of the B4 – Mixed Use zone.
- The proposal was supported by the Design Review Panel and has been confirmed as demonstrating Design Excellence.

Given the above, the consent authority can be satisfied that the provisions of clause 4.6 have been achieved and that the applicants section 4.6 is well founded and that there are

sufficient environmental planning grounds in which to support the variation as proposed. The proposed variation to the height standard in the circumstances of this case is satisfactory and supported.

6.10 - Design Excellence

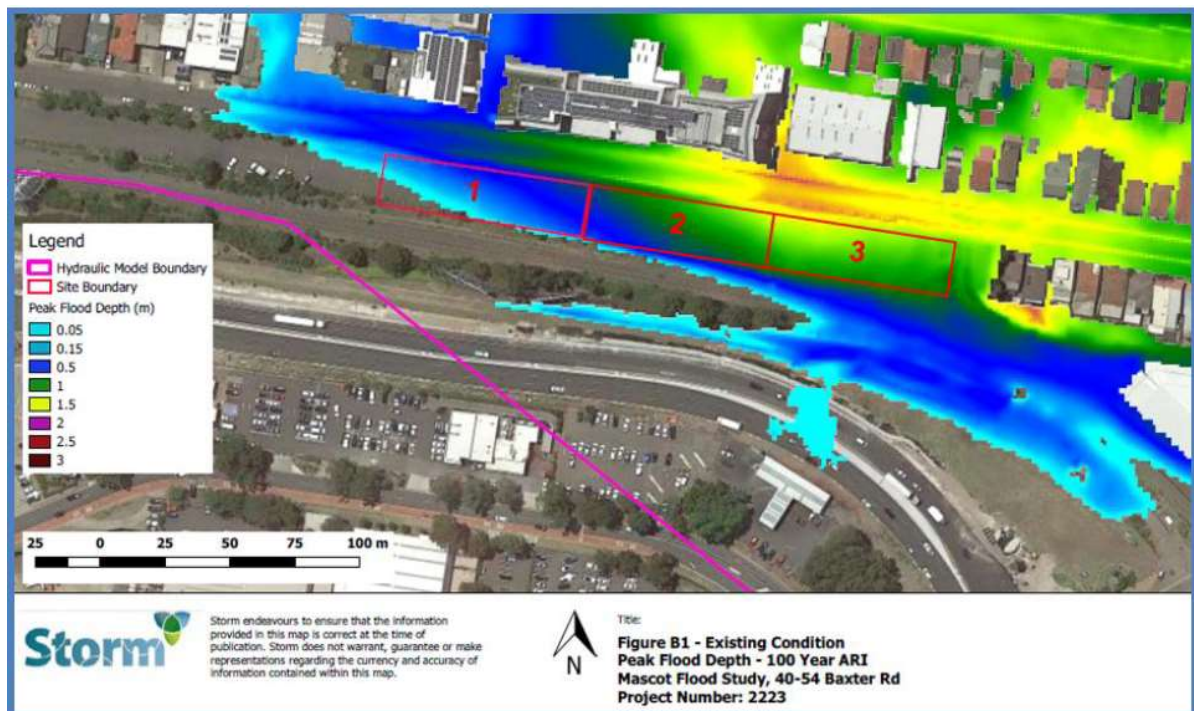
The objective of this section is to deliver the highest standard of architectural, urban and landscape design. This clause applies to the proposal as the applicant seeks to benefit from a height bonus applicable to the site which has been previously discussed.

As per the provisions of this clause, development consent must not be granted, unless the consent authority considers that the development exhibits design excellence. Pursuant to subclause 5(a), development consent must not be granted unless a design excellence panel reviews the development and the consent authority takes into account the findings of the panel.

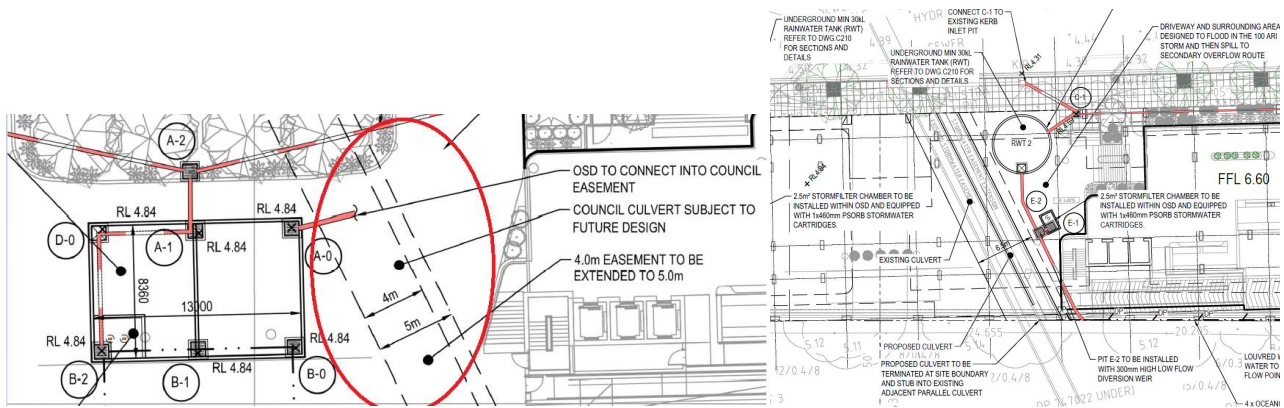
The proposed development was considered by Councils Design Excellence Panel who confirmed on 17 October 2022 post submission of final revised plans that the application achieved compliance with the Design Excellence provisions of the LEP. The proposal is satisfactory in this regard.

5.21 – Flood Planning

The subject site is constrained by potential flooding with 100% of Lots 2 and 3 affected, as depicted in the image below.



The subject site is burdened by a 4m wide stormwater easement and associated existing pipes which benefit Bayside Council. The 4m wide easement is illustrated below and flows generally north-west to south-east through the site, towards an existing channel to the south of the site. The easement is located beneath the proposed port de cochere within the proposed development.

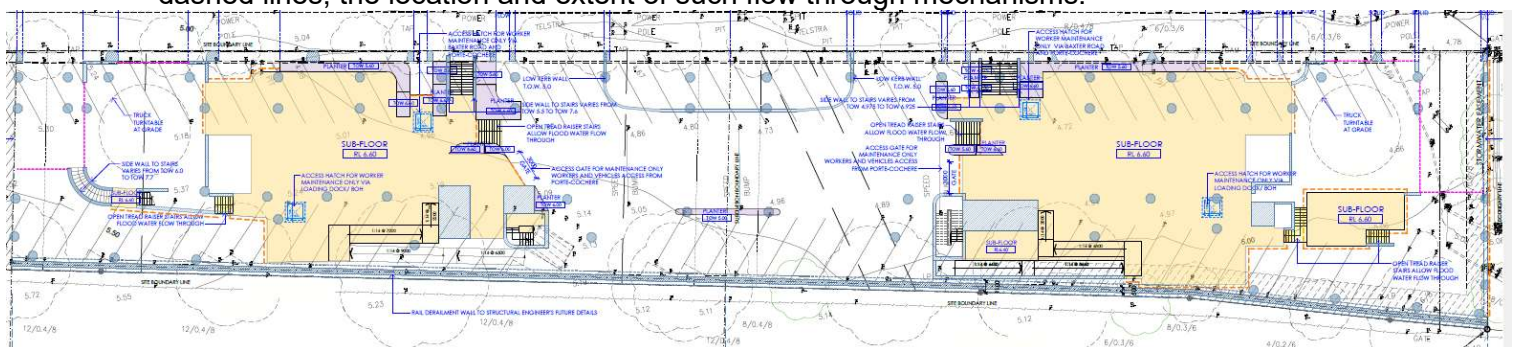


The proposed development incorporates an on site detention system which is proposed to connect and drain to this easement. Additionally it is proposed to extend the easement to a width of 5m and upgrade the size of existing stormwater infrastructure to a 1400mm wide x 800mm high culvert, to assist in accommodating increased stormwater flows from the proposed development and surrounding properties.

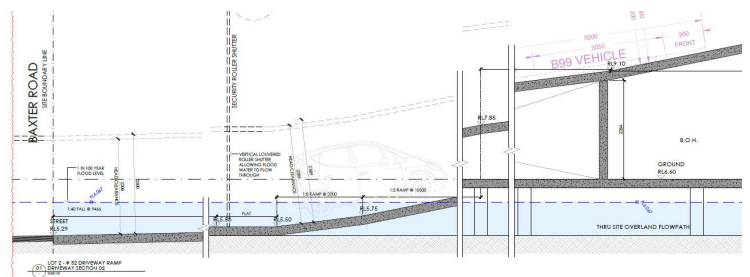
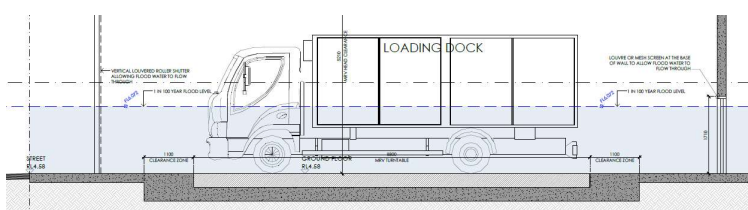
Additionally, the approved hotel upon the adjoining western lot, Lot 1, which is currently under construction, benefits from a condition of consent as per DA-2019/233 which facilitates an easement to provide direct access to the proposed development at level 2 within the car parking area, so as to facilitate emergency egress in flood (storm) events up to and including the 1% AEP flood event.

Consideration has been given to the 1 in 1000yr flood event (Probable Maximum Flood - PMF) and it is noted that a finished floor level of 7RL would be required in this instance. Council does not have any requirements with regard to PMF flooding, with the exception of risk management as a matter for consideration, of which is discussed further below. It is noted that the proposed development has a finished habitable ground floor level of 6.6RL.

Given the flood affectation of the site, the development is proposed to incorporate louvred and metal perforated screens which will enable floor water to freely pass through the sub floor and ground level of the development, in a flood event i.e. below vehicular ramp and fire stairs, through loading dock etc. The diagram below indicates in orange and pink dashed lines, the location and extent of such flow through mechanisms.



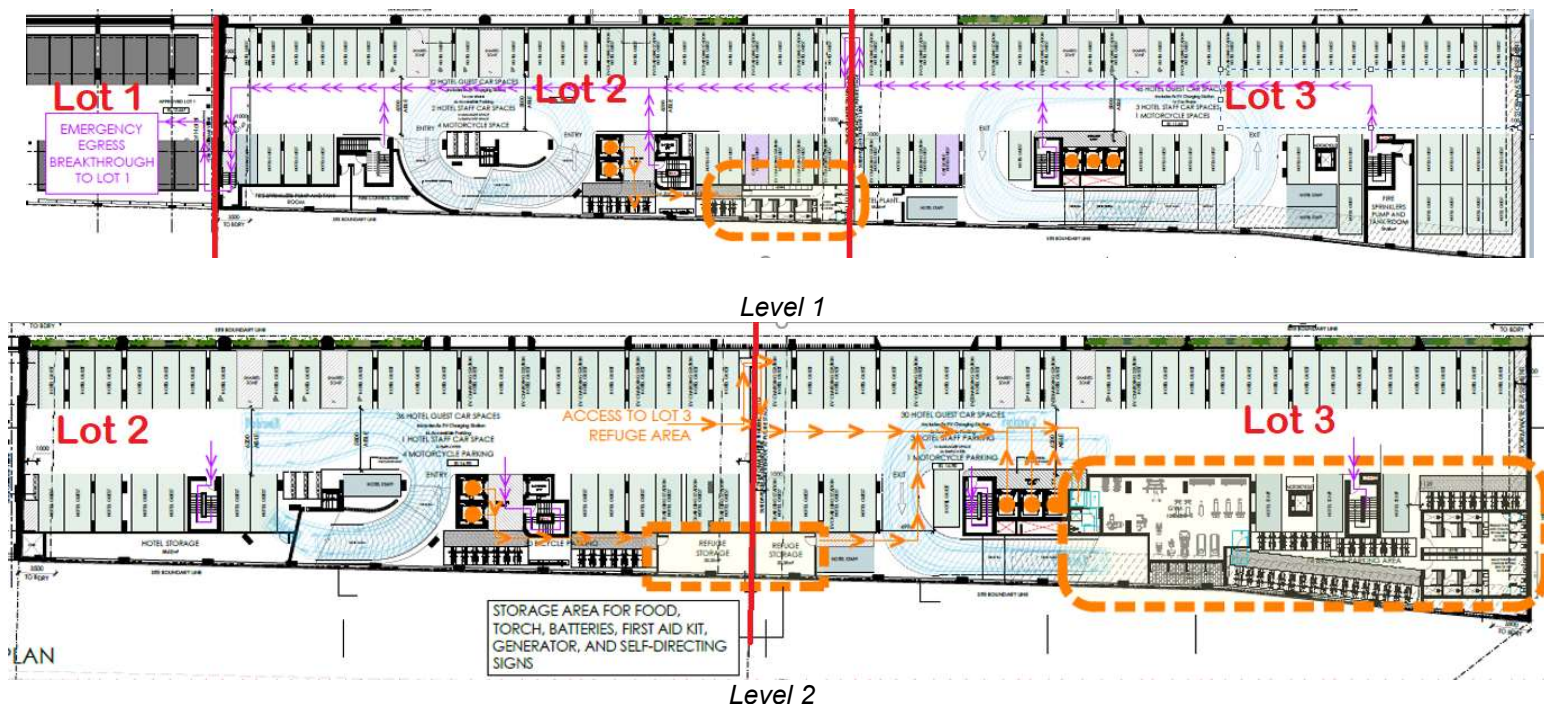
Additional diagrams below indicate the extent of the 1 in 100 year flood event and potential adverse impact to the development.



Submitted plans indicate that a total of 61.27% of the frontage of the development upon Lot 3 and 59.57% of the frontage of the development upon Lot 2 is designed in a manner which facilitates flood water to flow through. Additionally, separate flood storage tanks within the sub floor of the development are proposed for each hotel.

The applicant has submitted plans which indicate emergency egress in a flooding event between Lots 2 and 3. Plans depict the development under construction upon Lot 1 to the west, of which a physical break through was conditioned at Level 1, as part of the approval of the hotel on this lot, to facilitate access and refuge to Lot 1, if required, in a flood event, given Lot 1 is the least flood affected of the three lots.

The purple below indicates the proposed emergency evacuation route, with the orange depicting the route and location of proposed refuge areas at levels 1 and 2.



Councils Engineers have considered the proposed development against the relevant flood related requirements and support the proposal on the basis of the above and subject to the imposition of specific conditions of consent.

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

The aforementioned is a Department of Planning and Environment led change to replace all current business and industrial zones in LEPs across NSW with a new set of zones developed by the Department.

The exhibition will commence on Friday 27 May and conclude 8 July 2022. In summary, DPE proposes to translate the entirety of each of Bayside's employment as follows:

- B1 Neighbourhood Centre and B2 Local Centre will combine to become *E1 Local Centre*;
- B3 Commercial Core will become *E2 Commercial Centre*;
- B4 Mixed Use will become *MU1 Mixed Use*;
- B5 Business Development, B6 Enterprise Corridor and B7 Business Park will combine to become *E3 Productivity Support*;

- IN1 General Industrial and IN2 Light Industrial will combine to become *E4 General Industrial*.

A number of changes and inclusions to zone objectives and permissible land uses are also proposed for the new zonings.

The aforementioned results in the change of the current B5 – Business Development zone to be renamed E3 – Productivity Support. The proposal remains a permissible use, albeit redefined as '*Hotel or Motel Accommodation*' within the revised zone and remains consistent with the Zone objectives. The proposal is satisfactory with respect of the draft revisions.

Review of C.4.6 of Standard Instrument

Proposed changes to clause 4.6 of the Standard Instrument LEP aim to clarify the requirements for varying development standards, improve transparency and accountability in the planning system.

Under the proposed revised clause 4.6, the consent authority would need to be satisfied that the applicant's written request demonstrates consistency with the objectives of the relevant development standard and land use zone. Applicants would also have to demonstrate that the contravention will result in an improved planning outcome when compared with what would have been achieved if the development standard was not contravened.

In deciding whether a contravention of a development standard will result in an improved planning outcome, the consent authority is to consider the public interest, environmental outcomes, social outcomes or economic outcomes. Proposed changes were on exhibition from 31 March until 12 May 2021. The proposal has been considered against the above and is not inconsistent with the draft provision.

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

Botany Bay Development Control Plan 2013

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

Part	Control	Proposed	Complies
3A.2 – Car Parking <i>1 space manager; 1 space / 2 employees; 1 space / 1.5 rooms; 1 taxi pick-up / set-down space / 100 rooms; 2 coach pick-up / set-down</i>	C2 – Car parking <u>Lot 2</u> 103 staff spaces + 200 room spaces Total = 303 car spaces + 1 taxi + 2 coach <u>Lot 3</u> 103 staff spaces + 192 room spaces Total = 295 car spaces + 1 taxi + 2 coach	<u>Lot 2</u> 71 car spaces <u>Lot 3</u> 81 car spaces Shared coach / taxi pick up and drop off area within Port De Cohere	No - refer to discussion below.
3A.3.1 - Car Park Design	C1 – Parking to be as per AS2890.1 / AS2890.6 and AS2890.2.	Design and configuration of proposed car park and loading areas is as per the relevant Australian Standards.	Yes

3C.1 – Access and Mobility	C2 – All development must comply with Disability Discrimination Act 1992, BCA, Premises Standards and relevant Australian Standards	The proposal is accompanied by an Access Report, prepared by ABE Consulting dated 17/12/2021 which confirms that the proposal can achieve compliance with the relevant access provisions. i.e. accessible parking, lift access, ramps, signage, wheelchair seating etc.	Yes
3G.2 – Stormwater Management	C1 – Satisfactory stormwater arrangements.	Stormwater infrastructure proposed is adequate to accommodate the proposed new hotel development.	Yes
3G.3 – Water Sensitive Urban Design	C3 – Development to adopt an integrated approach on water management through a coordinated process to address water efficiency, conservation, stormwater, drainage and flooding.	On Site Detention tank, rainwater tank, appropriate stormwater measures proposed on site.	Yes
3G.4 – Stormwater Quality	C1 – Water quality objectives stated in “ <i>Botany Bay and Catchment Water Quality Improvement Plan (BBWQIP)</i> ” shall be satisfied.	Stormwater plans submitted include appropriate sediment and stormwater measures to ensure the quality of stormwater runoff meets the objectives of the BBWQIP.	Yes
3I.– Crime Prevention and Safety and Security	C1 – Building entrances to be visible / recognisable	The entrance to both proposed hotels are clearly distinguishable from Baxter Road given the awning feature proposed.	Yes
	C8 – Entrances to front the street, maximise passive surveillance and provide clear sightlines with direct access from the street to the building entrance.	Entries of both hotels front Baxter Road, floor to ceiling glazing permits clear sightlines to the public domain, hotel lobbies and adjoining internal cafés ensure passive and active surveillance to Baxter Road. Direct and accessible access is provided to both hotels from the public domain via appropriately located platform lifts.	Yes
	C10 – Entrances and exits of buildings shall be well lit, secure and highly visible to and from public spaces, streets and adjoining buildings.	Adequate lighting will be provided as part of both hotels to ensure the safety and security of future users.	Yes
3J.2 – Aircraft Noise and Exposure Forecast	C2 – Compliance with AS2021-2000	The subject site is affected by the 25-30 ANEF Contour. An Acoustic Report has been prepared and submitted. The report incorporates	Yes

		recommendations to ameliorate aircraft noise. The DA has been conditioned appropriately.	
3J.3 – Aircraft Height Limits and Prescribed Zones	C1 – OLS area affected, referral to Sydney Airports Corporation Limited	The application was referred to SACL. SACL responded on 17 February 2022 confirming acceptance of a maximum overall height of 49.6m. The proposal has been conditioned accordingly.	Yes
3L Landscaping	C3 – landscaping shall be designed to reduce the bulk, scale and size of buildings, to shade and soften hard paved areas, to create a comfortably scaled environment for pedestrians in the public domain, or from within the site, and to screen utility and vehicle circulation or parking areas. Emphasis should be placed on landscaped setbacks designed to soften buildings.	<p>Landscape Plans prepared by Habit8 were submitted with the DA.</p> <p>BBDGP 2013 has nil deep soil requirements for hotel development. Irrespective and given the nature of the site and its constraints, the southern portion of each of the lots adjoining the freight line remains as landscaped deep soil.</p> <p>Deep soil retained on site will allow for natural drainage to occur and minimise overland flow.</p> <p>Landscaped planters with a mix of ground covers, shrubs and trees are provided as follows to both hotels.</p> <ul style="list-style-type: none"> • Ground level within 1.4m high terraced planters, adjoining public domain to Baxter Road. • Landscaped planter within port de cohere and adjoining pick up / set down area. • Adjoining rear of vehicular exit ramp of Lot 3 (eastern hotel). • Adjoining side and rear of vehicular entry ramp of Lot 2 (western hotel) • Internally adjoining hotel lobbies. • Sporadic perimeter planters to northern façade at car parking levels 1 and 2 fronting Baxter Road • Perimeter planters to all elevations of level 3 hotel rooms / balconies. Varying widths and dense planting proposed. • Levels 4, 6, 8, 10 – Lot 2 incorporates two planters within recessed building line fronting Baxter Road adjoining hotel rooms and one planter to the south adjoining a hotel room. Lot 3 incorporates a planter within the recessed building element fronting Baxter Road and adjoining 	Yes

		<p>communal circulation space / lift lobby.</p> <ul style="list-style-type: none"> • Levels 5, 7, 9, 11 – Lot 2 incorporates two planters within recessed building line fronting Baxter Road adjoining hotel rooms and one planter to the south adjoining a hotel room. Lot 3 incorporates a communal outdoor balcony fronting Baxter Road with periphery landscape planting, seating and decorative elements adjoining communal circulation space / lift lobby. • Rooftop, landscape periphery planters to central portion of Lot 2 (western) hotel and eastern portion of Lot 3 (eastern) hotel. <p>The above landscaping provide visual amenity and soften the facades of the development. Such landscaped features enhance the streetscape appearance of building forms when viewed from the public domain.</p>	
3N.2 – Waste Minimisation / Management/ Demolition / Construction	C1 – A Site Waste Minimisation and Management Plan must be submitted.	<p>A Waste Management Plan prepared by Auswide was submitted. The plan addresses waste minimisation during demolition, excavation and construction and future on-site waste management.</p> <p>Appropriately sized / located waste storage areas are provided internally within both hotels, with waste collection to occur via an on site loading dock to each hotel, this incorporates a turntable to enable forward entry and exit for a medium rigid vehicle. Clearance height of 4.5m facilitates appropriate headroom for waste collection.</p>	Yes
6 – Mascot Business Development Precinct	C1 – Development to encourage a higher public transport (including walking and cycling) use, include strategies to encourage / promote car sharing / pooling strategies. Workplace Travel Plan to be lodged with application. Workplace Travel Plan (WTP) to establish measurable targets to achieve the mode share targets i.e:	<p>Both lots are located in close proximity to Sydney's Domestic and International Airports. The site is located 1km walking distance from Mascot Train Station to the north west.</p> <p>The site is located 360m to the east of O'Riordan Street and 200m to the west of Botany Road. These are classified roads with a high volume of taxi, uber, car share and public bus transportation available. The site is also within close proximity of mascot station eg 1.5km, making it ideally positioned to facilitate short trips to</p>	Yes - Proposal conditioned to require a workplace travel plan prior to OC.

	<p>65% by 2021 and 57% by 2031.</p>	<p>the Domestic / International Airport terminals which are approximately 1.5km and 5km from proposed hotels.</p> <p>Public transport services available in proximity of the site and the nature of the use of the proposed development will lessen traffic demand on roads in the immediate area.</p> <p>For Lot 2 (western hotel), a total of 3 staff car spaces, 1 car share space, 60 bicycle spaces, 8 motorbike spaces are proposed. For Lot 3 (eastern hotel), 6 staff car spaces, 1 car share space, 80 bicycle spaces, 2 motorbike spaces are proposed.</p> <p>A WTP was not submitted with DA, however the objective of a WTP is to reduce private car use. A significant proportion of vehicle trips to the development will be by taxi/shuttles/Uber and public transport. The submitted Traffic Report notes <i>"a WTP can be prepared at a later stage (prior to occupation certification) when an operator is onboard to provide guidance and set realistic targets."</i></p> <p>The aforementioned is concurred by the assessing officer and the proposal is to be conditioned accordingly.</p>	
	<p>C2 – Development, shall:</p> <p>(i) improve the appearance of buildings, particularly along the roads which serve a gateway function to Sydney Airport and the Sydney CBD; and</p> <p>(ii) Comply with Sydney Airport's regulation in regard to safety, lighting and height of buildings.</p>	<p>Building forms are of high quality design which will incorporate modern materials, finishes, treatments and landscaping to improve the public domain.</p> <p>The appearance and design of hotels as proposed reinforces the gateway function of the immediate area to the Airport, when viewed from the surrounding road network.</p> <p>The modern design and fresh appearance of hotels will contribute to the diverse character of the area.</p> <p>Landscaping as proposed will soften the building forms, enhance the existing streetscape and gateway function of the area.</p> <p>The proposal complies with the relevant height requirements of Sydney Airport.</p> <p>A variety of finishes, materials and textures are proposed for each hotel to allow each building to be differentiated.</p>	Yes

	C3 - Development which will penetrate Obstacle Limitation Surface (OLS) to be assessed by CASA, Air services Australia and the Airlines.	The proposal complies with the relevant height requirements of Sydney Airport.	Yes
	C4 - Redevelopment must take into account any road widening affectation	The subject site is not affected by a road widening reservation as per BLEP 2021.	Yes
	C5 - Development must not adversely affect operation of duplication of Sydenham-Botany Good Railway Line.	Proposal does not affect the existing operation of the freight rail line, nor the duplication of freight rail line as depicted in the Botany Rail Duplication EIS dated 1 October 2019. Proposal conditioned accordingly as per ARTC feedback.	Yes
	C7 - Development designed / constructed with AS2021 (Acoustic Aircraft Noise Intrusion-Building siting and Construction)	An Acoustic Report was submitted with the application. Recommendations were made to ensure that the development will comply with relevant Australian Standards and maximise amenity of future occupants. The proposal has been conditioned appropriately.	Yes
	C8 - Introduction of noise abatement measures to achieve compliance with current AS 2021 to not compromise architectural design or streetscape.	The proposed development incorporates acoustic abatement measures within the building form to achieve compliance with Australian standards and so as not to compromise architectural design or adversely impact upon the streetscape of Baxter Road.	Yes
	C9 - All development In / adjacent to, rail corridor / busy road to be designed as per <i>NSW Department of Planning 'Development Near Rail Corridors and Busy Roads - Interim Guidelines, December 2008'</i> .	The development has been designed in accordance with NSW Department of Planning 'Development Near Rail Corridors and Busy Roads - Interim Guidelines, December 2008'.	Yes
6.3.1 Amalgamation and subdivision	Development to comply Part 3E to ensure consistency with the Desired Future Character	Adjoining sites are redeveloped to their full potential or benefit from existing development consents.	Yes
	C1 - Max building height as per LEP	Proposal complies with relevant height standard. SACL raises no objection to the proposal.	Yes

6.3.4 - Building Design and Appearance	<p>C3 - Compliance with Civil Aviation Safety Authority requirements.</p> <p>C4 - Max height of building consistent with height of other buildings in immediate vicinity.</p>	Proposal (12 stories) is not inconsistent with the range of building heights in the surrounding context of the site i.e. vacant sites to 14 storey buildings further to the west.	
	<p>C7 - Schedule of finishes and detailed colour scheme.</p> <p>C8 - External finishes must be robust and graffiti resistant</p>	External colours / finishes are acceptable in the context. i.e. aluminium vertical louvres, timber vertical battens, framed glazing, metal capping, metal fins, sandstone wall, acrylic coloured render, vertical cabling to allow climbers to levels 1 and 2 carparking facades.	Yes
	C9 - Where blank walls on street frontages are unavoidable they must be screened by landscaping or treated as sculptural elements incorporating murals reflecting modern architectural design.	Nil blank walls to street frontages proposed.	Yes
	C10 - Walls must use non-reflective colours and materials to avoid glare, max reflectivity of any glazing is not >20% to avoid nuisance from glare.	Non reflective grey, brown, cream, beige and neutral colours proposed. Proposal conditioned accordingly.	Yes
	C11 - All elevations fronting a public place, or rail line, public place or proposed road, must be constructed of face brickwork or other decorative facade treatment to Council's satisfaction.	Elevations proposed to comprise varying textured rendered concrete, vertical aluminium timber battens and acrylic coloured rendered finishes.	Yes
	C12 - Buildings should be of contemporary / innovative design. All public frontages should be specially articulated with brick, stone, concrete, glass (non-reflective), (not concrete render).	Design of hotels are modern and contemporary with a mix of materials, finishes and treatments to provide an appropriate streetscape response and address.	Yes
	C13 - Open style or transparent materials encouraged on doors and/or walls of lifts and stairwells.	Clear glazing provided in proximity to lift lobbies, adjoining communal circulation spaces.	Yes
	C14 - Building height, mass, and scale should	Proposal complies with relevant height standard. Proposal is 12	Yes

	complement and be in keeping with character of surrounding /adjacent development.	stories in height and not inconsistent with the range of building heights in the surrounding context of the site i.e. vacant sites to 14 storey buildings. Bulk and scale on site is appropriate and design excellence achieved as stated by Councils Design Panel.	
	C15 - New buildings design requirements.	The proposal is consistent with these controls.	Yes
	<p>C16 - Street number visible from the street to allow visitors and emergency vehicles to identify the building.</p> <p>C23 - Driveways to provide adequate sight distance for the safety of pedestrians using the footpath area in accordance with AS2890.1 and AS2890.2.</p> <p>C24 - Pathways provide direct access and any edgework should be low in height or not reduce visibility of the pathway.</p>	The proposal is consistent with these controls. Relevant conditions have been imposed.	Yes
	<p>C28 - For new development provision must be made for connection to future underground distribution mains.</p> <p>C29 - Council may require bundling of cables surrounding the development to reduce visual impact of overhead street cables.</p>	<p>The proposal has been conditioned to ensure adequate services are provided to the development on site.</p> <p>Proposal conditioned accordingly to facilitate undergrounding of relevant overhead cables as required by the DCP.</p>	<p>Yes</p> <p>Yes</p>
	<p>C30 - Lighting must be provided to the external entry path, common lobby, driveway, and car park to a building using vandal resistant, high mounted light fixtures.</p> <p>C31 - The lighting in a car park must conform to AS1158.1, AS1680, and AS2890.1.</p>	Lighting has been incorporated into the design of the development both internally and externally.	Yes
	C34 Service areas including waste, recycling areas and external storage areas are to be located away	Servicing areas (i.e. substation, waste etc) are accommodated within each building on site and screened from public view.	Yes

	from principal street frontages and screened from view.			
	C35 Kerb and gutter, concrete footpath (or paved footpath) and any associated works along all street(s) frontage of a site shall be constructed and/or reconstructed of at the full cost of the developer.	Relevant conditions have been imposed to ensure indicative public domain works along the frontage of the site to Baxter Road are applied for and undertaken by the developer via the relevant process post determination of the subject application. All relevant frontage design work i.e. street tree planting, footpath, undergrounding of services shall be undertaken in accordance with Council requirements and implemented prior to the issue of Occupation of the development.		Yes
6.3.5 - Setbacks	<u>Front</u> - 3m landscaping setback - 9m to building	<u>Lot 2 (western hotel)</u> Ground = 1m – 3.1m landscaped planters L1 to L2 = Nil to planters, 1m to building edge L3 = Nil – 1.4m to planter edge L4 and above = 2.4m	<u>Lot 3 (eastern hotel)</u> Ground = 1m – 2.9m landscaped planters L1 to L2 = Nil to planters, 1m to building edge L3 = Nil – 1.4m to planter edge L4 and above = 2.485m	No – refer to discussion below.
	<u>Side</u> - 2m	<u>Lot 2 (western hotel)</u> Ground – L3 = Nil both sides L4 – L11 = 3m – 3.28m (west side) 3m (east side)	<u>Lot 3 (eastern hotel)</u> Ground – L3 = Nil both sides L4 – L11 = 4.37m – 5.15m (east side) 3m (west side)	Partial – refer to discussion below
	<u>Rear</u> – Nil to 3m	<u>Lot 2 (western hotel)</u> Nil – 3.639m	<u>Lot 3 (eastern hotel)</u> 2.457m – 6.375m	Yes
6.3.6 - Parking / Vehicular Access	Part 3A - Car Parking.	Refer to discussion above in 3A.2 - Parking Provisions		
6.3.8 – Site Facilities	C1 - New site facilities i.e. mail boxes, sub-stations to be designed / sited to enhance the development.	Site facilities integrated into building envelope and landscape design to obscure presence of necessary facilities. i.e. fire booster screened in louvred cupboard, substation in building envelope and gas regulator screened in landscaped planter.		Yes

	C2 - New site facilities situated to ensure satisfactory vehicular access by service personnel and vehicles.	Site services / facilities appropriately located to facilitate future servicing	Yes
	C3 - Above ground electricity / communication cables to be undergrounded.	Proposal conditioned accordingly.	Yes
	C4 - In some cases it may be necessary to provide an electricity substation adjacent to the frontage.	Substation chamber integrated into building envelope.	Yes
	C5 - Name / address to be clearly visible from the street. C6 - Street number must be visible	Proposal conditioned accordingly to ensure the street number and address of the development is clearly identifiable	Yes
	C7 - Arrangements satisfactory to Sydney Water to be made for provision to the land of water and sewerage services.	Proposal conditioned accordingly to ensure applicant liaises with Sydney water and obtains s73 certificate post determination.	Yes
	C8 - New utility services not to be incorporated into landscaping	Substation / fire booster integrated into building envelope. Gas regulator incorporated into landscaped planter at frontage of site.	No – given constraints of site, the hydrant booster and gas regulator are integrated into landscaped planters adjoining Baxter Road. Such services are conditioned to be exposed pipework in lieu of enclosed within a structure, to minimise their visual impact.
	C9 - Open storage areas delineated and screened	Nil open storage spaces / areas adjoining frontage of the site to Baxter Road	Yes

	C10 - Letterboxes along front boundary, clearly visible and accessible	Given proposed hotel use and 24/7 operation mail to be delivered to hotel lobby reception.	Yes
	C11 - Owners are to provide their own waste management services, not be visible from the street and in a designated area that is easily and safely accessible.	On site waste management proposed within building envelope, not visible from the street or public domain.	Yes
6.3.9 Landscape -	C2 Existing trees, including Council street trees and trees on neighbouring properties, retained and protected.	Refer to discussion in State Environmental Planning Policy (Biodiversity and Conservation) 2021	Yes
	C10 – Min. 10% of site landscaped. Lot 2 – 291.9sq/m Lot 3 - 304.3sq/m	<u>Lot 2 (western)</u> 460sq/m <u>Lot 3 (eastern)</u> 447sq/m Deep soil landscaping as existing retained south of building form and adjoining existing freight rail line, fronting Joyce Drive	Yes
	C12 - Underground parking beneath building footprint.	Above ground parking proposed. This is appropriately screened and forms part of the podium component of both developments. As designed above ground parking is appropriately obscured from the public domain.	No – acceptable given constraints and compliance with FSR, stormwater and deep soil provisions.
	C13 - Landscaped setbacks (side and rear)	Refer to Part 6.3.5 discussion	
	C14 - no OSD in landscaped setback or underneath landscaping.	OSD within building footprint	Yes
	C23 - Fire booster, water tanks, electrical kiosks and waste storage areas not in landscaped areas or street setback.	Services integrated into building form as previously discussed.	Yes
7F.2 General Requirements – Hotels and Motel Accommodation	C1 – Maximum stay permitted is 3 months.	A Plan of Management has been submitted confirming the maximum stay period permitted will be for 3 months	Yes

	C2 – Main access point to be located at main street frontage of property.	The main access point has been provided off Baxter Road.	Yes
	C4 – The minimum size for a visitor's room is 5.5m ² for the bedroom floor area for each person staying within the room.	Hotel rooms vary in overall area and dimensions from 19.61sq/m for a standard room and 21sq/m - 32.85sq/m for premium / accessible room.	Yes
	C7 – A small kitchenette is permitted if adequate cupboards and shelves are provided.	Nil kitchenettes within hotel rooms.	Yes
	C9- Bathrooms must be provided in accordance with the <i>Building Code of Australia</i> .	A separate bathroom is provided within each hotel room in accordance with the BCA.	Yes
	C10 – The design and operation of hotel must take into account possible noise impacts on adjacent properties and the surrounding area.	There are no residential properties adjoining the subject site, notwithstanding, an Acoustic Report was submitted with the application which incorporates acoustic amelioration measures to mitigate potential acoustic impacts onto and arising from the development. The proposal has been conditioned accordingly.	Yes
	C11 – Plan of Management (POM) to be submitted.	<p>A Plan of Management for each hotel was submitted as part of the DA. The proposal has been conditioned to require that each hotel operate in accordance with the POM and that each POM is reviewed annually.</p> <p>The proposal has further been conditioned to require both POM be revised to incorporate as follows;</p> <ol style="list-style-type: none"> 1. POM for Lot 3 be revised to incorporate acoustic recommendations and restrictions of the Acoustic Report submitted with this DA for the rooftop bar as discussed further in this report. 2. Both POM be revised to correctly detail the size of hotel rooms in 2.1.5 of the POM. 3. Both POM to be revised to clarify laundering processes, waste collection / times / frequency, deliveries, shuttle bus timetable service, staff car parking and flooding evacuation procedures. 	Yes – as conditioned.

	C12- The building is to comply with Parts C, D, and E of the BCA.	The proposal has been conditioned to ensure compliance with the relevant fire safety requirements of the BCA.	Yes
	C13 – Each room is to comply with Parts C, D E and F5 of the BCA so as to ensure there is adequate fire safety in the building and adequate sound insulation between each room.	The proposal has been conditioned to ensure compliance with the relevant fire safety requirements of the BCA.	Yes

Non Compliance

1. Car Parking

As noted above the proposal seeks to vary the DCP car parking rates for the proposed development, indicating that a reduced rate as per the RMS Guide to Traffic Generating Developments is more suitable, providing a reduced rate of parking for the development.

It should be noted that Council have on numerous occasions varied the car parking rate to 1 space per 4 rooms, which is deemed to be a more appropriate car parking rate in lieu of 1 space per 1.5 rooms or 1 space per 2.5 rooms as detailed within BBDCP 2013.

The proposal was considered by the RMS, Councils Engineers and Local Traffic Committee where it was noted that the proposed parking variation as sought by the applicant was acceptable, given the context of the site, proximity to Mascot Station, Sydney Airport, numerous available public transportation options i.e. taxi, uber, bus etc and the probability that the majority of guests to the hotel are unlikely to arrive via private transportation.

In supporting a variation to the relevant DCP requirement, the proposal has been conditioned to require the operation of an efficient shuttle bus to service to the airport and city, in order to further assist in transporting future users of the hotel and reducing traffic generating arising from the development.

Given the above a variation in this instance is supported and the proposal satisfies the objectives and intent of this provision.

2. Building Setbacks

The proposal does not strictly adhere to the required DCP setbacks as noted in the compliance table above. The constraints of the site as referred to in the '*Site Location and Context*' section of this report, restrict the location of building forms upon both lots 2 and 3.

The northern portion of both lots is the most suitable area for redevelopment, given such locations are directly accessible from Baxter Road, the land is relatively flat and can be safely and sufficiently buffered from the existing and future, yet to be duplicated freight rail line which traverses the site.

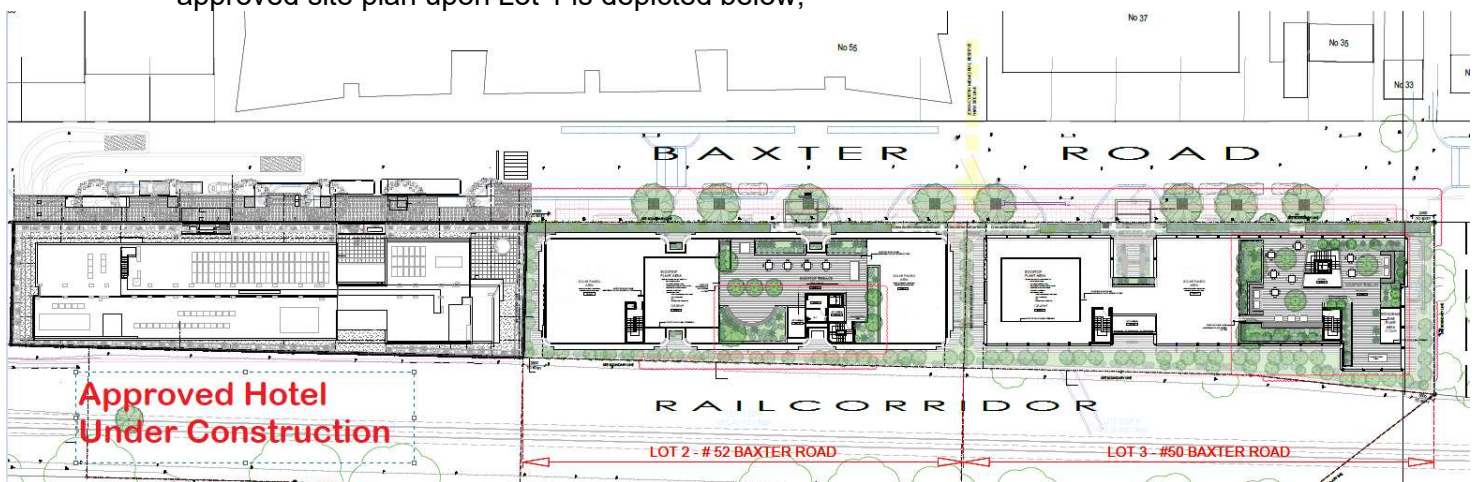
Whilst redevelopable portions of the site are also constrained i.e. burdened by easements, acid sulfate soils, flood affectation etc, there are means of resolution for the aforementioned which enable redevelopment to occur in the location of the building footprints as proposed.

Taking into consideration the unique nature and constraints of the site, applicable 3:1 FSR and 44m height limit, redevelopment of the lots could occur strictly in compliance with DCP

setbacks and the aforementioned development standards, however this would severely restrict the redevelopment potential of the lots, and as a consequence result in an unviable building envelope and form which would be out of character in the current context.

Consideration has therefore been given to the above factors and it is considered that a variation to DCP setbacks in this instance is appropriate given;

- The proposal adheres to the FSR standard applicable to the site.
- The proposal does not generate adverse overshadowing, visual privacy or acoustic impacts onto neighbouring properties or those on the northern side of Baxter Road.
- The proposal retains sufficient landscaping and deep soil areas on site and appropriately manages stormwater.
- The proposal is not inconsistent with previously approved setbacks of the hotel under construction on the adjoining western allotment (Lot 1) and thus the proposal as designed will provide a consistent and coherent streetscape response within Baxter Road. The approved site plan upon Lot 1 is depicted below;



- The proposal provides an appropriately designed street wall development which will activate the length of the street frontage to Baxter Road.
- The proposal provides an appropriate transition in level and delineation between public and private domain along the frontage of the site. This will improve the existing amenity of the public domain.
- The proposal appropriately activates the streetscape to Baxter Road and incorporates landscape planters along the frontage of the site.
- The proposal is well designed, responds to and enhances, the qualities and identity of the area including the adjacent sites, streetscape and neighbourhood.
- The proposal demonstrates a high level of amenity being created within the surrounding neighbourhood context, which aligns well with the desired future character for the area. An excellent degree of internal amenity and consideration of consolidated use of space is proposed which will contribute significantly to the local context.
- The proposed building form demonstrates Design Excellence as required by Clause 6.10 of BLEP 2021 and was supported by Councils Design Excellence Panel.

The variation to DCP setbacks as sought by this application is supported on the basis of the above.

Part 8.7 — Mascot Character Precinct

The subject site is located within the southern portion of the Mascot Character Precinct. The proposal is consistent with the future desired character and requirements of this part.

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

The Regulations were updated by the State Government of NSW on 17 December 2021 and came into force on 1 March 2022. The provisions of the Regulations relating to demolition have been considered in the assessment of the application.

Pursuant to clause 69 of the Regulations building works must be carried out in accordance with the requirements of the Building Code of Australia. It is noted that the proposal was accompanied by a BCA Report which confirmed that proposed works were assessed against the Deemed to Satisfy provisions of the Building Code of Australia and that the proposal as designed is capable of complying with the BCA without significant modification to plans for which approval is sought. The proposal has been conditioned accordingly to ensure compliance with the requirements of the BCA.

Based on the above, the proposal is consistent with the requirements of the Regulations 2021 and is acceptable in this regard. All relevant provisions of the Regulations have been considered in the assessment of this proposal.

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

Access Easement and Right of Carriageway

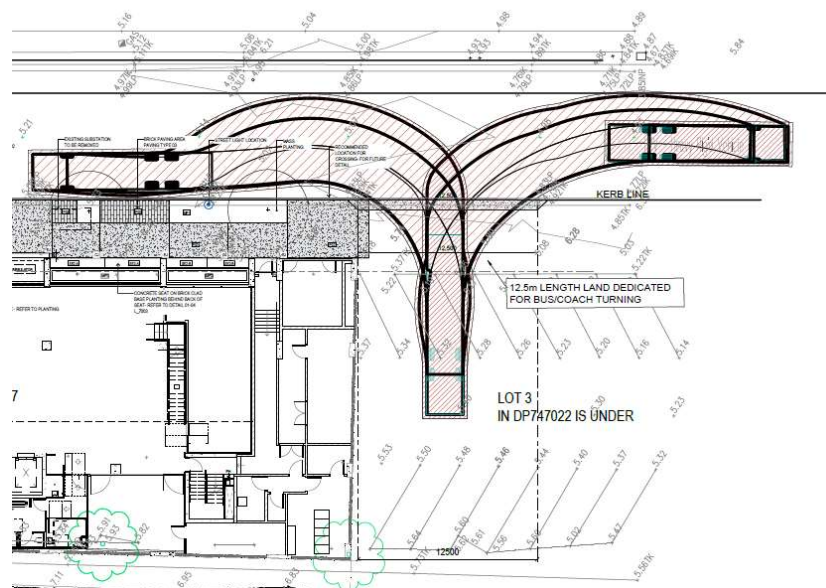
DA-2019/233 (*Torrens title subdivision of the site into 3 lots*) and DA-2019/234 (*Construction of a thirteen (13) storey hotel comprising 301 rooms, 3 levels of car parking, restaurant, cafe, gym*) as approved, both required that the following be provided.

a) Right of Carriageway for Vehicular Access

Benefitting Lot 1 and Burdening Lot 2 / Benefitting Lot 2 and Burdening Lot 3

Given the shallow depth of the site and insufficient turning area for a HRV (coach), loading/unloading for the hotel approved and currently under construction on Lot 1, a ROC for a vehicular turning area was required on Lot 2 as part of DA-2019/234.

Additionally, such a ROC was required to be provided upon Lot 2, burdening Lot 3 as part of the subdivision DA, to ensure such access could be provided at a later date to these lots to facilitate redevelopment.



b) Easement For Pedestrian Access (*emergency pedestrian egress*)

Lot 1 is subject of an easement which benefits Lots 2 and 3, facilitating emergency egress and evacuation during a flooding event.

After construction of the Porte De Cohere as proposed in Stage 1 of this DA and prior to the commencement of construction of Stage 2, the existing Right of Carriageway (ROC) burdening Lot 2 and benefitting Lot 1 (existing hotel under construction) facilitating vehicular access for HRV vehicles, will need to be extinguished and replaced with a new right of carriageway benefitting Lot 1, allowing the hotel on Lot 1 to use the Port De Cohere proposed as part of this application.

The new ROC shall cover the extent of the Port De Cohere to facilitate the U-Turn movements of Heavy Rigid Vehicles (i.e. coaches) requiring access to the hotel on Lot 1.

Given the ownership of Lot 1 (i.e. hotel under construction) differs from the ownership of Lots 2 and 3 (i.e. subject DA), the consent authority is not in a position to approve the current DA which will in essence extinguish the aforementioned ROC in (a) above, without the consent of the Owner of Lot 1. In this regard, the proposal is subject of a Deferred Commencement Approval, requiring the obtainment of the relevant owners consent from Lot 1, to facilitate the relevant changes to the ROC on Lot 2 which benefits this adjoining owners property i.e. Lot 1.

Artwork / Sculpture

Plans detail an indicative future sculpture at ground level within the landscaped planter adjoining the port de cohere. It is suggested that this shall be in the form of a 4.5m length x 1.4m width balloon dog artwork. Nil detail was provided in relation to the proposed artwork, i.e. colour, material, height, reflectivity etc as such the proposal has been conditioned that details be submitted to Council for consideration prior to the issue of any occupation certificate.

Indicative Public Domain Works

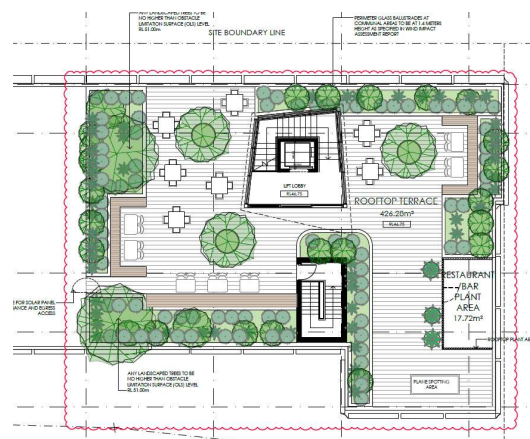
As existing the frontage of the site comprises street trees, kerb/gutter, power poles and lines, a grass verge and services.

Architectural plans detail indicative public domain works beyond the site boundaries, which do not form part of this application, are indicative only and subject to a further application to Council under the Roads Act, post determination of this application.

Works proposed within the public domain are beneficial to the development and streetscape within Baxter Road, as existing there is nil designated pedestrian footpath, seating or delineated planter zones along the frontage of the site.

Concept plans depict the provision of;

- a) Removal of street trees in order to underground existing overhead power lines.
- b) Replacement street tree planting.
- c) New street lighting, kerb and gutter.
- d) Provision of a dedicated paved pedestrian footpath.



As noted in the submitted Acoustic Report, the closest residential receivers are The Branksome Hotel and residential dwellings located at 59 Baxter Road, opposite the proposed rooftop restaurant / bar location approximately 18m away.

The height and location of the proposed rooftop restaurant / bar and proposed landscaping at the periphery which recesses useable areas, has been considered in contrast to surrounding built forms and uses. It is considered that that adverse overlooking impacts are unlikely to arise given the aforementioned.

Consideration has been given to the future use of this rooftop space and the potential acoustic impacts it may generate. The submitted Acoustic Report has considered the use of the rooftop area upon Lot 3 with a maximum of 50 persons at any one time and background music. The report stated as follows.

"Noise levels from the use of the rooftop bar with a maximum of 50 patrons and some background music will result in compliance with the determined criteria during the evening period, however, the following management procedures are recommended for the operation of the rooftop bar.

- *No live music or DJs with noise limiters applied to sound systems (<80dB(A) Sound Power Level, Lw)*
- *The rooftop bar is not to operate beyond 12am.*
- *Strict limits on the number of people allowed within the rooftop bar area at any one time"*

In order to ensure the above recommendations are adhered to and the use of the rooftop restaurant / bar does not generate adverse acoustic impacts to nearby properties, the proposal has been conditioned to require that the Plan of Management for Lot 3 be revised to incorporate the above recommendations, be submitted to Council prior to the issue of any Occupation Certificate and be implemented on site at all times.

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

The subject site is affected by a number of environmental hazards, including a high water table, flooding, aircraft noise, its location adjoining a freight rail line, classified road frontage to the south and potential contamination. These hazards have been considered in the assessment of this application, with relevant conditions of consent imposed as previously referred to in this report.

The subject site is located within the Mascot Precinct and is in close proximity to Kingsford Smith airport, which is the primary hub for international and domestic travel within Sydney. The site is zoned for an increase in density and height and is currently underutilised given the car parking use occurring on the property.

There are no further constraints or exceptional circumstances which would hinder the suitability of the site for the proposed development. The subject site is deemed suitable for the proposed development.

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

In accordance with Part 2 of the Botany Bay Development Control Plan 2013 – Notification and Advertising the development application was notified to surrounding property owners. Three (3) submissions were received and the following matters were raised;

Height / The proposed plan intends to construct 12 story (highrise) buildings in Mascot which is mostly a lowrise suburb / We don't want any more highrise buildings in Mascot on Baxter Street or anywhere else / The building is very close to the upper RL levels, close to the limits of the Procedure for Air Navigation Service – Aircraft Operations Surface (PANS-OPS) whose level = RL 54.5m ; Which does not leave very much room for error in poor visibility

weather like these past few days of extreme rain conditions, especially as these buildings are closest to the airport runways / As well as the Obstacle Limitation Surface (OLS) level = RL51m / The lift overruns (49.6m) and Fire Stairs (49.15m) should not breach the building height plane (BHP) of 44m, but should be within the allowable height. The building should come down in height, to be able to comply with council's LEP and DCP / As Baxter Road is a closed-off street, with the majority of buildings being low 2 storey residential buildings at one end, and a few commercial buildings of 3-4 storeys at the other, (even the Branksome Hotel and residences at 60 Robey Street is only 6 storeys in height, as shown on these plans); these proposed structures will dwarf all other elements of Baxter Road, especially at the pedestrian level, without any appropriate set backs to offset the wind tunnels that will be created. Therefore, it is suggested that the number of floors should be reduced to 7-8 floors only

Comment: The subject site is zoned for an increase in height and density. The matter of height has been previously discussed within this report and the overall height of the development is considered satisfactory. The proposal was referred to Sydney Airport Corporation and subsequently reviewed in relation to aircraft safety. Nil objection was raised by Sydney Airport Corporation subject to the imposition of conditions of consent which were imposed in the draft NOD.

On the Elevations, each of these rooms appear to be very minimal in size, so as to fit the 288 – 300 rooms per site; they only appear to be showing a bed with limited room between the end of the bed and the wall, IE not sufficient room for a table, desk with chair, TV cabinet, bags stand, let alone a couch etc. This means that they will be of a very low standard or poor quality rooms, more appropriate for 'ghetto' style of accommodation, not suitable for Sydney's gateway airport. This DA is too greedy for maximising accommodations, which is likely to end up being of a substandard. Therefore, it is suggested that the number of rooms on each floor should be reduced, allowing fewer rooms on each floor, as well as fewer floors being allowed.

Comment: Proposed hotel rooms are of sufficient dimensions and area and are designed in a manner which is not inconsistent with previously approved hotels within proximity to the site. The proposal is satisfactory with regards to the requirements of Botany Bay DCP 2013 and amenity within the proposed hotel rooms is of a satisfactory standard.

Separations between these two buildings and neighbouring buildings should be greater than the 3m - 4m shown, so that, if in the future, this accommodation reverts from hotel to residential accommodation, there will be more amenity between neighbouring windows, otherwise you will just be approving the 'slums of the future'!

Comment: The proposal is for a hotel development and thus has been assessed in this regard. Should a future application be submitted, this will be considered on its merits and in accordance with the relevant planning requirements which apply at the time.

The proposal discusses the Restaurant and Bar on level 11, of Lot 3, but fails to show same on the plans – only shown as rooms on all levels, with terrace on rooftop.

Comment: The rooftop restaurant / bar is identified on the rooftop plan and has been considered previously in this assessment.

The Port Cochere is limited to 4.5 m height, whereas the largest buses are 4.3m in height, so could be scraping the roof, or taking off passenger's heads on a Hop-on Hop-Off tourist bus, if it was to service these hotels. It would be similar to the Sydney Ferries not being able to go under certain bridges, when people are out on the decks / The turning circle radius for these larger vehicles needs to be greater than 12.5m as shown and up to 20m in

width / Porte Cochere needs to be more generous to allow additional space for all the vehicles to park, while waiting to be valeted into the parking areas of each hotel, as well as taxis buses etc. otherwise there will be chaos on Baxter Road, for all other road users, to be able to exit the street.

Comment: Hop on and hop off buses travel along established routes by operators and will not be stopping at the proposed hotel development.

The relevant Australian Standard requires a minimum headroom clearance of 4.5m for the porte-cochere. The development incorporates a 6.8m headroom clearance.

The porte-cochere is 40m in length and 22m wide and takes up 600m² of the site. The Port Cochere has been designed to accommodate the swept paths of Heavy Rigid Vehicles (HRC) i.e. coaches, which is the largest vehicle that is likely to visit the site.

The traffic report states that there should be a designated number of 6 parking spaces for taxis, at one per 100 rooms, and then states that none will be provided. Also states that this limited Porte Cochere space will be able to be all things to all vehicles and meet the different needs of all 588 guests rooms, which is farcical.

Comment: The porte-cochere is for shared use for coaches, taxis and any drivers arriving to the site. The area allocated for a 12.5m HRV (coach) is only envisaged to be occupied by a coach twice a week for a limited period of time. Outside of these times, this area is also available for use by light vehicles. A total of five (5) light vehicles can be accommodated within this coach area.

Outside of the main circulation area, there are an additional three (3) spaces adjacent to the northern property boundary within the porte-cochere for use by light vehicles. As such, there is sufficient area to accommodate the set-down and pick-up demands of both hotels within the porte-cochere. Council considers that the development provides sufficient taxi and coach drop off areas within the combined porte-cochere shared by both developments.

The traffic study states that 8 accessible rooms are to be provided in each hotel, therefore there should be a minimum of 8 accessible parking spaces provided in each car park. But the report states in 5.2 p.14 that there will be 'a total of 8 accessible parking bays for Lots 2 and 3'; being half the number required. It also advises that all persons will alight vehicles at the Porte Cochere, assuming that all modified vehicles for a disabled person is able to be driven freely by others. This should be reconsidered, as many modified vehicles can not be safely driven by others, but need to be driven only by the owner, so normal width disabled parking spaces need to be provided, that can be accessed for use by the general public.

Comment: The development incorporates 8 x accessible car parking spaces in each hotel, being a total of 16. This is double that required (i.e. 4 per hotel) as per the relevant requirements of the Building Code of Australia.

Traffic Study under 6.2 advises that RMS guidelines of 2002 does not have details for vehicle movements generated by hotels, therefore the assumption of the Baxter / O'Riordan streets intersections working appropriately, when there will be 3 hotels in the street, if this DA is approved, is short sighted, along with the simple fact that there is only one way in and one way out of this street, which does not allow for the accumulated impact of such traffic numbers generated by the number of hotel rooms of the three hotels, as well as the residential and other business activities of Baxter Road.

Comment: The TfNSW Guide to Traffic Generating Developments 2002 provides traffic generation rates for various uses based on an average of traffic surveys conducted by

TfNSW in the past. TfNSW Guide states that for hotel (tourist) developments, NSW based data is not available.

In the absence of a rate within the TfNSW Guide, the traffic report prepared for the proposed development draws comparison to comparable tourist hotels in the vicinity of the site for which survey data is available.

Traffic counts were conducted of a development which is located approximately 650m north of the subject development. These traffic counts were used to derive a traffic generation rate for both the morning and evening peak periods which were then applied to the site. As the surveys were conducted in the vicinity of the subject site of a comparable development, they reflect travel modes which would be expected for the proposed development.

The traffic generation of the proposed development was then applied to SIDRA 9 modelling of the intersection of O'Riordan Street, Qantas Drive, Sir Reginald Ansett Drive and Joyce Drive and the intersection of O'Riordan Street and Baxter Road to assess the impact of the additional traffic on the operation of these nearby intersections. The modelling outputs showed that both intersections experienced minimal change to the intersection delay in the morning and evening peaks in the development scenario. All intersections operated with spare capacity in all scenarios (existing and development).

The traffic modelling has been reviewed by Council and TfNSW and no objections have been raised. The development will not result in adverse significant material impact on the performance of the intersection of Baxter Road and O'Riordan Street.

Given the 180mm (7 inches) of rain that has fallen in the past two days in Kirribilli, (can only assume it is similar across other areas of Sydney), as such, concern is raised due to the Flood prone nature of this site, with excavation and loading docks etc. shown on the plan and discussed in the report, to be 'flooded', sitting below the natural ground level and the provision of louvred walls to allow the flood waters to pass through the site. One elevation shows the flood waters half way up the door of the tourist bus parked in the Porte Cochere. This should be redesigned, to mitigate the 1 in 100 year floods.

Comment: The development has been designed to respond to the constraints of the sites flood affectation. At grade areas below the flood level are entirely open areas that are only to be used for short periods of time. Habitable areas of each hotel are to be set at floor levels which are designed above the flood level. The existing flood storage within Lot 2 and 3 (the site) is to be maintained, hence the building slab suspended above the 1% AEP level on columns to minimise any adverse impact on the flood behaviour.

Sufficient emergency egress and flood refuge areas are provided within the development and a comprehensive flood risk management plan has been submitted by the applicant. The matter of flooding has been discussed in detail previously within this report.

Nor should emergency or medical evacuation of the two hotel sites, in the event of a flood, be reliant upon a doorway into the adjacent hotel complex on Lot 1, from the car park level. Would hate to see the chaos associated with the evacuation of potentially over 600 people through this car park doorway – great TV news coverage, along with the associated investigations as to why that was approved!

Comment: The doorway referred to by the objector is to be used only in the event of an extreme emergency and is not intended for all occupants to use at once. Each hotel is provided with safe flood refuge areas as previously discussed.

S.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 redevelopment of the site in accordance with its environmental capacity.

Proposed built forms as designed are high quality buildings which are confirmed by Councils Design Excellence Panel, to add architectural value to the existing streetscape.

The proposal does not create unreasonable impacts on surrounding properties. As such it is considered that the development application is in the public interest and will facilitate the orderly economic development of the land.

S7.11 Contributions

The proposed development will increase demand for public amenities within the Mascot Precinct. In accordance with Council's contributions plan, the proposal has been conditioned to require the payment of relevant s7.11 contributions for a total of 205 staff i.e. \$755,470.10 towards the provision and/or improvement of human services in the local government area.

Conclusion and Reasons for Decision

The proposed development has been assessed with regard to the s4.15 of the Environmental Planning and Assessment Act 1979 including relevant State Environmental Planning Policies, Bayside LEP 2021 and Botany Bay DCP 2013.

The proposed development, is a permissible land use within the zone with development consent. In response to the public notification, three (3) submissions were received. The matters raised in these submissions have been discussed in detail within this report.

Accordingly, the proposal is supported for the following reasons:

1. The proposal is permissible within the zone with development consent and satisfies the zone objectives.
2. The proposed development complies with the relevant planning instruments, with a minor variation to the Height of Building standard deemed acceptable, having regard to the justification provided within this report.
3. The proposal is of an appropriate height, bulk, scale and form for the site and is consistent with the emerging desired future character of the area as envisaged by BBDCP 2013.
4. The proposal achieves and demonstrates design excellence as required by requirements of Clause 6.10 of the BLEP 2021 and was supported by the Design Excellence Panel.
5. The applicant has appropriately responded to and resolved the flood constraints of the site.
6. The proposed development is a suitable use for the subject site and its approval is in the public interest.