

COUNCIL ASSESSMENT REPORT

SYDNEY EASTERN CITY PLANNING PANEL

PANEL REFERENCE	PPSSEC-190
DA NUMBER	MDA-2022/31
PROPOSAL	Modification to DA-2015/10022 to relocate parking from basement 2 to Level 1 of the podium form (deleting basement Level 2), subsequent redistribution of floor space and reconfiguration of each level of the building; increase in the number of apartments from 117 to 118 including 50 build-to-rent apartments; increase communal open space and associated reconfiguration of floor plates and building envelope.
ADDRESS	653 Gardeners Road, Mascot (Also known as 2 Bourke Street, Mascot) Lot 10 in DP 1219678
APPLICANT	S.N.S Pty Ltd
OWNER	S.N.S Pty Ltd
DA LODGEMENT DATE	2 March 2022
APPLICATION TYPE	Section 4.56 (original DA approved by Land and Environment Court)
REGIONALLY SIGNIFICANT CRITERIA	Clause 2, Schedule 6 of the State Environmental Planning Policy (Planning Systems) 2021: General Development over \$30 million
CIV	\$54,199,630 (excluding GST)
CLAUSE 4.6 REQUESTS	N/A as it is a Section 4.56 application, however variations to FSR & Height proposed.
KEY SEPP/LEP	<ul style="list-style-type: none"> • State Environmental Planning Policy (Planning Systems) 2021 • State Environmental Planning Policy (Resilience and Hazards) 2021 • State Environmental Planning Policy (Biodiversity and Conservation) 2021 • State Environmental Planning Policy (Industry and Employment) 2021 • State Environmental Planning Policy (Transport and Infrastructure) 2021

	<ul style="list-style-type: none"> • State Environmental Planning Policy (SEPP) No. 65 – Design Quality of Residential Apartment Building • State Environmental Planning Policy (Housing) 2021 • State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 • Bayside Local Environmental Plan 2021
TOTAL & UNIQUE SUBMISSIONS	Three (3) submissions (two from the same person).
KEY ISSUES IN SUBMISSIONS	<ul style="list-style-type: none"> • Scale • Privacy • Solar access • Insufficient landscaped area • Impacts on views • Structural risks • Insufficient quality of the application • Overdevelopment • Safety issues for pedestrians with vehicles exiting and entering the site
DOCUMENTS SUBMITTED FOR CONSIDERATION	<ul style="list-style-type: none"> • Architectural plans • Landscape plans
SPECIAL INFRASTRUCTURE CONTRIBUTIONS (S7.24)	Not applicable
RECOMMENDATION	Approval
DRAFT CONDITIONS TO APPLICANT	Yes
SCHEDULED MEETING DATE	8 June 2023
PREPARED BY	Andrew Ison, Senior Development Assessment Planner
DATE OF REPORT	29 May 2023

EXECUTIVE SUMMARY

The modification application (MDA-2022/31) seeks consent to relocate parking from basement 2 to Level 1 of the podium form (deleting basement Level 2), subsequent redistribution of floor space and reconfiguration of each level of the building; increase in the number of apartments from 117 to 118 including 50 build-to-rent apartments; increase communal open space and associated reconfiguration of floor plates and building envelope.

Approval for a mixed use development comprising the erection of an 11 storey building containing commercial space at ground floor, and 117 residential apartments above, and provision of 158 car parking spaces provided over 2 basement levels was issued by way of Consent Order by the Land and Environment Court on 20 December 2016.

The subject site is known as 653 Gardeners Road, Mascot ('the site'), however is also known as 2 Bourke Street, Mascot. The site comprises a lot with three separate frontages including Gardeners Road to the north, Bourke Street to the east and Galloway Street to the

south. The site occupies a regular shaped area of 3,284m². The current vehicular access to the site is via Bourke Street.

The site is located in an area of transition from industrial activities to high density residential, and is located within an area identified as the Mascot Station Precinct, which is generally bounded by (in a clockwise direction) Gardeners Road to the north, Kent Road to the west, Coward Street to the south and O’Riordan Street to the east.

The site is located in the MU1 Mixed Use zone pursuant to Clause 2.2 of the Bayside Local Environmental Plan 2021 (LEP). The approved development subject to this modified application is defined as a shop top housing development, which is permissible with consent in the MU1 Mixed Use zone. The proposed amendments subject to this application, including provision of ‘build to rent’ housing, will not change the land use and by extension its permissibility.

The principal planning controls relevant to the proposal include *State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development* (‘SEPP 65’), *State Environmental Policy (Housing) 2021*, the *Bayside Local Environmental Plan 2021* (‘LEP’), and the *Botany Bay Development Control Plan 2013* (‘DCP’). The proposal is inconsistent with various provisions of the planning controls, however the proposal is acceptable for reasons discussed in the report. The key non-compliant provisions include:

- Part 3E of the Apartment Design Guide with relation to deep soil zones
- Part 3F of the Apartment Design Guide with relation to visual privacy
- Part 4F of the Apartment Design Guide with relation to common circulation and spaces
- Clause 4.3 of the Bayside Local Environmental Plan 2021 with relation to height of building (a further increase from 51m as approved to 53.5m, a 21.6% variation to the maximum 44m height)
- Clause 4.4 of the Bayside Local Environmental Plan 2021 with relation to floor space ratio (a further increase from 3.39:1 as approved to 3.53:1, a 10.4% variation to the maximum 3.2:1 permitted FSR)
- Part 9A.4.3.4 of the Botany Bay Development Control Plan 2013 with relation to street setbacks

The modification application was referred to Council’s Design Review Panel which confirmed that it satisfied both the Design Quality Principles in SEPP 65 as well as the design excellence provisions in the Botany Bay Local Environmental Plan 2021.

Referrals from external agencies were undertaken, with the following below being satisfied:

1. Section 4.47 of the Environmental Planning and Assessment Act in relation to modified General Terms of Approval from Water NSW
2. Clause 2.98 of the State Environmental Planning Policy (Transport and Infrastructure) 2021 in relation to modified concurrence from Sydney Trains
3. Clause 28(2)(a) of State Environmental Planning Policy (SEPP) No. 65 – Design Quality of Residential Apartment Building in relation to advice of any design review panel have been satisfied; and
4. Clause 6.4 of Bayside Local Environmental Plan 2021 in relation to a controlled activity from Civil Aviation Safety Authority.

The proposed modifications include 50 of the 118 units being nominated build-to-rent housing in accordance with the Housing SEPP 2021. It satisfies all of the relevant provisions in the SEPP including car parking, and a condition will be imposed in the attached draft schedule of modified conditions with relation to restrictions on the title.

The site is impacted by road widening on the southern boundary to facilitate the widening of Galloway Street, with existing conditions retained in the attached draft schedule of modified conditions to ensure that the relevant part of land is dedicated to Council prior to issue of any Occupation Certificate.

The application was placed on public exhibition from 11 to 25 March 2022, with one (1) submission being received. Upon the lodgement of amended plans and an amended description, the application was placed on re-exhibition from 10 to 24 May 2023, with two (2) submissions being received. These submissions and their issues are considered further in this report.

The original application was originally referred to the Joint Regional Planning Panel for determination pursuant to Clause 3 of Schedule 4A of the Environmental Planning and Assessment Act 1979 (EP&A Act) as the Capital Investment Value of the proposal was \$70,507,285. This modification application is referred to the Sydney Eastern City Planning Panel ('the Panel') pursuant to the *'Instruction on functions exercisable by Council on Behalf of Sydney District or Regional Planning Panels – Applications to Modify Development Consent'* (dated 1 August 2020) as the original proposal was refused by the Panel and the current modification includes a departure from both the height and FSR development standards that exceeds 10%.

A briefing was held with the Panel on 24 March 2022 where key issues were discussed, including noted visual impact of above ground parking on the streetscape, further justification required of the additional gross floor area, and the applicant to investigate build to rent or affordable housing.

A second briefing was held on 29 March 2023 where key issues were discussed, including EV charging points required in the car parking area, and car parking to be assessed, with consideration to be given to excess parking and whether it is to be included in GFA calculation.

The key issues associated with the proposal included:

- Deletion of approved Level 2 basement and relocation of car parking to above ground to Level 1;
- Reconfiguration of approved building, with relocated communal open space, and changes to building setbacks;
- Reconfiguration of the finished floor levels;
- An increase in the approved floor space ratio;
- An increase in the approved height of building, including a new Level 12;
- 50 of the proposed 118 units being build-to-rent housing in accordance with the Housing SEPP 2021;
- Amended General Terms of Approval have been issued by Water NSW;
- Amended Concurrence has been received from Sydney Trains;
- The proposed modifications is considered to be substantially the same development;
- The variation to the height of building development standard is considered acceptable;
- The variation to the floor space ratio development standard is considered acceptable;
- Advertising signage top of building.
- A total of three unique submissions have been received

Following consideration of the matters for consideration under Section 4.15(1) of the EP&A Act, the provisions of the relevant State environmental planning policies, in particular SEPP

65, the LEP and the DCP, the proposed amendments subject to this modification application can be supported.

Following a detailed assessment of the proposal, pursuant to Section 4.16(1)(b) of the *EP&A Act*, MDA-2022/31 is recommended for approval subject to the modified conditions contained at **Attachment A** of this report.

These modified conditions have been rationalised, with a number of conditions being updated to reflect current legal requirements.

THE SITE AND LOCALITY

The Site

The subject site is located at 653 Gardeners Road, Mascot (Lot 10 in DP 1219678), also known as 2 Bourke Street, Mascot. The proposed development site has a frontage of 22.062m to Gardeners Road, a secondary frontage of 90.504m to Bourke Street and a third / dual frontage of 22.062m to Galloway Street, with a total site area of 3,284m². The subject site currently contains consists of a number of buildings on site, with an older industrial building located to the south and a contemporary office type building to the north, with also a large hardstand area located in the north-east portion of the site. It is currently being used by Avis Budget (a car rental company). The site has a cross fall from Bourke Street in the east to the west of approximately 1 metre.

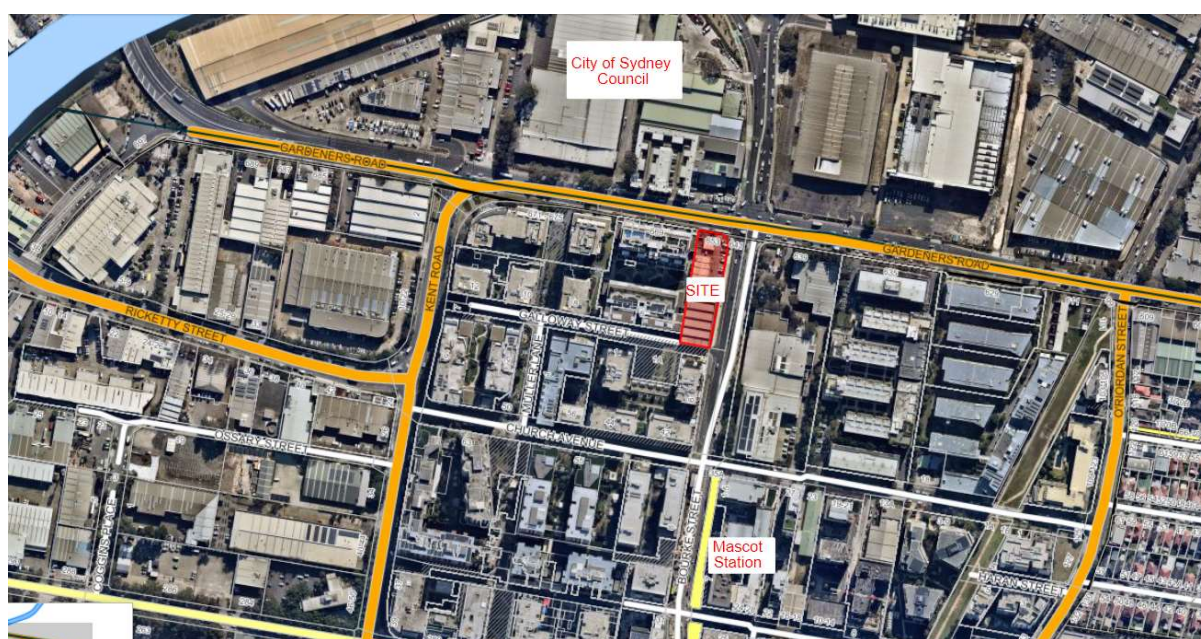


Figure 1: Aerial of subject site, marked in red [Source: Bayside IntraMaps]



Figure 2: Subject site, looking south down Bourke Street at the Gardeners Road intersection

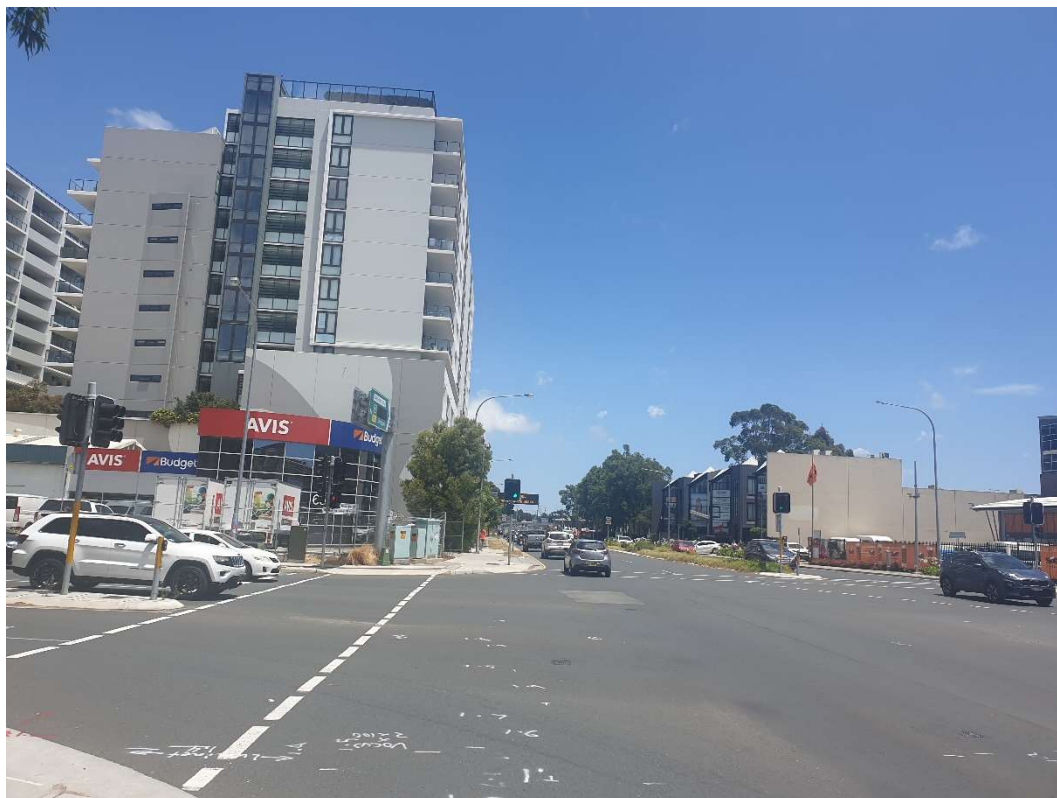


Figure 3: Gardeners Road, looking west at the Bourke Street intersection



Figure 4: Bourke Street, looking north at Galloway Street



Figure 5: Galloway Street, looking east approaching the Bourke Street intersection

The Locality

The subject site is located on the northern boundary of the Mascot Station precinct, on the southern side of Gardeners Road and the western side of Bourke Street. The subject site is surrounded by a number of land uses with (in a clockwise direction) with warehouse buildings on the northern side of Gardeners Road (within the City of Sydney Council area), a warehouse building to the east at 639 Gardeners Road, a mixed use development to the south at 6 Bourke Street, and a mixed use development to the west at 669 Gardeners Road (known as the 'Avantra Apartments').

The site is one of the few remaining industrial sites located in an area of transition from industrial activities to high density residential, and is located within an area identified as the Mascot Station Precinct, which is generally bounded by (in a clockwise direction) Gardeners Road to the north, Kent Road to the west, Coward Street to the south and O'Riordan Street to the east. The streetscape in the immediate area to the south of Gardeners Road is generally typified by recently completed multi-storey mixed use developments up to a height of 12 storeys. The subject site is located approximately 200 metres to the north of the main entry to Mascot railway station.

THE PROPOSAL AND BACKGROUND

The Proposal

The applicant seeks the following amendments:

- Reduction in the number of basement levels from two to one, to decrease construction risk, particularly in relation to the rail tunnel infrastructure and impacts associated with dewatering. The approved basement level 2 is fully within the ground water table. The approved basement level 2 will be relocated to Level 1 (above ground);
- An increase in the number of car parking spaces from the approved 157 to 168;
- Increase in the deep soil area from 36m² to 52m²;
- Two (2) new areas of roof top communal open space, increasing communal open space from 1,070m² to 1,717m²;
- Modified layout of retail tenancies with a minor reduction in the overall gross floor area from 626m² to 570m², although the number of approved retail tenancies will remain at six;
- Deletion of the approved 19 units on Level 1, with a redistribution of these approved units across the above levels;
- Increase in the number of approved units from 117 to 118 (32 x 1 bedroom units, 64 x 2 bedroom units and 22 x 3 bedroom units);
- 50 of these units to be "build to rent" housing as defined in the Housing SEPP 2021;
- New Level 12 with residential units, increasing the number of storeys from 11 storeys;
- The separation between the two (2) approved towers above the podium section; (northern tower addressing Gardeners Road and southern tower addressing Galloway Street) is proposed to be marginally reduced to accommodate the relocated GFA;
- Increase in the western setback of the neighbouring property at 669 Gardeners Road (known as the Avantra);
- Redistribution and relocation of the communal open space area;
- Increase in the communal open space area from 1,070m² to 1,717m²;
- Increase in the approved height of the building from 51m to 53.5m to accommodate the lift over run for the roof top communal open space; and
- Increase in the approved gross floor area (GFA) from 11,164m² to 11,601m², resulting in an increase of the Floor Space Ratio (FSR) from the approved 3.39:1 to 3.53:1.

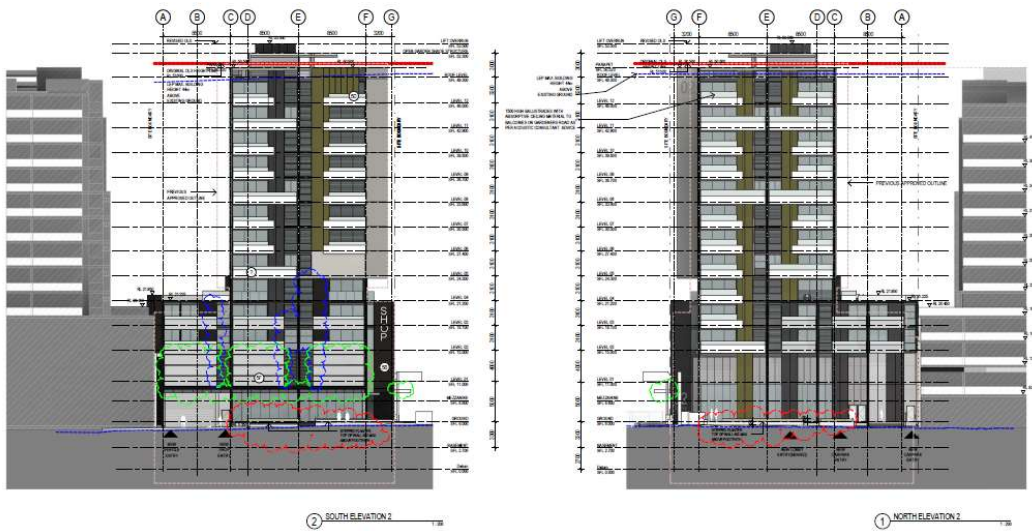


Figure 6: North and South Elevations, with the proposed amendments marked up in red (supplied by applicant)

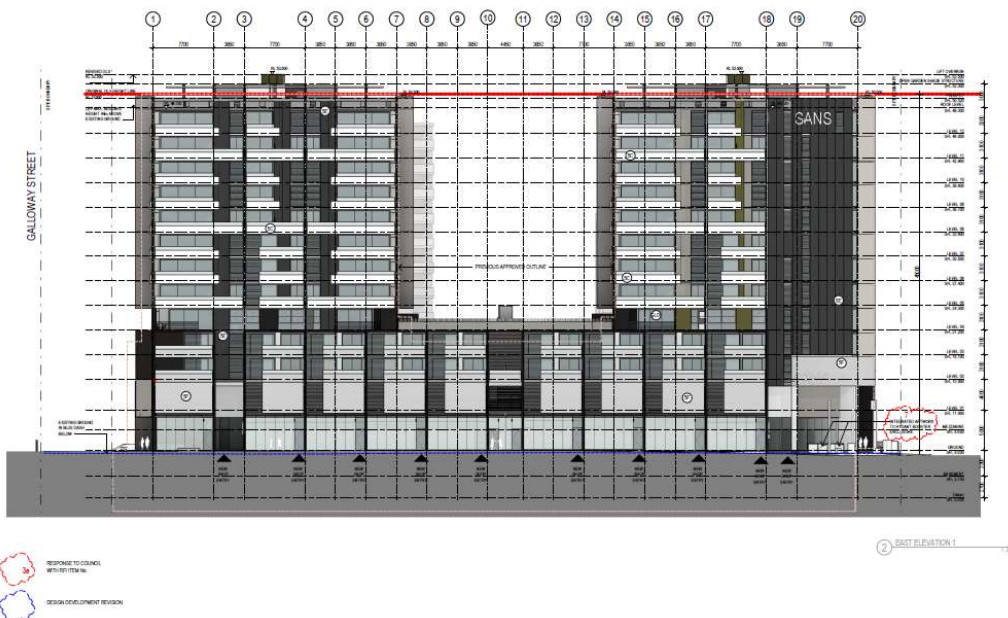


Figure 7: East Elevation, with the proposed amendments marked up in red (supplied by applicant)

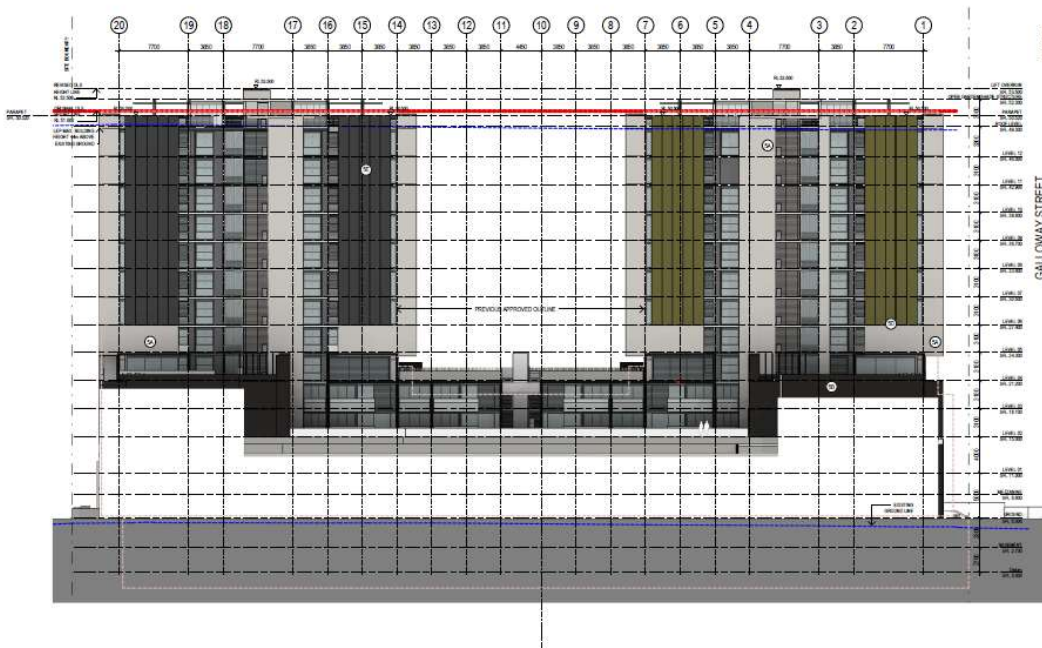


Figure 8: West Elevation, with the proposed amendments marked up in red (supplied by applicant)

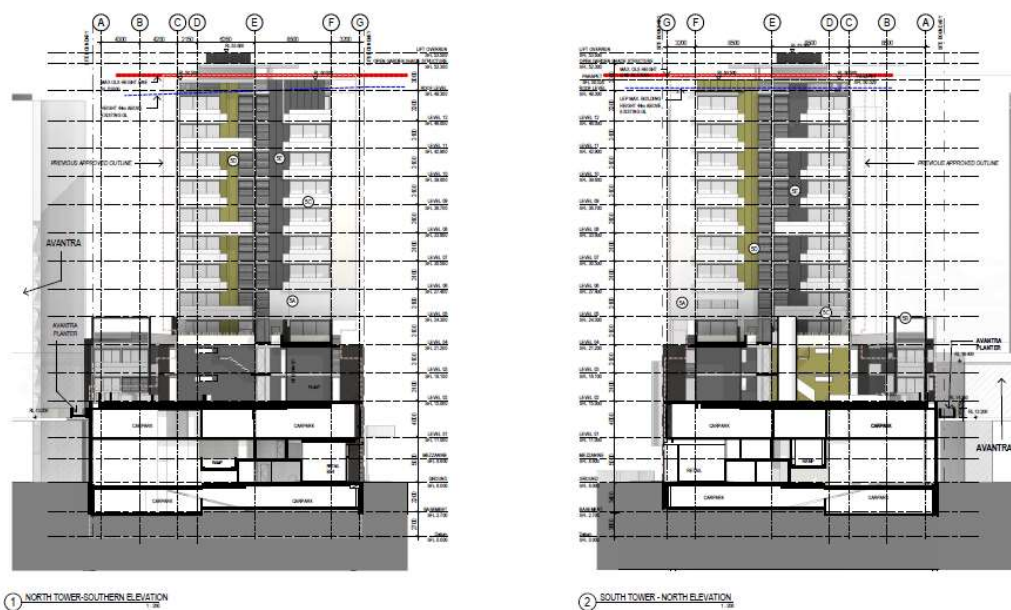


Figure 9: Internal Elevations, with the proposed amendments marked up in red (supplied by applicant)



Figure 10: Photomontage (supplied by applicant)

The specific amendments are provided in further detail below:

Basement Level 2

- Full deletion of this level

Basement Level 1

- Reconfiguration of layout, with footprint reduced on the southern boundary to allow for increased deep soil planting along Galloway Street;
- Relocation of plant;
- Inclusion of storage cages; and
- Increase in the number of approved car parking spaces from 73 to 84.

Ground Floor

- Reduction of the approved gross floor area from 787.17m² to 764m²;
- Reduction in the retail tenancy area from 626m² to 560m² primarily through the reduction in the depth of the commercial tenancies addressing Bourke Street;
- Landscaping added along the Galloway Street frontage
- Reconfiguration of car parking layout, with a decrease in the number of approved car parking spaces from 16 to 15;
- Waste rooms enlarged;
- Basement ramps relocated;
- Ramp to the relocated Level 1 car parking area added;

- Additional bicycle parking; and
- End of trip relocated

Mezzanine Level

- Creation of new mezzanine level to accommodate relocated OSD and plant

First floor

- Decrease in the finished floor level (FFL) from 13.6m AHD to 11m;
- Deletion of the approved 19 units (11 x 1 bedrooms plus study and 8 x 2 bedrooms);
- Reduction of the approved gross floor area from 1,523m² to 0m; and
- Relocated Basement Level 2 car parking area, including 70 car parking spaces, plant

Second floor

- Decrease in the finished floor level (FFL) from 16.7m AHD to 15m;
- Infill of the void area along the western elevation with communal open space (452.46m²);
- Deletion of communal open space in north-western corner and replaced with residential unit (A201);
- Increase in the number of approved units from 19 to 20;
- Approved 13 x 1 bedroom units reduced to 12 x 1 bedroom units;
- Approved 6 x 2 bedroom units to be increased to 8 x 2 bedroom units;
- Reconfiguration of balcony locations and designs for a number of units;
- Reconfiguration of space between two towers to accommodate plant, fire stairs and access to the communal open space, and
- Increase in the approved gross floor area from 1,452.45m² to 1,560.6m²

Third floor

- Decrease in the finished floor level (FFL) from 19.6m AHD to 18.1m
- Deletion of approved communal open space in south western corner (96m²) and replaced with residential unit (unit B310);
- Deletion of approved central communal open space between towers and infilled with residential floorspace;
- Increase in the number of approved units from 8 to 19;
- Increase in building line along Gardeners Road to western boundary, to accommodate additional floor area (unit A301);
- Approved 1 x 1 bedroom units increased to 8 x 1 bedroom units;
- Approved 5 x 2 bedroom units increased to 11 x 2 bedroom units
- Deletion of the approved 2 x 3 bedroom units;
- Reconfiguration of balcony locations and designs for a number of units;
- Reconfiguration of space between two towers to accommodate plant and fire stairs, and
- Increase in the approved gross floor area from 791.23m² to 1,560.6m²

Fourth floor

- Decrease in the finished floor level (FFL) from 22.9m AHD to 21.2m;
- Decrease in the number of approved units from 10 to 8;
- No change to the 2 x 1 bedrooms;
- Approved 8 x 2 bedroom units reduced to 4 x 2 bedroom units;

- Addition 2 x 3 bedroom units (none previously approved on this floor);
- Decrease in the approved gross floor area from 828.15m² to 792.94m²;
- Reconfiguration of balcony locations and designs for a number of units;
- Reconfiguration of the footprints for both the south and north towers, with slight increases to the southern, eastern and northern elevations, and a minor decrease to the western elevation; and
- New communal open space between the north and south tower areas as well in north western and south western corners (total area of 536.39m²)

Fifth floor

- Decrease in the finished floor level (FFL) from 26m AHD to 24.3m;
- No change in the number of approved units (10);
- No change to the approved mix of units (2 x 1 bedrooms and 8 x 2 bedrooms);
- Increase in the approved gross floor area from 828.8m² to 877.87m²;
- Reconfiguration of balcony locations and designs for a number of units; and
- Reconfiguration of the footprints for both the south and north towers, with slight increases to the southern, eastern and northern elevations, and a minor decrease to the western elevation.

Sixth floor

- Decrease in the finished floor level (FFL) from 29.1 AHD to 27.4m;
- No change in the number of approved units (10);
- No change to the approved mix of units (2 x 1 bedrooms and 8 x 2 bedrooms);
- Increase in the approved gross floor area from 828.12m² to 877.87m²;
- Reconfiguration of balcony locations and designs for a number of units; and
- Reconfiguration of the footprints for both the south and north towers, with slight increases to the southern, eastern and northern elevations, and a minor decrease to the western elevation.

Seventh floor

- Decrease in the finished floor level (FFL) from 32.2m AHD to 30.5m;
- Increase in the number of approved units from 9 to 10;
- Approved 1 x 1 bedroom units increased to 2 x 1 bedroom units;
- Approved 5 x 2 bedroom units increased to 11 x 2 bedroom units;
- Approved 6 x 2 bedroom units increased to 8 x 2 bedroom units;
- Deletion of the approved 2 x 3 bedroom units;
- Increase in the approved gross floor area from 828.12m² to 877.87m²;
- Reconfiguration of balcony locations and designs for a number of units; and
- Reconfiguration of the footprints for both the south and north towers, with slight increases to the southern, eastern and northern elevations, and a minor decrease to the western elevation.

Eighth floor

- No change in the number of approved units (8);
- No change to the approved mix of units (4 x 2 bedrooms and 4 x 3 bedrooms);
- Increase in the approved gross floor area from 823.92m² to 859m²;
- Reconfiguration of balcony locations and designs for a number of units; and

- Reconfiguration of the footprints for both the south and north towers, with slight increases to the southern, eastern and northern elevations, and a minor decrease to the western elevation.

Ninth floor

- No change in the number of approved units (8);
- No change to the approved mix of units (4 x 2 bedrooms and 4 x 3 bedrooms);
- Increase in the approved gross floor area from 823.92m² to 859m²;
- Reconfiguration of balcony locations and designs for a number of units; and
- Reconfiguration of the footprints for both the south and north towers, with slight increases to the southern, eastern and northern elevations, and a minor decrease to the western elevation.

Tenth floor

- No change in the number of approved units (8);
- No change to the approved mix of units (4 x 2 bedrooms and 4 x 3 bedrooms);
- Increase in the approved gross floor area from 823.92m² to 858m²;
- Reconfiguration of balcony locations and designs for a number of units; and
- Reconfiguration of the footprints for both the south and north towers, with slight increases to the southern, eastern and northern elevations, and a minor decrease to the western elevation.

Eleventh floor

- No change in the number of approved units (8);
- No change to the approved mix of units (4 x 2 bedrooms and 4 x 3 bedrooms);
- Increase in the approved gross floor area from 824m² to 858m²;
- Reconfiguration of balcony locations and designs for a number of units; and
- Reconfiguration of the footprints for both the south and north towers, with slight increases to the southern, eastern and northern elevations, and a minor decrease to the western elevation.

More details on the amendments to the units are in the below tables:

Twelfth floor

- New residential level, with 8 units (4 x 2 bedrooms and 4 x 3 bedrooms);
- Proposed gross floor area of 858m²;
- Footprints of both towers consistent with Levels 4 to 11

Rooftop

- New communal open space area with an area of 732.6m²

Elevations

- Changes to facades and building materials

The table below is a summary of key development data:

Control	Approved	Proposed
Site area	3,284m ²	3,284m ²
Gross Floor Area (GFA)	11,164m ²	11,604m ²
Floor Space Ratio (FSR) = 3.2:1 (max)	3.39:1	3.53:1
Maximum Height = 44m (max).	51m	53.5m (top of lift over run)
Clause 4.6 Requests	<u>HOB</u> : Variation to 44m development standard approved by LEC <u>FSR</u> : Variation to 3.2:1 development standard approved by LEC	<u>HOB</u> : N/A as it is a s4.56 application <u>FSR</u> : N/A as it is a s4.56 application
Number of apartments	117	118
Landscaped area	<u>Deep soil</u> : 36m ² <u>Other</u> :	<u>Deep soil</u> : 52m ² <u>Other</u> :
Car parking spaces =	158	170 (including car was bay and car share space)

Background

The development application was lodged on 2 March 2022. A chronology of the development application since lodgement is outlined below including the Panel's involvement (briefings, deferrals etc) with the application:

Date	Event
2 March 2022	The MDA was lodged with Council.
14 March 2022	The start of the notification period with the closing date being 28 March 2022. A total of one submission were received.
18 March 2022	A site inspection was carried out.
24 March 2022	Kick off briefing with the Sydney Eastern City Planning Panel, with the following key issues identified for consideration: <ul style="list-style-type: none"> • Noted visual impact of above ground parking on streetscape. • Further justify of additional GFA required. • Applicant to investigate build to rent or affordable housing.
5 May 2022	Referred to the Bayside Design Review Panel, recommending that it satisfies the design quality principles contained in SEPP 65 as well as the design excellence provisions in the Bayside LEP.
27 October 2022	A request for information (RFI) letter was issued to the applicant, requesting additional information on the following: <ul style="list-style-type: none"> • Build to Rent Housing • SEPP 65 • Traffic, parking and access • Stormwater Management • Floodplain Management • Landscaping • Water NSW • Sydney Trains
24 March 2023	Response to the RFI letter provided
29 March 2023	Follow-up briefing with the Sydney Eastern City Planning Panel, with the following key issues identified for consideration: <ul style="list-style-type: none"> • EV charging points required in the car parking area

Date	Event
	<ul style="list-style-type: none"> Car parking to be assessed, with consideration to be given to excess parking and whether it is to be included in GFA calculation
12 April 2023	Concurrence provided by Sydney Trains
8 May 2023	General Terms of Approval provided by Water NSW
10 May 2023	The start of the notification period with the closing date being 24 May 2023. A total of two submissions were received (resulting in total of three submissions being received).

Site History

DA-2015/22

The former JRPP refused the application for demolition and construction of an 11 storey mixed use development on 16 December 2015.

A Class 1 appeal was lodged with the Land and Environment Court, with Section 34 Conciliation successful and consent orders issued on 20 December 2016. The approval was for a mixed use development comprising the erection of an 11 storey building containing commercial space at ground floor, and 117 residential apartments above, and provision of 158 car parking spaces provided over 2 basements.

Change of address

It is noted that some of the documentation relating to this modification application refers to 2 Bourke Street.

The current address for this property is 653 Gardeners Road, Mascot.

When the development is completed, access to the building will be from Bourke Street and a new address will be allocated, which is likely to be 2 Bourke Street.

The new address will take effect when the new building is completed, and a strata plan is registered. This process is prescribed in Condition 120 of the development consent and is not required to be modified as part of this application.

Extension of consent

Ministerial Orders were issued in May 2020 as a response to the COVID pandemic that prescribed that for consents and deferred commencement consents granted prior to 25 March 2020 that had not already lapsed, the lapsing date had been extended by 2 years. Therefore, the lapse date of the development consent is currently 20 December 2023.

STATUTORY CONSIDERATIONS

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

- (a) *the provisions of any environmental planning instrument, proposed instrument, development control plan, planning agreement and the regulations*

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

These matters are further considered below.

It is noted that the proposal is considered to be (which are considered further in this report):

1. Integrated Development (s4.46)
2. Requiring concurrence/referral (s4.13)

Environmental Planning and Assessment Act 1979 – Section 4.47 Integrated Development

The development application was Nominated Integrated Development in accordance with the Water Management Act 2000 as the development involved a temporary construction dewatering activity.

As part of the original DA assessment, General Terms of Approval were issued by the NSW Office of Water on 28 October 2015.

The proposed modifications subject to this application includes the extent of excavation, which was reduced from two to one level of basement. In part, this was to reduce construction risk, in relation to impacts associated with dewatering. Part of the subject modification seeks to relocate parking from basement Level 2, which is fully within the ground water table, to level 1.

As part of the assessment of this application, a referral was sent to Water NSW. On 29 March 2022, it issued a Stop The Clock letter, requesting further additional information. In summary, it requested a geotechnical report. This was primarily due to the age of the prior GTA's issued by WaterNSW or industry previous agencies, and therefore a reassessment on this matter was required.

This information was lodged with Water NSW. On 8 May 2023, it issued modified General Terms of Approval (GTAs). Condition 9 in the attached Draft Schedule of Conditions has been modified to reflect these modified GTAs.

The proposed modifications satisfy Section 4.47 of the Act.

S.4.56 – Modification by consent authorities of consents granted by the Court

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

(a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and

Comment: The modified proposal will involve the following changes:

- Deletion of the second level basement
- Reconfiguration of the approved layout

- Increase in the number of approved units
- Increase in the gross floor area
- Increase in the height of the building
- Reconfiguration of building setbacks and separation
- Provision of fifty (50) build to rent units

The increases in the height of building and FSR development standards will result in an encroachment above the LEP development standards but will not result in any significant change from that approved. In addition, minimal changes to amenity impacts will result given changes proposed, its location and neighbouring land uses. The footprint of the buildings has not substantially changed, with the exception of a deletion of one basement level, a minor decrease to the setback to Bourke Street and to the building separation distance between the two towers above the podium. The appearance of the building as viewed from the public domain does not substantially change, with the main difference the Level 1 portion of the façade (with the change from residential units to car parking), however, the architectural treatment is considered acceptable.

Whilst the modified proposal now includes build-to-rent housing, the categorisation of the development has not changed, which is a shop-top housing development incorporating commercial floorspace at ground level and residential dwellings above from Levels 2 to 12 and also car parking. Build-to-rent housing is not separately defined in the Standard Instrument and is legally defined as a form of residential accommodation (being comprised of dwellings).

As such, the development to which the consent as modified relates is substantially the same development as that for which consent was originally granted.

(b) it has notified the application in accordance with:

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

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

Comment: The proposal amendment involves changes to the approved scheme and the adjoining owners were notified of the application in accordance with the Botany Bay DCP. The adjoining owners were also notified of the amended application that includes the fifty (50) build to rent units.

(c) it has notified, or made reasonable attempts to notify, each person who made a submission in respect of the relevant development application of the proposed modification by sending written notice to the last address known to the consent authority of the objector or other person, and

Comment: All adjoining owners were notified of the proposed modification.

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

Comment: Three unique submissions were received by Council and will be addressed later in this report.

(1A) In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section

4.15(1) as are of relevance to the development the subject of the application. The consent authority must also take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified.

Comment: The proposed amendment will not undermine or detract from the basis of the original decision to approve the proposed development on the site. The application was approved through the Land and Environment Court.

The proposed amendment will not significantly affect the previously approved development in respect to its resulting amenity and levels of privacy within the site. An assessment of the relevant matters contains in section 4.15(1) is provided below. Consideration has also been given to the reasons given by the consent authority for the grant of the consent and the proposal is acceptable in this regard.

(1B) Development consent of the kind referred to in section 4.13(3), or in respect of which a biobanking statement has been issued under Part 7A of the Threatened Species Conservation Act 1995, is not to be modified unless:

(a) in the case of development referred to in section 4.13(3)—the requirements of section 4.13(3)–(7) have been complied with in relation to the proposed modification as if the application for the proposed modification were an application for development consent, or

(b) in the case of development in respect of which a biobanking statement has been issued under Part 7A of the Threatened Species Conservation Act 1995—the applicant has made an application for modification of the biobanking statement in relation to the proposal and a new biobanking statement has been issued or the consent authority is satisfied that the modification will have no impact on biodiversity values (within the meaning of that Act).

Comment: The proposed amendment does not involve a biobanking statement or state significant development.

(1C) The modification of a development consent in accordance with this section is taken not to be the granting of development consent under this Part, but a reference in this or any other Act to a development consent includes a reference to a development consent as so modified.

Comment: The current scheme is an amendment to an application modified under this Part but is not granted under this Part. Accordingly, the proposal complies with the requirements of subclause 1C under this Part.

(2) After determining an application for modification of a consent under this section, the consent authority must send a notice of its determination to each person who made a submission in respect of the application for modification.

Comment: There were three unique submissions received by Council in relation to the application for modification.

(3) The regulations may make provision for or with respect to the following:

(a) the period after which a consent authority, that has not determined an application under this section, is taken to have determined the application by refusing consent,

(b) the effect of any such deemed determination on the power of a consent authority to determine any such application,

(c) the effect of a subsequent determination on the power of a consent authority on any appeal sought under this Act.

Comment: Not applicable.

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

The following Environmental Planning Instruments (EPI) are relevant to this application:

- (1) State Environmental Planning Policy (Planning Systems) 2021;
- (2) State Environmental Planning Policy (Resilience and Hazards) 2021;
- (3) State Environmental Planning Policy (Biodiversity and Conservation) 2021;
- (4) State Environmental Planning Policy (Industry and Employment) 2021;
- (5) State Environmental Planning Policy (Transport and Infrastructure) 2021;
- (6) State Environmental Planning Policy (SEPP) No. 65 – Design Quality of Residential Apartment Buildings;
- (7) State Environmental Planning Policy (Housing) 2021;
- (8) State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004; and
- (9) Bayside Local Environmental Plan 2021

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

EPI	Matters for Consideration	Complies
State Environmental Planning Policy (Planning Systems) 2021	Clause 3.10, which declares the proposal as regionally significant development pursuant to Clause 2 of Schedule 6.	Yes
State Environmental Planning Policy (Resilience and Hazards) 2021	Chapter 4, which relates to remediation of land	Yes
State Environmental Planning Policy (Biodiversity and Conservation) 2021	Chapter 2, which relates to protecting the biodiversity values of trees and other vegetation in non-rural areas	Yes
State Environmental Planning Policy (Industry and Employment) 2021	Chapter 3 – Advertising and signage	Yes – subject to conditions to delete the advertising sign.
State Environmental Planning Policy (Transport and Infrastructure) 2021	<ul style="list-style-type: none"> • Clause 2.98, which relates to excavation in, above or adjacent to rail corridors • Clause 2.117, which relates to development on proposed classified road • Clause 2.118, which relates to development with frontage to classified road • Clause 2.119, which relates to impact of road noise or vibration on non-road development 	Yes
State Environmental Planning Policy (SEPP) No. 65 – Design Quality of	Clause 28(2), which takes into consideration for the following: (a) The advice of the Design Review Panel (DRP)	Yes

EPI	Matters for Consideration	Complies
Residential Apartment Buildings	(b) The design quality of the development when evaluated in accordance with the design quality principles (c) the Apartment Design Guide	
State Environmental Planning Policy (Housing) 2021	Chapter 3, Part 4 – Build to Rent Housing	Yes
State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004	Clause 6 - Buildings to which Policy applies	Yes
Bayside Local Environmental Plan 2021	<ul style="list-style-type: none"> • Clause 2.3 – Zone MU1 Mixed Use • Clause 2.7 – Demolition • Clause 4.3 – Height of Buildings • Clause 4.4 – Floor Space Ratio • Clause 5.1 – Relevant acquisition authority • Clause 6.1 – Acid Sulfate Soils • Clause 6.2 – Earthworks • Clause 6.3 – Development in Areas subject to Aircraft Noise • Clause 6.4 – Airspace Operations • Clause 6.7 – Stormwater • Clause 6.9 – Active Street Frontage • Clause 6.10 – Design Excellence • Clause 6.11 – Essential services • 	Refer to assessment of BLEP 2021 below.

State Environmental Planning Policy (Planning Systems) 2021

The original application was originally referred to the Joint Regional Planning Panel for determination pursuant to Clause 3 of Schedule 4A of the Environmental Planning and Assessment Act 1979 (EP&A Act) as the Capital Investment Value of the proposal was \$70,507,285.

This modification application is referred to the Sydney Eastern City Planning Panel ('the Panel') pursuant to the '*Instruction on functions exercisable by Council on Behalf of Sydney District or Regional Planning Panels – Applications to Modify Development Consent*' (dated 1 August 2020) as the original proposal was refused by the Panel and the current modification is equivalent to a s4.55(2) application and includes a departure from both the height and FSR development standards that exceeds 10%.

State Environmental Planning Policy (Resilience and Hazards) 2021

Chapter 4 – Remediation of Land

As part of the development application assessment, an assessment was made against Clause 7 of the now repealed SEPP 55 (title), which required the consent authority to be certain that the site is, or suitable for its intended use at the time of determination of an application.

The following assessment was made as part of DA-2015/22:

A contaminated site auditor accredited with the NSW EPA has been appointed. An Auditor Interim Advice Letter No.1 has been provided with the application which addresses the proposed residential use for the site. The Interim Advice reviewed the „Stage 2 Environmental Site Assessment, 653 Gardeners Road, Mascot“, 12 February 2008 (Project Ref: ENVILCOV00417AA-R01i2) and the „Remediation Action Plan, 653 Gardeners Road, Mascot, NSW“, 19 March 2008 (Project Ref: ENVILCOV00417AA-R02i1) completed by Coffey and concluded that the site can be made suitable for the proposed residential uses if remediated in accordance with the „Remediation Action Plan, 653 Gardeners Road, Mascot, NSW“ dated 19 March 2008, Coffey.

It has been demonstrated that the site can be made suitable to accommodate the intended use and it satisfies the provisions of SEPP No. 55.

The modified proposal will not change any conclusions made in the DA assessment (as approved by the Bayside Local Planning Panel), and hence any prescribed conditions for the original DA will remain unchanged.

State Environmental Planning Policy (Biodiversity and Conservation) 2021

Chapter 2 – Vegetation in non-rural areas

The modification application was referred to Council's Tree Management Officer for assessment.

The proposed development does not impact upon any significant trees on the property, adjacent lots or in the public domain.

The proposal has provided sufficient information and therefore is satisfactory with regards to satisfying this Chapter.

State Environmental Planning Policy (Industry and Employment) 2021

This Chapter is applicable to the proposed signage. The application includes the following signage:

- Advertising sign (SANS) on the Bourke Street elevation at a height of approximately Level 12. (Note: Sans Group is a private development company).
- Building identification sign (SANS) on the Bourke Street elevation at a height of approximately Level 3. While 'Sans' is a business, this signage is provided at a height, location and of a size that is akin to a building identification sign permitted under Botany DCP 2013.

The Schedule 5 assessment criteria has been considered in the assessment of this modification application.

The lower level building identification sign is considered compatible with the desired amenity and visual character of the Mascot Station precinct area. It is also at a scale, proportion and form appropriate to the streetscape, as there other completed mixed-use developments in proximity with similar building identification signage.

The upper level advertising sign is not considered appropriate as:

- It does not positively contribute to the visual interest of the streetscape

- Does not respect important features of the building
- Does not comply Part 3D.8 of the Botany Bay DCP 2013 as it is considered to be third party advertising which is not permitted

A condition will be imposed in the attached draft schedule of conditions that will instruct the deletion of the upper level advertising sign prior to the issue of the Construction Certificate.

The two '02' signs are considered acceptable as they are of an appropriate scale and also are important for wayfinding purposes (as stated earlier in this report, the building will in the future be identified as 2 Bourke Road).

State Environmental Planning Policy (Transport and Infrastructure) 2021

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

As part of the development application assessment, an assessment was made against Clause 86 of the State Environmental Planning Policy (Infrastructure) 2007, as the proposed development included excavation within proximity of the Airport Line railway tunnel.

Sydney Trains did not issue concurrence as part of the assessment of the DA and was one of the mentioned in the Statement of Reasons issued by the Sydney East JRPP when it was refused on 16 December 2015.

However, as part of the Section 34 Conciliation, Sydney Trains issued their concurrence on 17 November 2016. Sydney Trains determined that whilst additional documentation was required, it could be provided after granting consent, which would enable the proposed development to progress to the next detailed design stage.

The proposed modifications subject to this application includes the extent of excavation, which was reduced from two to one level of basement. In part, this was to reduce construction risk to the rail tunnel.

As part of the assessment of this application, a referral was sent to Sydney Trains. On 29 March 2022, it issued a Stop The Clock letter, requesting further additional information. In summary, it requested the following:

- Geotechnical and Structural report/drawings
- Numeric modelling analysis
- Detailed Survey Plan
- Cross sectional drawings
- Rail impact assessment report

This information was lodged with Sydney Trains. On 12 April 2023, it issued a modified concurrence, subject to one of the prescribed conditions under the previous concurrence to be deleted and a new condition to be imposed. Condition 7 in the attached Draft Schedule of Conditions has been modified to reflect this modified concurrence.

The proposed modifications satisfy Clause 2.98 of the SEPP.

Clause 2.118 – Development with frontage to classified road

DA-2015/22 made no assessment under Clause 101 of the now repealed State Environmental Planning Policy (Infrastructure) 2007 with relation to the assessment of the proposed development fronting a classified road (i.e. Gardeners Road).

As part of the assessment of this application, a referral was sent to Transport for NSW (TfNSW). On 30 March 2022, it provided a referral response. It stated that it raises no objection to the proposed modifications as they are unlikely to have a significant impact onto the classified road network.

The proposed modifications satisfy Section 2.118 of the SEPP.

Clause 2.119 – Impact of road noise or vibration on non-road development

The proposed modified development that is on land in or adjacent to the road corridor with an annual average daily traffic volume of more than 40,000 vehicles and that the consent authority considers is likely to be adversely affected by road noise or vibration.

Accordingly, Clause 2.119 of this SEPP is required to be considered as part of this assessment.

For residential use the consent authority must not grant consent unless it is satisfied that appropriate measures will be taken to ensure that the following LAeq levels are not exceeded:

- a. *in any bedroom in the building 35 dB(A) at any time between 10 pm and 7 am,*
- b. *anywhere else in the building (other than a garage, kitchen, bathroom or hallway) 40 dB(A) at any time.*

The modified proposal was accompanied by an Acoustic Report, prepared by Acoustic Logic and dated 28 February 2022, which considered the potential impact of road noise on the proposed modified development.

This was referred to Council's Environment and Health Officer for assessment. They advised that internal noise levels cannot be achieved in the units without all windows and doors being closed at all times. They recommend alternative mechanical ventilation vs natural ventilation, to comply with noise regulations. The Acoustic Report also mentions several mitigation measures required in order to achieve vibration isolation. Therefore the condition requiring an acoustic compliance certificate prior to Occupation Certificate is required. This can be supplied to the PCA or Council.

The proposal satisfies Clause 2.119 of the SEPP.

State Environmental Planning Policy (SEPP) No. 65 – Design Quality of Residential Apartment Buildings

In accordance with Clause 28(2) of this SEPP, the consent authority must take into consideration the following:

- (a) *The advice of the Design Review Panel (DRP)*

This DA was reported to the DRP on 5 May 2022.

The DRP supports the proposed modified development, confirming also that it achieves 'Design Excellence' in accordance with Section 6.10 of the BLEP 2021.

(b) The design quality of the development when evaluated in accordance with the design quality principles.

The design quality principles have been considered in the assessment of the proposal and are found to be satisfactory as indicated below.

Principle 1: Context and Neighbourhood Character

The subject site is located within the Mascot Station Precinct area and is zoned MU1 Mixed Use as prescribed under the Bayside LEP 2021. The existing streetscape of the southern side of Gardeners Road and western side of Bourke Street is characterised primarily by multi-storey mixed use and shop top housing developments.

The zone objectives for the MU1 Mixed Use zone is to provide a mixture of compatible land uses, and to integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling. Accordingly, this is an area that has gradually been undergoing transition, with a large number of mixed use and shop top housing developments recently constructed within the Mascot Station Precinct area. Furthermore, the proposal is consistent with the desired future character, with respect to generally meeting the relevant development standards in the Rockdale LEP 2011 (with the exception of the Height of Building and Floor Space Ratio, which will be further discussed later in this report) and all of the relevant standards in the Apartment Design Guide (ADG) as prescribed under this SEPP and controls in the Botany Bay DCP 2013.

The DRP was satisfied that it complied with this Principle, by way of the following:

- Modifications to the streetscape interface, tower form and materiality
- The detailed attention given to the context, especially to adjacent built form.

Principle 2: Built Form and Scale

The built form of the proposed development will actively contribute towards the evolving nature of the streetscape and character for the Mascot Station Precinct, with respect to the scale, bulk and height of the building, and also manipulation of building elements adding visual interest from the street. Internal amenity, outlook and surveillance opportunities are provided through the location of living areas and the communal open space on the roof top.

The DRP was satisfied that it complied with this Principle, by way of the following:

- The modulation of the two towers to enhance variation
- Additional solidity to the northern tower
- Integration of above grade parking level
- Refinement of streetscape
- Integration of roof terraces and
- Slight adjustments to height and bulk

Principle 3: Density

The density is considered acceptable with respect to the bulk and scale of the development and will be assessed in greater detail in the LEP section of this report. Furthermore, there

is sufficient communal open space as well as private open space areas. The application of these principles means that it is not considered to be overdevelopment of the site. It is in within the Mascot Station Precinct, which is in close proximity to Mascot railway station, and is within walking distance of a number of public parks and reserves, as well as schools.

The DRP was satisfied that it complied with this Principle, by way of the following:

- The inclusion of build to rent units
- The high quality of streetscape provided
- A substantial increase in landscaped areas at roof level
- A demonstration that additional GFA will not increase physical or visual impacts on the public domain or adjacent properties

Principle 4: Sustainability

The applicant has submitted a BASIX Certificate, demonstrating that the proposal achieves the relevant energy efficiency standards as specified by the BASIX SEPP. It also complies with the minimum 70% requirement of the proposed apartments living area windows and private open space (balconies) needing to receive at least two hours sunlight between 9am and 3pm in midwinter.

The DRP was satisfied that it complied with this Principle, by way of the following:

- Sustainability initiatives are substantial and well documented.
- The frontage to Bourke Road has been resolved through the modulation and setback of the shop fronts that provide a finer grain scale to the street. This combined with appropriate street tree planting and a more generous public domain now provides a more appropriate interface and amenity.

Principle 5: Landscape

Landscape details have been provided, with respect to the public domain at ground level, the communal open space areas as well as the private courtyard areas. This has been reviewed by our Landscape Architect, and is deemed acceptable, subject to the imposition of modified conditions.

The DRP was satisfied that it complied with this Principle, by way of the following:

- The ground floor provides an appropriate amenity to the street with planters to the periphery on Gardeners Road creating a defensible open space.
- Trees to Gardeners Road provide appropriate scale and environmental cooling to this northern aspect of the site.
- The landscape areas to the podium level are linear in nature and as such as constrained by the proposed built form and footprint. It is therefore recommended that some modulation of the spaces would provide better outcomes for the encouragement of varied sized community groups in the use of the spaces.

Principle 6: Amenity

The modified design provides a good level of amenity for future occupants by providing appropriate room dimensions, suitable solar access to most units, natural ventilation through each floor, appropriately sized courtyards and balconies for each residential unit as well as communal open space, and ease of access for all age groups and degrees of mobility.

The DRP was satisfied that it complied with this Principle.

Principle 7: Safety

It provides for an easily identifiable, prominent and generous residential lobby entries for both towers off Bourke Street, with commercial tenancies comprising individual distinguishable pedestrian entries. Residential apartments and car parking areas on site will be accessible via a secure electronic system. Common areas will be well lit with clearly defined legible pathways.

The MDA was referred to the NSW Police for comment. It was identified as a medium crime risk, with recommendations provided which will be inserted as a condition in the attached draft schedule of modified conditions.

The DRP was satisfied that it complied with this Principle.

Principle 8: Housing Diversity and Social Interaction

The proposed development will provide for a mixture of housing types that will cater for different budgets and housing needs, including Build to Rent Housing. This will aid in addressing housing affordability.

The DRP was satisfied that it complied with this Principle, by way of the following:

- The additional communal open space proposed at roof level will increase social interaction.

Principle 9: Aesthetics

The proposal incorporates a varied palette of colours and materials to create visual interest when viewed from the public domain. Materials proposed include but are not limited to pre-cast concrete, off-form concrete, frameless glass and aluminium louvres. These materials will provide a modern, contemporary, high quality and visually appealing development on site.

The DRP was satisfied that it complied with this Principle, by way of the following:

- The modifications made to the tower form and shape of the towers.

(c) the Apartment Design Guide

The proposal has been assessed against the Apartment Design Guide (ADG) The proposed development is considered to have performed adequately in respect to the objectives and design criteria contained within the ADG. The relevant issues are discussed below:

Section	Design Criteria	Proposed	Complies
<i>Part 3 Siting the Development</i>			
Part 3D: Communal and Public Open Space	Communal open space has a minimum area equal to 25% of the site.	The communal open spaces located on Levels 2, 4 and the rooftop has a total area of 1,712m ² , which is equal to 52.1% of the site.	Yes

Section	Design Criteria	Proposed	Complies
	Developments achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of 2 hours between 9 am and 3 pm on 21 June (midwinter).	A detailed plan has been provided in the architectural plans that demonstrates at half hourly intervals the extent of direct sunlight to the principle useable part (total of 1673.77m ²). It demonstrates that between 11am and 1pm that direct sunlight can be achieved to between 53% and 61% of the principle useable part	Yes
Part 3E: Deep Soil Zones	For sites greater than 1,500m ² , a deep soil area equal to 7% of the site and with a minimum dimension of 6m	A total of 52m ² is provided at ground level, primarily on the Galloway Street and Gardeners Road frontages	See Note 1
Part 3F: Visual Privacy	<p>For developments up to 8 storeys:</p> <ul style="list-style-type: none"> • 9m between habitable/balconies and non-habitable • 4.5m between non-habitable rooms <p>For developments over 9 storeys:</p> <ul style="list-style-type: none"> • 12m between habitable/balconies and non-habitable • 6m between non-habitable rooms 	Complies Levels 1 to 7, minor non-compliance on Levels 8 to 12	See Note 2
Part 3J: Car Parking	On sites that are within 800 metres of a railway station or light rail stop in the Sydney Metropolitan Area the minimum car parking requirement for residents and visitors is set out in the Guide to Traffic Generating Developments, or the car parking requirement prescribed by the relevant council, whichever is less	Refer to car parking assessment under the Impacts of the development section of this report	Yes
Part 4 Designing the Building			
Part 4A: Solar and	Living rooms and private open spaces of at least	The living rooms and private open space	Yes

Section	Design Criteria	Proposed	Complies
Daylight Access	70% of apartments in a building receive a minimum of 2 hours direct sunlight between 9am and 3pm at midwinter.	areas for 87 out of the 118 apartments (73.7%) receive at least 2 hours of direct sunlight between 9am and 3pm on 21 June.	
	A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid-winter	2 out of the 118 apartments (1.7%) receive no direct sunlight between 9am and 3pm on 21 June.	Yes
Part 4B: Natural Ventilation	At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building.	84 out of the 118 apartments (72%) will be naturally cross ventilated.	Yes
Part 4C: Ceiling Heights	Measured from finished floor level to finished ceiling level, minimum ceiling heights are: <ul style="list-style-type: none"> • 3.3m for ground floor to promote future flexibility of use • 2.7m for habitable rooms • 2.4m for non-habitable rooms 	5m is proposed for the ground floor retail, 3.1 for residential levels	Yes
Part 4D: Apartment Size and Layout	Apartment are required to have the following minimum internal areas: <ul style="list-style-type: none"> • 1 bedroom: 50m² • 2 bedrooms: 70m² • 3 bedrooms: 90m² The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m ² each.	The minimum area for the 1-bedroom units are 54.2m ² . The minimum area for the 2-bedroom units are 79.5m ² . The minimum area for the 3-bedroom units are 108.9m ² .	Yes
	Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms.	All habitable rooms have windows of acceptable size to facilitate acceptable solar access and natural ventilation.	Yes
	Habitable room depths are limited to a maximum of 2.5 x the ceiling height.	The habitable room depths comply.	Yes

Section	Design Criteria	Proposed	Complies
	Master bedrooms have a minimum area of 10m ² and other bedrooms 9m ² (excluding wardrobe space).	The size of all bedrooms comply.	Yes
	Bedrooms have a minimum dimension of 3m (excluding wardrobe space).	All bedrooms have a minimum dimension of 3m, excluding wardrobe space.	Yes
	Living rooms or combined living/dining rooms have a minimum width of: <ul style="list-style-type: none"> 3.6m for studio and 1- bedroom apartments 4m for 2- and 3- bedroom apartments 	The width of the studio and 1-bedroom units is at or greater than 3.6m, and the width of the 2-bedroom units is at or greater than are 4m.	Yes
	The width of crossover Or cross through apartments are at least 4m internally to avoid deep narrow apartment layouts.	The width of each apartment is greater than 4m.	Yes
	The width of crossover or cross through apartments are at least 4m internally to avoid deep narrow apartment layouts.	The width of each apartment is greater than 4m.	Yes
Part 4E: Private Open Space and Balconies	All apartments are required to have primary balconies as follows: <ul style="list-style-type: none"> Minimum area of 8m² and minimum depth of 2m for 1-bedroom units Minimum area of 10m² and minimum depth of 2m for 2-bedroom units Minimum area of 12m² and minimum depth of 2m for 3-bedroom units The minimum balcony depth to be counted as contributing to the balcony area is 1m.	The minimum area for of the balconies for the 1-bedroom units are 10.3m ² . The minimum area for the 2-bedroom units are 10.1m ² . The minimum area of the balconies for the 3-bedroom units are 11.6m ² . All balconies have minimum depth of 2m.	Yes for the 1 and 2 bedroom units, a condition to be imposed to ensure all non-build-to-rent 3 bedroom units comply
Part 4F: Common Circulation and Spaces	Maximum number of apartments off a circulation core on a single level is eight	Each floor contains a maximum of ten per core on Levels 2 and 3, maximum of	See Note 3

Section	Design Criteria	Proposed	Complies
		four for Levels 4 to 12	
	Daylight and natural ventilation should be provided to all common circulation spaces that are above ground	Lobbies are naturally lit and there is opportunity for natural ventilation.	Yes
Part 4G: Storage	<p>In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided:</p> <ul style="list-style-type: none"> • 6m³ for 1-bedroom units • 8m³ for 2-bedroom units • 10m³ for 3-bedroom units <p>At least 50% of the required storage is to be located within the apartment.</p>	There is a mixture of storage located within the units as well as within the basement areas.	Yes

Note 1 – Deep soil

Part 3E-1.4 of the Apartment Design Guide states that achieving the design criteria may not be possible on some sites including where the location and building typology have limited or no space for deep soil at ground level, such as in centres where there is 100% site coverage or non-residential uses at ground floor level.

Where a proposal does not achieve deep soil requirements, acceptable stormwater management should be achieved and alternative forms of planting provided such as on structure.

The applicant has provided the following by way of an alternative:

- Landscaping on structure, increased as part of this modification application.
- Soil depths (to 800mm) for mature tree growth
- An on-site stormwater management system designed by a qualified hydraulic engineer.

This has been reviewed by Council's Landscape Architect and deemed acceptable.

On that basis, it is recommended that these alternative forms are supported by the Sydney Eastern City Planning Panel.

Note 2 – Visual privacy

Levels 8 to 12 maintains the same setback to the western boundary (659-669 Gardeners Road), and hence does not achieve the minimum 12m requirement, with the non-compliance ranging between 2.58m at the Galloway Street frontage to 1.52m at the Galloway Street frontage.

The design of the units has minimised the number of openings along this elevation, and privacy screenings are proposed to achieve compliance. These screenings are a prominent feature on the western elevation architectural drawings. Furthermore, it is maintaining a building line on this elevation that is consistent with what has been approved. It is considered that this has been appropriately addressed.

On that basis, it is recommended that these alternative forms are supported by the Sydney Eastern City Planning Panel.

Note 3 – Circulation core

Part 4F1.8 of the Apartment Design Guide states that where a development is unable to achieve the design criteria, a high level of amenity for common lobbies, corridors and apartments should be demonstrated.

For Levels 2 and 3 a high level of amenity is demonstrated with the corridors being naturally lit, naturally ventilated, has seating areas and for Level 2 has direct access to the communal open space. These design solutions are considered to demonstrate high levels of amenity, and therefore is considered to have been appropriately addressed.

On that basis, it is recommended that these alternative forms are supported by the Sydney Eastern City Planning Panel.

State Environmental Planning Policy (Housing) 2021

Clause 72 – Development for the purposes of build-to-rent housing permitted with consent

The subject site is zoned MU1 Mixed Use as per the Bayside LEP 2021, and shop top housing is permissible in the Land Use Table. Therefore, this establishes permissibility of build-to-rent housing in this zone.

The proposed modified development has nominated 50 of the 118 units (18 x 1 bedrooms and 32 x 2 bedrooms), which will be occupied, or intended to be occupied, by individuals under residential tenancy agreements. The allocation of these units are as follows:

Level 2	18 units	A201, A202, A203, A204, A205, A206, A207, A208, A209, A210, B203, B204, B205, B206, B207, B208, B209, B210
Level 3	20 units	A301, A302, A303, A304, A305, A306, A307, A308, A309, A310, B301, B302, B303, B304, B305, B306, B307, B308, B309, B310
Level 4	4 units	A401, A402, B403, B404
Level 5	4 units	A501, A502, A503, B503
Level 6	2 units	A603, B603
Level 7	2 units	A703, B703

All buildings containing the dwellings are located on the same lot.

Clause 73 – Conditions of build-to-rent housing to apply for at least 15 years

Appropriate conditions will be imposed relating to the following:

- That the tenanted component of the building will not be subdivided into separate lots;
- That the tenanted component of the building will be owned and controlled by 1 person, and operated by 1 managing agent, who provides on-site management.

- That it would be subject a period of 15 years commencing on the day an occupation certificate is issued for all parts of a building to which the development relates

The above will be imposed as a condition in the attached draft schedule of modified conditions by way of a restriction against the title.

Clause 74 – Non-discretionary development standards—the Act, s 4.15

The approved development, and the development as proposed to be modified, involves a variation to the height and FSR non-discretionary development standards, however the proposal is compliant with the minimum 10 car parking spaces required for the 50 BTR units.

This Clause does not prevent the consent authority from approving development that does not comply with a non-discretionary development standard. The variations to height and FSR are supported for the reasons detailed in assessment of BLEP 2021 below.

Therefore, the proposal is acceptable with regards to Clause 74.

Clause 75 – Design requirements

Where SEPP 65 applies to the development, the consent authority shall be flexible in applying certain design criteria of the ADG having regard to Part 4 Items 4E, 4G and 4K and its consideration of the Objectives of Part 4 of the ADG that:

- (i) the amenities proposed to be provided to tenants residing in the building through common spaces and shared facilities and services,
- (ii) whether the configuration and variety of dwellings in the building will provide adequate options to prospective tenants in relation to the size and layout of the dwellings,
- (iii) whether tenants residing in the building will be able to relocate to other dwellings in the building that will better accommodate their housing requirements if their requirements change.

The proposed modified development includes large communal open space areas on Levels 2 and 4 as well as the rooftop, which will contain shared facilities and services.

The 50 nominated units that have been allocated as build-to-rent housing all comply with the minimum unit & private open space sizes and contain a mixture of unit sizes (in terms of bedrooms) as well as locations from Levels 2 to 7.

Given that the nominated units will be distributed through the proposed modified development and are of varying sizes, it will allow for tenants residing in the building will be able to relocate to other dwellings in the building that will better accommodate their housing requirements if their requirements change.

The proposed development as amended complies with the design criteria for 4E (Private open space and balconies), 4G (Storage) and 4K (Apartment Mix). However, it is to be noted that 4K has Design Guidance and not Design Criteria.

Clause 76 – Active uses on ground floor of build-to-rent housing in business zones

The proposed modified development has an active street frontage.

Clause 77 – Conditions requiring land or contributions for affordable housing

Development Contributions as per Section 7.11 of the Environmental Planning and Assessment Act 1979 will be payable and imposed as a condition.

Clause 78 – Consideration of Apartment Design Guide for further subdivision of dwellings

No subdivision is proposed.

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

The applicant has submitted a BASIX Certificate for the proposed development, being certificate number 595120M_05.

Commitments made within BASIX certificates result in reductions in energy and water consumption on site post construction. A condition has been imposed on the consent to ensure that the stipulated requirements are adhered to. The proposal is satisfactory in this regard.

Bayside Local Environmental Plan 2021

Clause 2.3 – Zone MU1 Mixed Use

The subject site is zoned MU1 Mixed Use under the provisions of Bayside Local Environmental Plan 2021 (BLEP 2021). The proposal is defined as a mixed-use development which constitutes a permissible development only with development consent. The **objectives of the zone** are:

- To encourage a diversity of business, retail, office and light industrial land uses that generate employment opportunities.
- To ensure that new development provides diverse and active street frontages to attract pedestrian traffic and to contribute to vibrant, diverse and functional streets and public spaces.
- To minimise conflict between land uses within this zone and land uses within adjoining zones.
- To encourage business, retail, community and other non-residential land uses on the ground floor of buildings.
- To ensure built form and land uses are commensurate with the level of accessibility, to and from the zone, by public transport, walking and cycling.

The proposed development satisfies the objectives of the zone.

Clause 2.7 – Demolition

The proposed development subject to this modification will not change any conclusions made in the DA assessment (as approved by the Land and Environment Court).

Clause 4.3 – Height of Buildings

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

The approved height of building was 51 metres, which was subject to a Clause 4.6 assessment.

The maximum height subject to this modification application is 53.5 metres, which is a further increase of 2.5 metres and a variation of 21.6%.

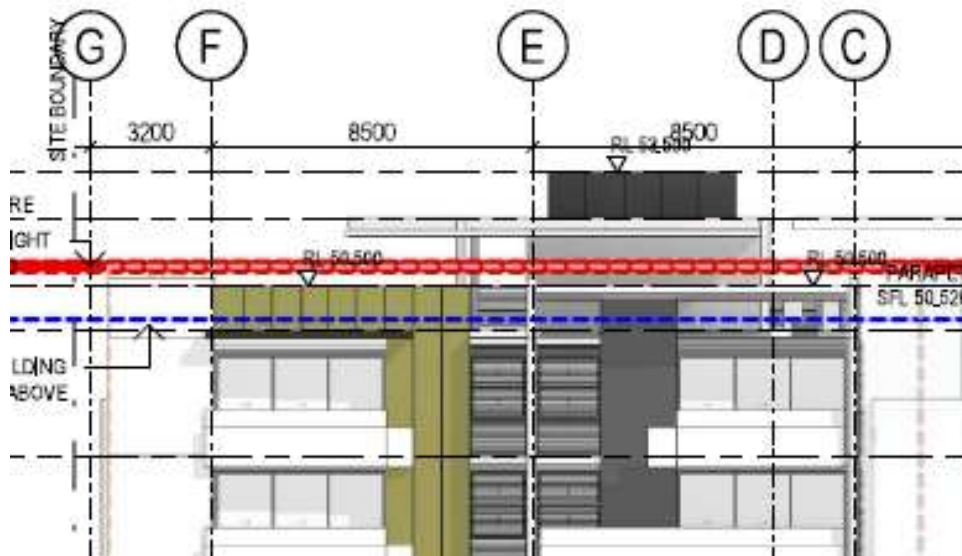


Figure 11: Southern tower, northern elevation with blue line indicating the 44m Height of Building development standard (supplied by applicant)



Figure 12: Northern tower, southern elevation with blue line indicating the 44m Height of Building development standard (supplied by applicant)

As demonstrated in the above figures, the extent of the height increase starts below the parapet wall for Level 12, but primarily contains the covered structures for the rooftop communal open space as well as the lift over run.

The red line indicates the 51m Obstruction Limitation Surface (OLS) that was subject to the approval of DA-2015/22. However, it is to be noted that in September 2018 the Department of Infrastructure Airspace Protection Division allowed for the intrusion of a building on the site into the prescribed airspace to a maximum of 53.5m AHD. Sydney Airport in their referral dated 8 May 2023 supported the increase subject to modified conditions, including the following:

- The building must not exceed a maximum height of 53.5 metres AHD, including all lift over-runs, vents, chimneys, aerials, antennas, lighting rods, any roof top garden plantings, exhaust flues, etc.

As this is a Section 4.56 application, the provisions of Clause 4.6 to vary a development standard do not strictly apply.

Notwithstanding this, the applicant has still provided an assessment against the objectives of this Clause, and is provided below:

The objectives of Clause 4.3 are as follows:

*(a) to ensure that building height is consistent with the desired future character of an area,
(b) to minimise visual impact of new development, disruption of views, loss of privacy and loss of solar access to existing development,
(c) to nominate heights that will provide an appropriate transition in built form and land use intensity.*

Nothing in the proposed modification impacts upon the development as modified meeting these objectives.

The control will continue to prescribe maximum building heights and the proposal will not alter that. Council will be able to continue to consider variations based on merit and in accordance with the provisions of Clause 4.6 for each new development.

The B4 Mixed Use zone within the MSTCP is undergoing change and revitalisation. The development activity and built form and land use outcomes within the precinct will have a significant and demonstrable influence on shaping the urban character and visual catchment of the locality overall.

The Land and Environment Court has approved the development at a similar height to that which is proposed under the modification application, noting that the building perimeter parapet of the two (2) towers is proposed to be reduced by 0.5m compared to the approved height.

The proposed increase in overall height relates to the lift, the roof top plant structures, and the rooftop communal open space structures. All these structures are well set back from the side parapet and will not be clearly visible from the street or level below and will not result in loss of privacy, disruption to views or loss of solar access to existing development.

The lift and the proposed rooftop communal open space will instead provide considerable benefit and amenity to the future residents of the approved development.

The proposed modification will not alter the perceived visual massing of the development and the proposed overall form and character of the approved development will be essentially unaffected by the modification.

The scale of the development as modified will remain consistent with the scale of the approved development and the desired future character of the locality. The development is of a design where the approved variation in height will not compromise the ability for adjacent buildings and public areas to receive satisfactory exposure to sky and sunlight.

For these reasons the proposed variation to the maximum building height standard is considered to result in a better planning outcome, and is reasonable and appropriate in the circumstances.

Assessment

- The nature of the full extent of the encroachment of the Height of Building is minor.
- Recent decisions have allowed variations for roof-top communal open space, plant rooms and lift over runs where they are located away from the outer edge of the parapet wall, generally more centralised within the tower structure and not further increasing visual impact, disruption of views, loss of privacy and loss of solar access to neighbouring sites.
- The variation provides a built form that is coordinated and cohesive.
- The proposed building height is consistent with the desired future character in the Mascot Station Precinct when viewed from street level and as evidenced by the recently completed developments in the area.
- CASA have provided concurrence for the height of building as proposed as part of this application.
- The development will not adversely impact the surrounding streetscape and desired future character of the area.
- The proposed height of building does not set an undesirable precedent for future development within the precinct.

With the above considered, it is recommended that this variation is supported by the Sydney Eastern City Planning Panel.

Clause 4.4 – Floor Space Ratio

A maximum Floor space Ratio (FSR) standard of 3.2:1 (Gross Floor Area (GFA) of 10,508.8m²) applies to the subject site.

The approved FSR was 3.39:1 (GFA of 11,164m²), which was subject to a Clause 4.6 assessment.

The FSR subject to this modification application is 3.53:1 (GFA of 11,601m²), which a further increase of 437m² and a variation of 10.4%.

The table below details the changes in GFA throughout the modified proposal, with the comment section specifying the location of amendments:

	Approved	Proposed	Difference	Comment
Ground	787.17m ²	764m ²	-23.17m ²	Reduction in the depth of commercial tenancies addressing Bourke Street to accommodate amendments to at grade parking area adjacent to western boundary
Level 1	1,523m ²	0m ²	-1,523m ²	Deletion of units and replaced with car parking
Level 2	1,452.46m ²	1,560.6m ²	+108.14m ²	Deletion of communal open space and replaced with residential unit
Level 3	791.23m ²	1,560.6m ²	+715.37m ²	Deletion of communal open space and decreased building setback along Bourke Street frontage for both towers
Level 4	828.15m ²	792.94m ²	+35.21m ²	Minor changes to the size of both towers

	Approved	Proposed	Difference	Comment
Level 5	828.8m ²	877.87m ²	+49.07m ²	Minor changes to the size of both towers
Level 6	828.12m ²	877.87m ²	+49.75m ²	Minor changes to the size of both towers
Level 7	826.06m ²	877.87m ²	+51.81m ²	Minor changes to the size of both towers
Level 8	823.92m ²	859m ²	+35.08m ²	Minor changes to the size of both towers
Level 9	823.92m ²	859m ²	+35.08m ²	Minor changes to the size of both towers
Level 10	823.92m ²	858m ²	+34.08m ²	Minor changes to the size of both towers
Level 11	824m ²	858m ²	+34m ²	Minor changes to the size of both towers
Level 12	0m ²	858m ²	+858m ²	New residential level, size consistent with levels directly below

As this is a Section 4.56 application, the provisions of Clause 4.6 to vary a development standard do not apply.

Notwithstanding this, the applicant has still provided an assessment against the objectives of this Clause, and is provided below:

As with the approved development, the development as modified will remain consistent with the objectives of the FSR standard outlined in subclause 4.4(1), despite the minor variation to the FSR standard. These objectives are as follows: “(a) to establish standards for the maximum development density and intensity of land use, (b) to ensure that buildings are compatible with the bulk and scale of the existing and desired future character of the locality, (c) to maintain an appropriate visual relationship between new development and the existing character of areas or locations that are not undergoing, and are not likely to undergo, a substantial transformation, (d) to ensure that buildings do not adversely affect the streetscape, skyline or landscape when viewed from adjoining roads and other public places such as parks, and community facilities, (e) to ensure buildings do not adversely affect the streetscape, skyline or landscape when viewed from adjoining roads and other public places such as parks and community facilities”

The control will continue to prescribe maximum FSRs and the proposal will not alter that. Council will be able to continue to consider applications and variations based on merit and in accordance with the provisions of Clause 4.6.

The intensity and bulk and scale of the proposed development, as modified, will be consistent with the scale of the approved development at the site as well as approved development within the immediate vicinity and wider locality of the site, which have been completed or are under construction. The proposal involves only minor change to the approved height of the development and noting that the building perimeter parapet height is proposed to be reduced by 0.5m compared to the approved development.

The proposed density of the modification, although numerically increased above that already approved, is nonetheless consistent with Council’s strategic vision and desired future character for the Mascot Station Town Centre Precinct in that it will assist in delivering a vibrant and rejuvenated mixed use precinct with new retail and commercial

opportunities and increased residential dwellings with high amenity and access to public transport.

The additional GFA proposed in the modification equates to a total of 437m² only, and results in a minor amendment to the approved footprint and building envelope because the additional floor area is distributed primarily over the multiple levels of the tower elements of the development.

The additional GFA does not result in any discernible increase in the building mass or increase in the scale of the approved buildings which have already been determined to be suitable for this location.

The detailed architectural drawings and the Design Report accompanying the application demonstrate that the proposal will not result in any adverse impacts to adjoining properties and the public domain by way of overshadowing, visual and acoustic privacy or view loss.

The building is of a design such that the floor space which represents the variation to the FSR control is positioned on the site in a manner that ensures that it will not adversely compromise the amenity of surrounding properties.

A significant outcome of the proposed modifications is that the separation distance between the proposed building and the constructed building to the west at 659-665 Gardeners Road will be increased, providing greater privacy outcomes and reducing visual massing (if only marginally).

Although there is a minor modification proposed to the height of the building, the scale of the building does not change and, for all intents and purposes, the visual relationship of the building with the surrounding properties and public domain will remain unchanged from that which has been approved. Additionally, the correlation between the size of a site and the extent of any development on that site will remain acceptable and consistent with the development as approved.

The approved development was assessed as being a development that will contribute to the economic growth of Botany Bay (now Bayside) and the proposal as amended will continue to positively contribute to the economic growth of the area.

Consequently, the proposed development as amended is consistent with each of the FSR development standard objectives.

Importantly the proposed development will result in a better planning outcome compared to the approved development. Notwithstanding the increase in GFA, the proposed modifications will result in significant increases in internal amenity of the residential apartments and commercial tenancies, without increasing adverse impacts to adjacent properties of the public domain.

In particular, the proposed modifications will result in the following improved residential outcomes:

- Deletion of basement Level 2 and reduced risk to underground rail infrastructure and reduced interference with the water table;*
- Improved apartment mix*
- Increase in apartment sizes*
- Increase in deep soil area from 36m² to 52m²;*

- *The addition of communal open space at roof level of both towers and consequential increase in communal open space from 1,070m² to 1,717m² representing an increase in communal open space from 32% of site area to 52% of site area;*
- *Increase in the amount of communal open space receiving two (2) hours of solar access in mid-winter;*
- *Reduction in the number of apartments per core;*
- *All private open space area for residential apartments is equal to or greater than the private open space areas approved in the original development consent;*
- *Reduction in overshadowing of adjacent communal and public open space;*

In addition, the ground floor retail and commercial floor space has been refined to include the following improvements:

- *Modified layout of retail tenancies with a more flexible space and allowing for a more efficient consolidation and or partition of the retail space to suit future uses; and*
- *Reduction in the difference between the finished floor level of the Gardeners Road commercial unit to the footpath level of Gardeners Road, resulting in a more efficient pedestrian access and improved landscaped treatment to the Gardeners Road frontage.*

The proposed modifications have been achieved while maintaining compliance with onsite parking and servicing provisions.

The proposed modifications have also been achieved while increasing the approved building separation distances to the approved (and now constructed) development to the west. Additionally, the modifications result in a design that achieves equal to, or better than, the required ADG building separation distance between the two (2) proposed towers at the site.

The proposed development will continue to 'read' as two (2) towers above a four (4) storey podium. The height of the towers remains commensurate with the approved development and the changes to the approved building envelope will be negligible when viewed from adjacent properties and the public domain.

The proposed modifications will not result in discernible changes to the overall scale and building mass of the approved development as detailed above in this report.

The additional GFA will not result in additional bulk or scale impacts and the external appearance of the development will, for all intents and purposes, be the same when compared to the approved development.

On balance, the development will result in improved development outcomes compared to the approved development and the increase in FSR is justifiable in the circumstances.

Assessment

- *The intensity and density of the development is of a form that would be reasonably contemplated for the site. Whilst the proposed FSR is non-compliant, there are other sites within the Mascot Station Precinct that have been approved at a similar or higher FSR. The FSR, whilst beyond that prescribed in the development standard generates a bulk and scale that is in keeping with the desired future character of the area. The site is also located within 200m of Mascot Train Station.*

- The proposal has maintained an appropriate visual character in that the bulk and scale of the proposal will complement the adjoining approved developments to the west at 669 Gardeners Road and 6 Bourke Street to the south. This provides a uniform streetscape presentation, providing an appropriate visual interface between new development and adjoining approved development.
- The proposal is not considered to generate adverse impacts to the use of adjoining properties and the public domain.
- The site is a large site that is capable of accommodating an increase in density without generating adverse impact. The density is considered to be similar to that of adjoining approved development in the precinct.
- The proposal shall contribute to the economic growth of the Botany Bay area via the provision of new housing and employment opportunities within proximity to public transport services and within the Mascot Station Precinct.
- The proposed variation is at the lower end as compared to other sites within the Mascot Station Precinct, with 3.75:1 approved for 7 Bourke Street and 30-32 John Street and 3.82:1 approved for 8 Bourke Street and 37 Church Avenue, both of which are in close proximity to the subject site.
- The additional floor space does not result in unacceptable adverse impacts to adjoining properties in terms of traffic, bulk and scale, streetscape impact, visual impact or overshadowing.
- The FSR does not set an undesirable precedent for future development within the precinct.

With the above considered, it is recommended that this variation is supported by the Sydney Eastern City Planning Panel.

Clause 5.1 – Relevant acquisition authority

DA-2015/22 made note of the subject site being affected by road widening, as shown below:



Figure 13: Extent of acquisitions for road widening on all three frontages (supplied by applicant)

In 2017, works commenced on Gardeners Road and Bourke Street as part of the WestConnex (M8) project, and have now been completed (Figures 3 and 4 earlier in this report show this).

Further to this, a portion of the site along the southern boundary is to be acquired to complete the full width construction of Galloway Street, which is a new street to service the new mixed-use developments between Gardeners Road to the north and Church Avenue to the south. This portion is to be dedicated to Council at no cost and full completion of Galloway Street will be part of this approval in accordance with existing conditions of consent.

Clause 6.1 – Acid Sulfate Soils

The following assessment was made as part of DA-2015/22:

The subject site is affected by Class 2 Acid Sulfate Soils. The development application is accompanied by an Acid Sulfate Soils Management Report prepared by Douglas Partners dated 21 December 2014. The report indicates that sampling and testing was restricted to 4.5 m below ground surface level and therefore disturbance of materials to greater depths may encounter acid sulphate soils particularly in bored piles which will presumably be taken to bedrock. It would, therefore, be prudent to carry out a detailed assessment when you obtain development approval and, on the basis of sampling and testing at anticipated depths of soil disturbance, a decision can be made of whether an acid sulphate soil management plan is required.

However, given the DP experience with extensive drilling, sampling and monitoring of disturbed soils during piling at Sydney Airport we believe there is a high probability that any spoil from deep excavations or pile drilling will need to be treated before off-site disposal. It would be sensible to wait until the development is approved and the final designs are prepared so that the sampling and testing can be targeted to the locations and depths required for deep foundations and deep excavations.

The proposal is able to comply with the requirements of this clause.

The modified proposal will not change any conclusions made in the DA assessment (as approved by the Land and Environment Court), and hence any prescribed conditions for the original DA will remain unchanged.

Clause 6.2 – Earthworks

The impacts of the proposed earthworks were considered in the assessment of DA-2015/22. Conditions were imposed to ensure minimal impacts on the amenity of surrounding properties, drainage patterns and soil stability.

The modified proposal will not change any conclusions made in the DA assessment (as approved by the Land and Environment Court), however some conditions will be amended to be updated.

Clause 6.3 – Development in Areas subject to Aircraft Noise

The subject site is located within the ANEF 20-25 contour.

The modified proposal was accompanied by an Acoustic Report, prepared by Acoustic Logic and dated 28 February 2022, which considered aircraft noise on the proposed modified

development.

It has made an evaluation of the noise intrusion and recommends the installation of ventilation or air conditioning systems as the aircraft noise exposure exceeds ANEF 20. As internal noise levels cannot be achieved with windows open, it is recommended that an alternative outside air supply system or air conditioning be installed in accordance with AS1668.2 requirements. Any mechanical ventilation system that is installed should be acoustically designed such that the acoustic performance of the recommended constructions are not reduced by any duct or pipe penetrating the wall / ceiling / roof. Noise emitted to the property boundaries by any ventilation system shall comply with Council requirements.

This is deemed to be acceptable and hence is consistent with this Clause.

Clause 6.4 – Airspace Operations

The subject site lies within an area defined in the schedules of the Civil Aviation (Buildings Control) Regulations that limit the height of structures to 50 feet (15.24 metres) above existing ground level without prior approval of the Civil Aviation Safety Authority. The application proposes a building which exceeds the maximum height.

As part of the assessment of DA-2015/22, it was referred to Sydney Airport for consideration. The Civil Aviation Safety Authority (CASA), on behalf of Sydney Airport raised no objections to the proposed maximum height of RL 51.00 AHD (which is prescribed under Condition 8).

The proposed modifications subject to this application further increases the height (RL 53.5), and therefore the application was referred to SACL who did not object to the proposal on site to a maximum height of 53.5 metres AHD.

The proposal is satisfactory with respect to the objectives and requirements of this Section.

Clause 6.7 – Stormwater

Amended stormwater plans were submitted as part of this application.

This was assessed by Council's Development Engineer, and recommended that amended stormwater plans shall be submitted for assessment at Construction Certificate stage reflecting the issues identified in the assessment of the submitted stormwater plans.

Clause 6.9 – Active Street Frontage

The Bourke Street frontage of the proposed development is identified as an active street frontage in the LEP map.

The proposed modifications subject to this application will retain a similar ground floor footprint and hence it is satisfied that there will be an active street frontage after its erection or change of use. These future uses will likely include business premises, retail premises and medical centre.

Clause 6.10 – Design Excellence

The subject site is mapped under design excellence in the LEP.

As stated earlier in this report under the SEPP 65 section, this application was referred to the Bayside DRP on 5 May 2022. As part of this referral, the Design Review Panel confirmed that the proposed modification application achieved design excellence.

In considering whether the development exhibits design excellence, the consent authority must have regard to the following matters:

(a) whether a high standard of architectural design, materials and detailing appropriate to the building type and location will be achieved,

Main finishes consist of pre-cast, light weight and polished aggregate concrete and a contrast is achieved through different paint colours that highlight the architectural expression of the balconies and the supporting built form. The proposal achieves design excellence.

(b) whether the form, arrangement and external appearance of the development will improve the quality and amenity of the public domain,

The modifications to the external elevations improves the amenity of the proposal to gain design excellence.

(c) whether the development detrimentally impacts on view corridors,

It will not detrimentally impact on view corridors.

(d) the requirements of any development control plan made by the Council and as in force at the commencement of this clause,

Pedestrian access has been facilitated and amenity around the proposal provides a satisfactory outcome to achieve design excellence.

(e) how the development addresses the following matters:

(i) the suitability of the land for development,

The suitability of the land has been satisfactorily addressed

(ii) existing and proposed uses and use mix,

The existing and proposed uses and use mix has been satisfactorily addressed

(iii) heritage issues and streetscape constraints,

There are no heritage items that may be impacted by the proposal. The streetscape interface including awnings, planters and other elements have been designed in an acceptable manner.

(iv) the relationship of the development with other development (existing or proposed) on the same site or on neighbouring sites in terms of separation, setbacks, amenity and urban form,

Deemed satisfactory.

(i) bulk, massing and modulation of buildings,

The modulation, bulk and massing of the building provides an appropriate response to the existing and future desired character.

(vi) street frontage heights,

Street frontage heights are satisfactory, as well as the resolution of built form.

(vii) environmental impacts such as sustainable design, overshadowing, wind and reflectivity,

Deemed satisfactory.

(viii) the achievement of the principles of ecologically sustainable development,

Deemed satisfactory.

(ix) pedestrian, cycle, vehicular and service access, circulation and requirements,

Deemed satisfactory.

(x) the impact on, and any proposed improvements to, the public domain,

The streetscape interface has resulted in a satisfactory outcome.

(xi) achieving appropriate interfaces at ground level between the building and the public domain,

The streetscape interface has resulted in a satisfactory outcome.

(xii) excellence and integration of landscape design.

The streetscape landscape and relevant interfaces have resulted in a satisfactory outcome.

Clause 6.11 – Essential services

The proposed modifications subject to this application will retain the ability to provide relevant services on site.

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

There are no draft Environmental Planning Instruments that are applicable to the assessment of this application.

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

The following Development Control Plan is relevant to this application:

Botany Bay Development Control Plan 2013

The application is subject to the Botany Bay DCP 2013. An assessment against the relevant parts of the DCP are provided below:

Part 3A – Parking and Access

The ground floor retail and the 68 standard residential units are relevant under this section of the DCP. However, given the multiple uses and with that the calculations sourced from other planning documents other than the DCP, a full detailed calculation will be made later in the report, under “Impacts of the Development” section.

Outside of the car parking spaces, the following have been provided in either the

basement or Level 1 car parking areas:

- Loading dock area designed to accommodate 1 medium rigid vehicle (MRV) and 1 Council garbage truck
- 38 bicycle parking spaces
- 4 motorcycle parking spaces
- 1 car share bay
- 1 car wash bay

The provision of the above complies with the prescribed rates in the DCP.

This has been reviewed by Council's Development Engineer and considered acceptable, subject to modified conditions in the attached Draft Schedule of Modified Conditions.

Part 3C – Access and Mobility

The applicant has provided an access report prepared by Accessible Building Solutions and dated 19 November 2021.

It has assessed the proposed modifications against the following:

- The Access Provisions of the BCA 2019
- The Access To Premises Standard
- AS1428 suite of Standards
- AS2890.6 for car parking
- AS1735.12 for lifts
- AS4299 Adaptable Housing
- SEPP 65 – Part 4Q
- Council's DCP relating to Access for People with a Disability

Compliance with the findings and recommendations of this report will be imposed as a reference document in Condition 1 of the attached draft schedule of conditions.

Part 3D – Signage

Refer to the SEPP section earlier in the report which discusses the proposed signage.

Part 3G – Stormwater Management

Refer to the LEP section earlier in this report.

Part 3I – Safer By Design

Refer to the Schedule 1 under SEPP 65 section earlier in the report which discusses the safer by design assessment.

Part 3J – Aircraft Noise and OLS

Refer to the LEP section earlier in this report.

Part 3K – Contamination

Refer to the SEPP section earlier in the report which discusses the contamination of the site.

Part 3L – Landscaping

An amended set of landscape plans, prepared by Oculus, was lodged with the MDA, which included the following information:

- Materials and Finishes Schedule
- Master Plant Schedule
- Surface Finishes Plan
- Planting Plan
- Sections and Elevations

This has been reviewed by Council's Landscape Architect and considered acceptable, subject to modified conditions in the attached Draft Schedule of Modified Conditions.

Part 3N – Waste Minimisation and Management

A Waste Management Plan was lodged with the MDA, and is considered to be satisfactory.

Part 4C – Apartment Buildings

Part	Control	Proposed	Complies
Part 4C.5 Social Requirements	C1 A statement from the architect or builder must be submitted with the development application certifying that the adaptable dwelling has been designed in accordance with the provisions of the Australian Standards AS 4299-1995 Adaptable Housing	The applicant has provided an access report prepared by Accessible Building Solutions and dated 19 November 2021 which in part has certified that the proposed adaptable dwellings have been designed in accordance with AS 4299-1995.	Yes
	C2 Adaptable and accessible housing are to be provided in accordance with Part 3C – Access and Mobility.	A total of 24 units have been nominated as adaptable units, with details shown in the architectural plans	Yes
Part 4C.6.2 Design and Siting	C1 The design and layout of development on sites in excess of 2000m ² must be appropriate to the bulk and scale of surrounding developments.	It is considered that the design of the proposed development is consistent with the bulk and scale of the surrounding developments on the western side of Bourke Street and southern side of Gardeners Road	Yes
Part 4C.7 Mixed Uses	C1 Any retail or commercial component must be located at ground level.	All the proposed retail space is located at ground level	Yes

Part	Control	Proposed	Complies
	C2 Adequate storage space is to be provided for the use of the commercial or retail premises	Storage areas have been nominated on the floor plans for the retail tenancies	Yes
	C3 Noise insulation measures are to be incorporated into the development with particular attention to shared ceiling/floors and walls.	Condition 50 in the development consent issued under DA-2015/22 prescribes noise insulation measures, which is consistent with this control	Yes
	C4 The building is to be designed to encourage uses that will enhance and promote active street front activities.	All of the retail tenancies have a frontage to either Bourke Street, Gardeners Road or Galloway Street	Yes
	C5 The layout and design of the building is to ensure privacy for dwellings within the development.	Refer to ADG assessment on building separation earlier in this report	Yes
	C6 The design of parking areas and loading facilities is to take into account the use of these areas by a range of activities and will minimise any conflicts that may arise as a result of the multiple use of these facilities.	The nominated parking and loading area for the retail area is clearly separated from the other activities on the site,	Yes
	C7 Visitor parking for the shop component is to be conveniently located, identified as such, and accessible to the general public. Visitor parking is not to be located behind any security grill or gate.	It is conveniently located near the ground floor tenancies and not located behind any security grill or grate	Yes
	C8 Site facilities, storage, mailboxes, and garbage collection points must be designed to adequately service the needs of the occupants of the building and are to be conveniently located	These are appropriately designed and located within the development	Yes

Part	Control	Proposed	Complies
	within the development.		

Part 9A – Mascot Station Precinct

Part	Control	Proposed	Complies
9A.4.3.4 Street Setbacks	C1 All development within Urban Block 1 must comply with the street setbacks identified in Figures 30 and 31.	The ground level setback is 0m to Bourke Street and New (Galloway) Street and 3m to Gardeners Road	Yes
		Gardeners Rd – Average 6m; Bourke St – 3m (to Galloway Street alignment); and Galloway Street – 3m to 6m (to Galloway Street alignment).	No see Note 1 below
9A.4.4.4 Active Street Frontages and Awnings	C1 All development within Urban Blocks 1, 3 and 4 must provide retail or commercial street frontages where shown in Figures 49, 50, 51 and 52.	Commercial/retail tenancies are provided on the ground floor. No residential apartments are proposed on the ground floor.	Yes
	C2 All development within Urban Blocks 1, 3 and 4 must provide awnings where shown in Figures 53, 54, 55 and 56.	An awning is provided to the retail and commercial tenancies.	Yes
	C4 There must be a minimum clear passage width of 2 metres between the adjacent building and leased area for outdoor dining to allow for clear passage of pedestrian traffic at all times.	There is adequate area in the through site link for outdoor dining and pedestrian movement.	Yes
9A.4.4.5 Residential and Non Residential Interface	C2 Shadow diagrams must be provided for all development proposals for the summer and winter solstices. Shadow diagrams must show shadow impacts at 9am, 12 noon and 3pm	Detailed shadow studies and sun eye diagrams were provided in the set of architectural drawings. Whilst it is noted earlier in this report that there has been an increase in height and some minor changes to building setbacks, it is	Yes

Part	Control	Proposed	Complies
	for both solstices. Additional building setbacks may be required where internal site shadow impacts or impacts on adjoining properties are considered by Council to be unreasonable.	considered on balance that the extent of shadow impacts on neighbouring properties has not significantly changed the assessment and conclusions made in the DA assessment.	
9A.4.4.6 Building Articulation	C2 Blank external walls of greater than 100m ² must be avoided.	No blank walls are proposed	Yes
9A.4.4.7 Dwelling Size and Mix	C2 The combined total number of studio units and one- bedroom apartments/dwellings must not exceed 35% of the total number of apartments/ dwellings within any single site area.	The combined total of 1 bedroom units is 27.1%	Yes
9A.4.4.8 Landscaped Area	C8 Developers are required to execute all nominated proposed public domain works identified on Figures 57, 58, 59 and 60, including landscaping works.	Condition 27 in the attached Draft Schedule of Modified Conditions prescribes that a Public Domain Frontage Design package (for the entire frontage of the site including Galloway Street, Bourke Street and Gardeners Road) must be prepared	Yes
9A.4.4.11 Car Parking	C1 Car parking provision must comply with the following car parking rates: <i>Retail</i> 1 space/80sqm of GFA	A full detailed calculation will be made later in the report, under "Impacts of the Development" section	Y - See 'Impacts' section later in the report
9A.4.5.4 Solar Access and Shadow	C3 Development must demonstrate: (i) Neighbouring developments will obtain at least three hours of direct sunlight to 50% of the primary private open space and 50% of windows to habitable rooms; and (ii) 30% of any common open space will obtain at least two hours of direct sunlight between	Detailed shadow studies and sun eye diagrams were provided in the set of architectural drawings. Whilst it is noted earlier in this report that there has been an increase in height and some minor changes to building setbacks, it is considered on balance that the extent of shadow impacts on neighbouring properties has not significantly changed the assessment and conclusions made in the DA assessment.	Yes

Part	Control	Proposed	Complies
	9am and 3pm on 21 June.		
9A.4.5.7 Wind Mitigation	<p>C1 All new buildings are to meet the following maximum wind criteria:</p> <ul style="list-style-type: none"> (i) 10 metres/second along commercial/retail streets; (ii) 13 metres/second along main pedestrian streets, parks and public places; and (iii) 16 metres/second in all other streets 	<p>A Pedestrian Wind Environment Statement has been submitted with the application prepared by Windtech Consultants dated 22 June 2021.</p> <p>The report concludes that it has been predicted that most ground levels wind speeds within public access areas surrounding the development should remain at their present levels or be reduced with the addition of the proposed development and its wind mitigation treatments.</p>	Yes, subject to design measures

Note 1 – Street setbacks

The proposal seeks a departure from the DCP layouts as prescribed in Part 9A.4.3.4 of the DCP, in that the upper level setbacks are less than 5 metres from Bourke Street and Galloway Street, with a minimum of 3 metres.

The applicant has provided a summary of the differences in the accompanying DCP Compliance Table which is an attachment to the Statement of Environmental Effects, as listed below:

The proposal generally complies with the above control apart from minor variations to the setback for the future Galloway Street which in some instance will be less than 3m and with regard to setbacks to Bourke Street in which the eastern elevation setback to Bourke Street is punctuated with balconies elements and projecting vertical elements. This elevation is highly articulated and the projections into the required 3m setback result in a better modulated form and will not result in any adverse impacts by way of overshadowing, privacy or visual massing.

It is noted that the southern and eastern elevations are nonetheless well-articulated and achieve ADG compliant building separation with the development to the south.

The proposed modifications generally increase the setbacks to the buildings to the west above the podium level when compared to the approved development.

The proposal includes new communal open space at Level 4 between the two (2) towers and at the north west and south west corners. These gardens will provide considerable additional amenity for future residents of the development while not resulting in adverse impacts to the property to the west. In particular the landscaping has been organised in a manner that will protect privacy for residents in the Avantra building to the west, and will provide a 'greener' outlook and 'softer' landscaped setting for residents in that building.

Overall, the proposal responds appropriately to the alignment of the approved building to the west.

Despite the non-compliance, the proposal complies with the relevant objectives as listed below:

- It provides for a development that suitably buildings that spatially defines Bourke Street and Galloway Street with a well-articulated façade to the street;
- When compared to neighbouring developments that are already completed, it will be compatible with the desired future streetscape character; and
- There are well-articulated and stepped building facades on the upper levels.

With the above considered, it is recommended that this variation is supported by the Sydney Eastern City Planning Panel.

Section 7.11 Contributions (formerly Section 94)

The provisions contained in Council's Section 94 Contributions Plan apply to developments involving the construction of additional residential development that creates further demand to improve or upgrade existing facilities, amenities or services.

A revised total of **\$2,400,594.31** has been calculated. This payment will be imposed as a condition in the attached schedule.

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

There is no planning agreement applicable to the proposal.

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

The proposed development is not inconsistent with the relevant provisions of the *Environmental Planning and Assessment Regulation 2021*.

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

The likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality must be considered. In this regard, potential impacts related to the proposal have been considered in response to SEPPs, LEP and DCP controls outlined above.

Car parking

As discussed earlier in various sections earlier in this report, the proposed development generates a number of car parking rates across a number of planning documents, as listed below:

Component	Required	Proposed by Applicant	Compliance
Standard Residential Units (68 units)			
1 bedroom unit (0)	0.6 spaces/unit = 0	145 spaces	Yes – subject to condition permitting
2 bedroom unit (46)	Min 0.9 spaces/unit and max 2 space		

	per unit = min 42 and max 92		maximum of 136 spaces to be allocated to residential units (with remaining 9 spaces reallocated to BTR Units)
3 or more bedrooms unit (22)	Min 1.4 spaces/unit and max 2 space/unit = min 31 and max 44		
Residential Total (68 Units) <i>Note: these are the typical apartments that are permitted to be strata subdivided</i>	Min 73 and max 136 spaces		
Visitors Parking (68 Units) <i>Note: Only the typical apartment component requires visitor parking</i>	1 space/5 dwellings = 14 spaces	17 spaces	Yes – subject to 3 excess visitor spaces in Basement level being reallocated with 1 to BTR & 2 to Commercial
Build to Rent Units (50 units)			
BTR units (50 units) 32 x 1 bedroom 18 x 2 bedroom <i>Note: All apartments are to be entirely in single ownership. BTR component doesn't attract a visitor parking rate in the Housing SEPP.</i>	0.2 spaces/unit = 10 spaces	0 spaces	Yes – subject to 10 residential spaces to be provided for BTR
Commercial Tenancies			
Commercial/retail B01 – 128.4m2 B02 – 78. 5m2 B03 – 87.8m2 B04 – 87.6m2 B05 – 78.7m2 B06 – 99 m2	10 spaces required	6 spaces	No – however acceptable subject to condition requiring total of 8 commercial spaces - reverting back to the existing approved 8 commercial spaces
Other			
Service Bay residential	Loading dock for 1 MRV and 1 council garbage truck	1 MRV & 1 council garbage truck	Yes
Bicycle Parking	38	38	Yes
Motorcycle Parking	4	4	Yes
Car Share Bay	1	1	Yes
Car wash bay	1	1	Yes

With consideration of the above, the following below will be the recommended allocation of parking:

- **Build-to rent housing: 10 spaces** (re-allocated from the excess residential spaces). This is purely against the 50 nominated units, with no visitor rates. The new Bayside DCP 2022 requires that parking for Build to Rent developments comply with the Housing SEPP. Therefore, in the absence of provisions in the applicable Botany Bay DCP 2013 (now superseded), the Bayside DCP 2022 is used as a guide.
- **Residential apartments: 150 spaces.** 136 will be for residents and 14 will be for visitors. The 3 excess visitor spaces in the basement level is to be allocated to residential.
- **Commercial / retail: 8 spaces.** 8 spaces were approved, with 2 residential spaces to be reallocated to restore the number of approved spaces.
- The total number of car parking spaces is 168, and therefore it is compliant with no deficit or surplus.
- Out of the 14 visitor spaces, 8 will be EV charging spaces.
- This allocation will be imposed as a condition in the attached draft schedule of conditions.

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

The site is considered suitable for high density residential and mixed use development, which is permissible in the MU1 Mixed Use zone. It is located within the Mascot Station Precinct, which is strategically earmarked for revitalisation and redevelopment.

Water NSW has provided modified General Terms of Approval, Sydney Trains has provided amended concurrence and Sydney Trains is supportive of the additional height subject to modified conditions.

Whilst there are a series of non-compliances as discussed earlier in this report, on balance it is considered suitable in its current form.

Section 4.15(1)(d) - Public Submissions

The development has been notified in accordance with Part 2 of the Botany Bay DCP 2013 between 14 to 28 March 2022 and 1 submission was received.

Following the submission of the amendments, it was re-notified between 10 and 24 May 2023. A total of 2 submissions were received.

A number of issues raised in these three (3) submissions had already been addressed in this report and are listed below:

- Scale
- Privacy
- Solar access
- Insufficient landscaped area
- Impacts on views
- Overdevelopment

The remaining issues raised in the submissions are addressed further below:

Structural risks

There are conditions imposed in the development consent that relate to a dilapidation report of the immediate adjoining properties including photographic survey prepared by a Practising Structural or Geotechnical Engineer. There have been changes in legislation that have further regulated certification with the aim to reduce structural risks and defects.

Insufficient quality of the application

As stated earlier in this application, a request for information (RFI) letter was sent to the applicant in order to complete the assessment. On that basis, there was sufficient information.

Safety issues for pedestrians with vehicles exiting and entering the site

The projected number of vehicles entering and exiting the site from Galloway Street in peak periods is not considered to be of a level that will present a significant danger to pedestrians.

Section 4.15(1)(e) - Public interest

Granting approval to the proposed development is in the public interest as it will not have an adverse impact upon the locality in terms of traffic impact, bulk, scale, visual impact and streetscape presentation or overshadowing.

REFERRALS AND SUBMISSIONS

Agency Referrals and Concurrence

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

Agency	Concurrence / referral trigger	Comments (Issue, resolution, conditions)	Resolved
Concurrence Requirements (s4.13 of EP&A Act)			
Transport for NSW	Section 2.119 of Transport and Infrastructure SEPP 2021 – Development with frontage to a classified road	No objections	Yes
Sydney Trains	Section 2.99 of Transport and Infrastructure SEPP 2021 – Excavation in, above, below or adjacent to rail corridors	No objections, subject to modified conditions. Detailed assessment earlier in this report.	Yes
Referral/Consultation Agencies			
Sydney Airport	Section 6.7 (Airspace Operations) – Bayside LEP 2021	No objections, subject to modified conditions. Detailed assessment earlier in this report.	Yes
Design Review Panel	Section 28(2)(a) – SEPP 65 Section 6.10 (Design Excellence) – Bayside LEP 2021	The advice of the DRP has been considered in the proposal and is further discussed in the SEPP 65 section of the report	Yes
Integrated Development (S 4.46 of the EP&A Act)			

Water NSW	Environmental Planning and Assessment Act 1979 – Section 4.47 Integrated Development	Amended General Terms of Approval issued	Yes
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Council Referrals

The development application has been referred to various Council officers for technical review as outlined below:

Officer	Comments	Resolved
Engineering	Assessment of car parking, stormwater management, floodplain management, excavation, basement design and public domain. Supported subject to modified conditions. Detailed assessment earlier in this report.	Yes
Landscape	Assessment of modified landscape plans. Supported subject to modified conditions. Detailed assessment earlier in this report.	Yes
Trees	Assessment of tree removal on site. Supported, detailed assessment earlier in this report.	Yes
Contributions	Revised and indexed contributions provided, subject to modified conditions. Detailed assessment earlier in this report.	Yes
Environment and Health	Assessment of amended acoustic report. Supported subject to modified conditions. Detailed assessment earlier in this report.	Yes

CONCLUSION

In accordance with Clause 2, Schedule 6 of the State Environmental Planning Policy (Planning Systems) 2021, the Application is referred to the Sydney East Central Planning Panel for determination.

The proposed modified development is permissible in the MU1 Mixed Use Zone. A number of variations to the Bayside LEP, Apartment Design Guide and Botany Bay DCP 2013 have been assessed and considered acceptable.

The proposal has been assessed in accordance with Section 4.15 of the Environmental Planning and Assessment Act 1979.

On balance, the proposed development in its current form should be appropriate for the site and it is recommended that the Panel approve MDA-2022/31 for the reasons outlined in this report.

RECOMMENDATION

1. That modification application MDA-2022/31 for Modification to DA-2015/10022 to relocate parking from basement 2 to Level 1 of the podium form (deleting basement Level 2), subsequent redistribution of floor space and reconfiguration of each level of the building; increase in the number of apartments from 117 to 118 including 50 build-to-rent apartments; increase communal open space and associated reconfiguration of floor plates and building envelope at 653 Gardeners Road, Mascot be APPROVED pursuant to Section 4.16(1)(a) of the *Environmental Planning and Assessment Act 1979*. The proposal is modified in the following manner:

- (a) The following conditions being modified: 1, 4, 7, 8, 9, 12, 13, 15, 18, 20, 35, 36, 37, 39, 40, 88, 92, 104, 106, 108, 110 and 111.
 - (b) The following conditions to be deleted: 21, 26, 27, 38, 105, 107 and 118.
 - (c) The following conditions to be added: 6A, 6B, 6C, 11A, 21A, 26A, 27A, 38A, 104A, 105A, 107A, 118A and 121A.
2. THAT the submitters be notified of the Panel's decision.