

## COUNCIL ASSESSMENT REPORT

<b>Panel Reference</b>	<b>PAN 248325 &amp; PPSSEC-216</b>
<b>DA Number</b>	<b>DA-2022/237</b>
<b>LGA</b>	<b>Bayside</b>
<b>Proposed Development</b>	(As Amended) Integrated Development - Demolition of existing structures and construction of a six (6) storey mixed-use development comprising retail uses, hotel accommodation, food and drink premises, basement carparking, tree removal and signage zones
<b>Street Address</b>	277 The Grand Parade, Ramsgate Beach, NSW
<b>Applicant/Owner</b>	Moside Pty Ltd
<b>Date of DA lodgement</b>	10 August 2022
<b>Total number of Submissions</b> <b>Number of Unique Objections</b>	<ul style="list-style-type: none"> <li>• 32+23+19 (3 notifications, 80 total)</li> <li>• 31+22+18 (Unique, excluding residents who submitted during each exhibition period)</li> </ul>
<b>Recommendation</b>	<b>Refusal</b>
<b>Regional Development Criteria (Schedule 7 of the SEPP (State and Regional Development) 2011)</b>	<b>Part 2 – General Development Over \$30M</b>
<b>List of all relevant s4.15(1)(a) matters</b>	<ul style="list-style-type: none"> <li>• Environmental Planning and Assessment Act 1979</li> <li>• Environmental Planning and Assessment Regulation 2021</li> <li>• State Environmental Planning Policy, “SEPP”, (Planning Systems) 2021</li> <li>• SEPP (Transport and Infrastructure) 2021</li> <li>• SEPP (Resilience and Hazards) 2021</li> <li>• SEPP (Industry and Employment) 2021</li> <li>• SEPP (Biodiversity and Conservation) 2021</li> <li>• Standard Instrument (Local Environmental Plans) Order 2006</li> <li>• Bayside Local Environmental Plan 2021</li> <li>• Bayside Development Control Plan 2021</li> </ul>
<b>List all documents submitted with this report for the Panel’s consideration</b>	<ul style="list-style-type: none"> <li>• Latest/Current Plans</li> <li>• Previous Plans considered by DRP</li> <li>• DRP Comments</li> <li>• Applicant’s Summary of Changes and DRP response</li> <li>• Clause 4.6 (Height) Request</li> <li>• S.E.E. (Original DA)</li> <li>• Plan of Management</li> <li>• Traffic and Parking Report (Latest)</li> <li>• Acoustic Report (Latest)</li> <li>• NSW Water GTA</li> <li>• TfNSW Response</li> <li>• Council Engineering Comments</li> <li>• Council Contamination Officer Comments</li> <li>• PreDA Advice</li> <li>• RFI</li> <li>• Mills Oakley Advice – FSR (Legal Privilege)</li> <li>• Council Legal Advice - FSR (Legal Privilege)</li> </ul>
<b>Clause 4.6 requests</b>	<ul style="list-style-type: none"> <li>• Bayside Local Environmental Plan 2021, Clause 4.3 (Building Height), Zoning = Mixed Use MU-1</li> </ul>
<b>Summary of key submissions</b>	<ul style="list-style-type: none"> <li>• Noise/acoustic impacts</li> <li>• Overshadowing</li> <li>• Construction-related Impacts</li> <li>• Character</li> <li>• Height</li> <li>• Setbacks</li> </ul>

	<ul style="list-style-type: none"> <li>• Hotel Use/impacts from patrons</li> <li>• Traffic/Parking</li> </ul>	
<b>Report prepared by</b>	<b>Jason Perica (Director Perica and Associates Urban Planning)</b>	
<b>Report date</b>	6 November 2023	
<b>Summary of s4.15 matters</b>		
Have all recommendations in relation to relevant s4.15 matters been summarised in the Executive Summary of the assessment report?		<b>Yes</b>
<b>Legislative clauses requiring consent authority satisfaction</b>		
Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarized, in the Executive Summary of the assessment report? <i>e.g. Clause 7 of SEPP 55 - Remediation of Land, Clause 4.6(4) of the relevant LEP</i>		<b>Yes</b>
<b>Clause 4.6 Exceptions to development standards</b>		
If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report?		<b>Yes</b>
<b>Special Infrastructure Contributions</b>		
Does the DA require Special Infrastructure Contributions conditions (S7.24)? <i>Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions</i>		<b>No</b>
<b>Conditions</b>		
Have draft conditions been provided to the applicant for comment? <i>Note: in order to reduce delays in determinations, the Panel prefer that draft conditions, notwithstanding Council's recommendation, be provided to the applicant to enable any comments to be considered as part of the assessment report</i>		<b>No</b>

## Key Issues

The key issues identified in the assessment of the development application ("DA") relate to:

- Building Height and height non-compliance;
- Scale and relationship with adjoining development, particularly to the south, and also across Ramsgate Road to the north;
- FSR and areas excluded from FSR that should be included;
- Non-compliance with the DCP "rear" setback control and associated impacts of overshadowing and scale/visual impacts;
- Contextual considerations, including relating to strategic aspirations in area-specific controls in the DCP, and interface issues to the immediate south, given a significant change in zoning, height and FSR controls, also affecting the likely future relationship with surrounding land;
- Matters of design detail and issues raised by the Design Review Panel ("DRP"), including their lack of support for the proposal;
- Whether a ground floor side setback of 1.5m to the south is warranted;
- Characterisation of the "side" and "rear" boundaries for this corner site, linked to DCP controls;
- Activation of The Grand Parade, and the (in)appropriateness of the main entry to the supermarket from that The Grand Parade;
- Contamination and groundwater, and management by conditions;
- Acoustic impacts and many other aspects requiring further detail and/or assessment, such as acoustic measures/report, traffic and parking, landscaping, flooding, stormwater management, wind testing and access.

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The development application (“DA”) has been assessed in accordance with the relevant requirements of the *Environmental Planning and Assessment Act 1979* (“the Act”), associated *Environmental Planning and Assessment Regulation 2021* and is recommended for refusal.

As outlined throughout the report, there are many instances of additional information and reports needed prior to any favourable determination, if the Panel was minded to approve the proposal. While it therefore may be considered premature to report the matter to the Panel, there are also crucial aspects of concern with the proposal, that additional information would not remedy. The applicant, to their credit, have made many changes, including relatively significant changes in response to issues raised, particularly by the DRP. However, the application is over 14 months old, and more significantly, there are key and fundamental concerns with the proposal, particularly related to height, bulk/FSR, setbacks and context/streetscape, expressed by the DRP and shared by the assessing officer. So in the interests of providing certainty to the applicant and community, to avoid ongoing delay, and to avoid further sunk costs from the applicant for additional material that would not resolve these fundamental concerns, it is nonetheless appropriate to report this matter for determination to the Panel.

This report has been written by an independent planning consultant, as the original proposal included a Voluntary Planning Agreement (“VPA”), related to works and parking on Council-owned land, that may have led to a perceived Conflict of Interest or Conflict of Duties. That VPA aspect of the proposal has since been withdrawn by the applicant. However, given the original appointment and work undertaken, the assessment was carried through to this Panel report by the independent planning consultant.

The people involved in writing and authorising this report declare, to the best of their knowledge, that they have no interest, pecuniary or otherwise, in this application or persons associated with it and have provided an impartial assessment.

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## Recommendation

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1. THAT the Sydney Eastern City Planning Panel, exercising the functions of Council as the consent authority pursuant to s4.16 and s4.17 of the Environmental Planning and Assessment Act 1979 ("the Act"), determine Development Application DA-2022/237 for demolition of existing structures and construction of a six (6) storey mixed-use development comprising retail uses, hotel accommodation, food and drink premises, basement carparking, tree removal and signage zones at 277 The Grand Parade, Ramsgate Beach, NSW 2217, by refusing consent for the following reasons:
  - a) The proposal should not be approved having regard to the considerations in Clause 2.11(1)(a)(ii) and (iii) of *State Environmental Planning Policy ("SEPP") – Biodiversity and Conservation (2021)*, as the proposal will have an adverse impact upon:
    - (ii) *overshadowing, wind funnelling and the loss of views from public places to foreshores,*
    - (iii) *the visual amenity and scenic qualities of the coast, including coastal headlands,*and in accordance with Clause 2.11(1)(b) of that SEPP, such impacts could reasonably be avoided by designing and siting to avoid such impact;
  - b) While stated and argued to be complying with the maximum Floor Space Ratio ("FSR") development standard of 2:1 within *Bayside Local Environmental Plan 2021* ("the LEP"), the proposal has been assessed as significantly exceeding the FSR development standard (mainly due to undercroft areas with high surrounding walls/screens and internal corridors being excluded), and no written submission to contravene this development standard under the provisions of Clause 4.6 ("Clause 4.6 Request") of the LEP has been submitted;
  - c) The proposal exceeds the maximum Building Height of 20.5m by over 15% and the submitted Clause 4.6 Request has not adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard, thereby not satisfying Clause 4.6(3)(b) of the LEP;
  - d) In accordance with the considerations within Clause 4.6(4) of the LEP (applying at the time of lodgement, noting recent changes implemented on 1 November 2023), granting consent would not be in the public interest because it is inconsistent with the both the objectives of the Building Height development standard and the objectives for development within the zone in which the development is proposed to be carried out;
  - e) The proposal is inconsistent with aims (e) and (k) of Clause 1.2 (Aims) of the LEP, being:
    - (e) *to create a liveable urban place through the application of design excellence in all elements of the built environment and public domain;*
    - (k) *to promote and enhance the amenity of Botany Bay's foreshores and Bayside's waterways;*as the proposed pedestrian main entrance to the Grand Parade is inappropriate given the footpath width, bus stop needs, likely pedestrian conflicts and relatively

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hostile environment, while the foreshore setting will not be enhanced, as the proposal as viewed from the east will represent an inappropriate scale relationship to the south, while also lacking consistent height with buildings to the north across Ramsgate Road, as envisaged by LEP and DCP controls;

- f) Having regard to Section 1.3(g) of the Act (Objects, particularly “*to promote good design and amenity of the built environment*”), Clause 1.2(e) of the LEP (Aims of the Plan, and particularly “*to create a liveable urban place through the application of design excellence in all elements of the built environment and public domain*”), Part 3.1 of Bayside Development Control Plan 2022 (Site Analysis and Locality) and the visual prominence and importance of the site to Ramsgate Centre, it is appropriate to consider the comments of Council’s Design Review Panel (“DRP”), whose comments, despite subsequent changes to the proposal, raise significant concerns with the proposal in terms of design, massing, bulk, scale, height and contextual relationship with the surrounds;
- g) The proposal will have adverse overshadowing and visual impacts on properties to the south of the site, and to the foreshore park to the east, that could be reasonably reduced, given the sensitive orientation of the site and the significant point of transition in zoning, height and floorspace to the south, which also affects the future likely ongoing relationship between sites;
- h) The proposal is the first major development on the southern side of The Grand Parade and as such is likely to be used as a reference in establishing existing and desired future character of the area for other sites to the west, and granting consent would not be in the public interest; and
- i) The proposal cannot be approved as there are numerous supporting plans, details and reports needed to properly consider the likely environmental impacts of the proposal which have not been provided or assessed, including:
  - i. Plans which consider and depict recommended acoustic measures (screening etc.), wind measures after wind tunnel testing, and integrated landscape measures;
  - ii. A Landscape Plan, consistent with the above matters related to acoustic and wind treatment, and soil depth, irrigation and maintenance details to ensure the intended green edge can be realised;
  - iii. Overshadowing plans which are consistent with DCP controls in any comparison, and which highlight the additional shadowing caused by the building height non-compliance, as well as views from the sun to ascertain likely shadow impacts on the northern elevations of the adjoining development to the south, in the solstice and equinox periods;
  - iv. Wind tunnel testing, as recommended by the applicant’s most-recent wind impact assessment report, and noting the implications for the landscape design and FSR calculations;
  - v. Updated flooding assessment, consistent with the submitted plans and considering, addressing and resolving concerns expressed by Council’s engineers;
  - vi. Updated stormwater design and management measures, consistent with the submitted plans and considering, addressing and resolving concerns expressed by Council’s engineers;

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- vii. An updated traffic and parking assessment, consistent with the submitted plans/details and considering, addressing and resolving concerns expressed by Council's engineers as well as any further feedback received from the Bayside Traffic Development Advisory Committee (BTDAC) and any comments from TfNSW, noting proposed works to classified roads need TfNSW and BTDAC approval, which remains outstanding;
  - viii. A revised Plan of Management, ensuring plan extracts depict the latest proposal and commitments and management measures do not refer to aspects of the proposal which have been altered or removed and that all acoustic measures recommended are appropriately referenced;
  - ix. An updated Access report, or addendum to it, given relatively significant changes to the proposal since the previous report(s), and to consider the desirability of locating some equitable parking spaces closer to the hotel lift core;
  - x. An updated Operational Waste Management Plan, or addendum to it, given relatively significant changes to the proposal since the previous report.

2. THAT the submitters be notified of the Panel's decision.

## Background

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### History

#### Previous Applications

There have been 4 DAs or Complying Development Certificates ("CDC's") approved for the site since 2004, related to various fitout works, signage, awning or alterations and additions to the existing Coles Supermarket and carpark at the subject site. None are of relevance to the proposal, other than to verify there is an existing approved supermarket and adjoining carpark at the subject site.

The history of key dates associated with the subject application is summarised as follows:

- 19/6/2022 - A Pre-DA meeting was held regarding a proposal essentially the same as the DA, as originally lodged.
- 28/7/2022 – Pre-DA written advice provided to the applicant. Essentially this advised the proposal would not be supported. The pre-DA advice is contained in an attachment to this report.
- 10/8/2022 – DA lodged with Council, with VPA offer outline.
- 24/8/2022 - 23/9/2022 – DA publicly notified (33 submissions).
- September 2022 – Independent planning consultant appointed, reviews documentation, visits site and surrounds.
- 22/09/2022 - Sydney Eastern City Planning Panel (SECPP) briefing.
- 29/9/2022 – Design Review Panel ("DRP") first meeting.

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- 12/12/2022 – Detailed Request for Further Information sent to the applicant. The RFI advice is contained in an attachment to this report.
  - March-April 2023 – Revised plans and supporting information lodged in response to the RFI. This included revisions to the proposal and the works to Council land.
  - 14/3/2023 - SECCP second briefing.
  - 13/4/2023 - DRP second meeting.
  - 28/4/2023 – 31/5/2023 – Revised DA publicly notified (23 submissions).
  - 4/8/2023 – Applicant lodged draft plans ahead of resubmission, with various changes to the building and excluding the VPA works outside the site boundaries.
  - 7/8/2023 - DRP third and last meeting. The DRP advice is contained in an attachment to this report. The plans considered at that last DRP meeting are contained as a separate attachment to this report.
  - August-September 2023 – Applicant advised the revised proposal will need re-notification and the minimum information for such exhibition, and that the matter will need to be reported to a SECCP meeting in November 2023, with a report finished several weeks prior (including all reports being needed by 3 October 2023).
  - Early October 2023 – Revised plans and some limited supporting information (Summary of changes and DRP response, Clause 4.6 (Height), Legal opinion regarding FSR calculation, wind report addendum). This was partial basic supporting information to allow re-exhibition, needed as some changes altered relationships with adjoining land. The legal opinion regarding FSR calculation was not placed on exhibition due to potential legal privilege.
  - 13/10/2023 – 27/10/2023 - Revised DA publicly notified, for 14 days given two previous notification periods (19 submissions as at 31/10/2023 after exhibition close).
  - 3/11/2023 – Traffic and Parking report received related to the most recent plans (email not Portal), not able to be properly assessed given timing.
  - 6/11/2023 – BCA Report submitted related to the most recent plans (email not Portal).
  - 6/11/2023 – Acoustic Report received (email not Portal) related to latest DA (not able to be assessed given timing).

As indicated above, the original DA has been modified twice and notified for a total of 3 times.

The following table outlines key aspects of the proposal between the 3 iterations of the proposal:

Aspect	Original	Previous (4/23)	Current	Notes
FSR	2.33:1	2.25:1	1.88:1	Figures from the applicant - excludes undercroft areas and some horizontal circulation space - calculation not accepted.
GFA	10,450sqm	10,092sqm	8,8434sqm	As above.
Height (Roof)	28.4m	25.7m	23m	Existing ground taken as RL 2.5 (varies, generally higher).
Height (Lift/Upper)	31.5m	29.7m	24m	Rooftop structures and level removed from latest proposal – only lift overrun above roof level.
Storeys	7 + rooftop	7 + rooftop	6 (no rooftop)	One level reduced, rooftop access removed shape changed.
Hotel Rooms	104	104	122	Larger perimeter tower footprint, allows more rooms.
VPA Offer?	Yes	Yes	No	No VPA works outside site in the latest/current proposal.
Use of ground floor	Supermarket and retail	Supermarket and retail	Supermarket and retail	Changed entry in previous & latest plans – pedestrians enter supermarket from The Grand Parade, previously Ramsgate Rd.
Use 1 <sup>st</sup> and 2 <sup>nd</sup> floor	Retail/F&B and hotel pool	Retail/F&B and hotel pool	Retail/F&B and hotel pool	Some changes to layout and associated with tower changes above.
Car parking numbers	204 Building	327 (204+123 under Ramsgate)	216	Removed parking/VPA works to Ramsgate Road in latest proposal. Parking under Ramsgate Road unclear in original DA.
Shape tower	Central/stepped	Central/stepped	More permitter/"L"	See plans.
Setbacks	Varied	Varied	Varied	See plans.
Activation	Ramsgate Rd only	Both streets	Both streets	Change to pedestrian access to The Grand Parade, and revised setback to The Grand Parade in latest plans.

**Table** - Comparison between original, revised and latest proposal

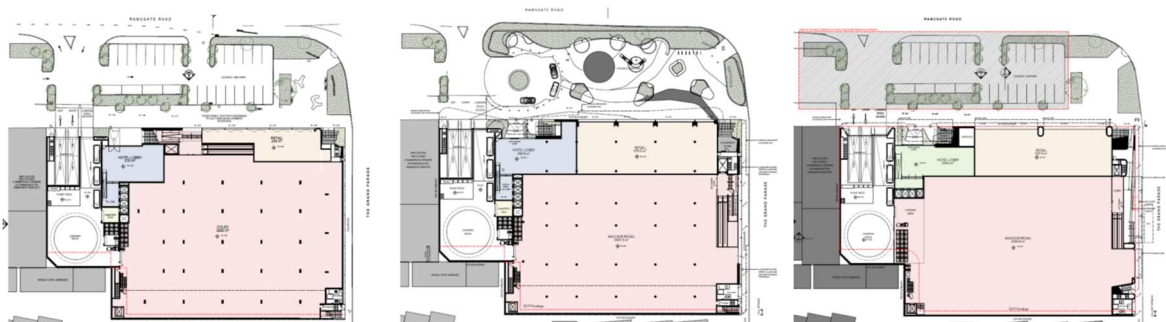


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As can be seen from the above, there have been various and relatively significant changes to the DA since its original lodgement.

The latest revised plans are attached to this report, as it is those plans the applicant intends to rely upon and upon which this assessment is based. However, the plans considered at the last DRP meeting (August 2023) are also attached.

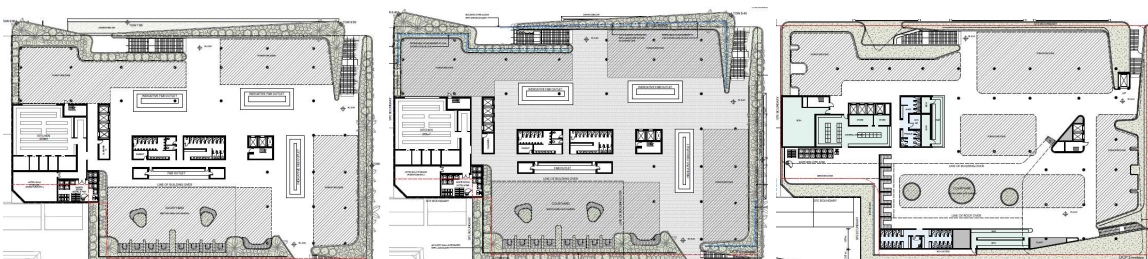
The above table is provided, together with plan and elevation extracts below to give some understanding and context to the changes made to the 3 sets of plans publicly exhibited, and given the changing feedback from the Design Review Panel. In reality there have been 4 sets of plans as the plans in August 2023 considered by the DRP had some further changes done prior to the most recent and current plans publicly exhibited in October 2023 (including changes by the applicant in response to some DRP concerns).



**Figure - Ground Floor Plan (Original, revised, Latest)**



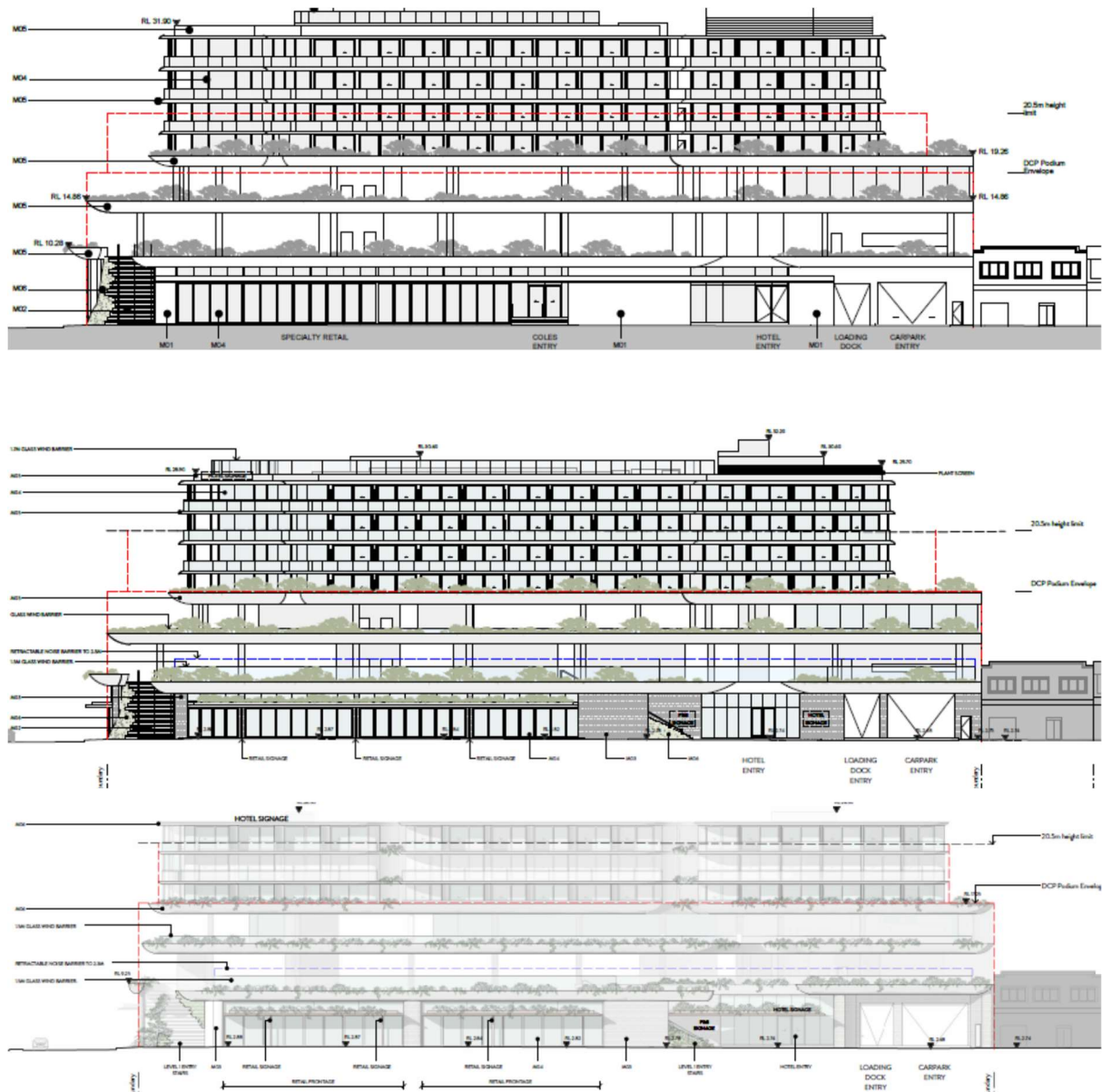
**Figure - Tower Plan (Level 4 – typical) - Original, revised, Latest**



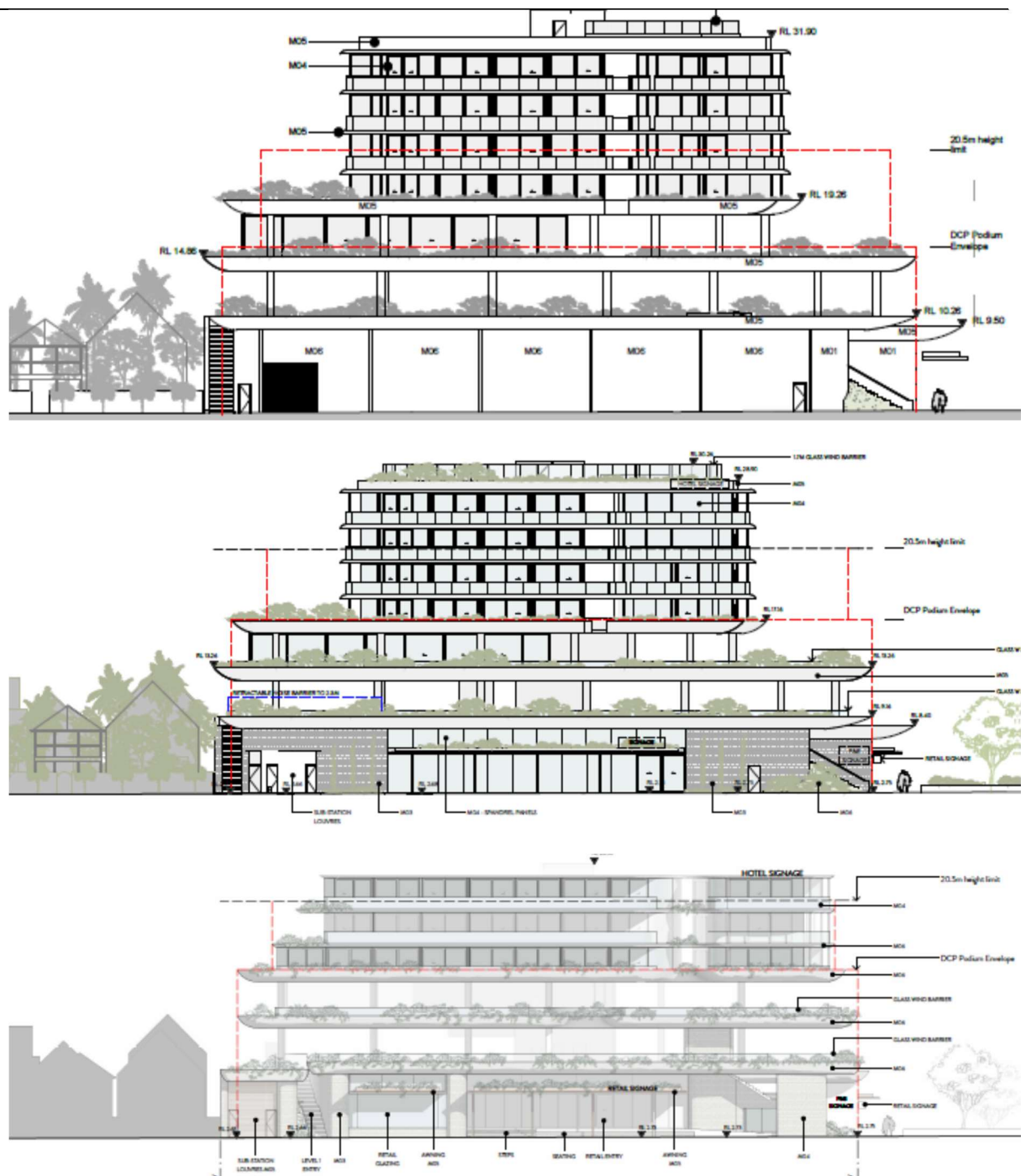
**Figure - First Floor Plan (Original, revised, Latest)**



**Figure - Second Floor Plan (Original, revised, Latest)**



**Figure - Elevation – Ramsgate Road/North (Original, revised, Latest)**



**Figure - Elevation - The Grand Parade/East (Original, revised, Latest)**

## Proposal (As Amended)

The proposed development is summarised as follows (relating to the most recent or latest plans lodged in October 2023 and dated 4/10/2023 on the plans):

### Integrated Development

The proposal is Integrated Development as an approval is needed from Water NSW for de-watering of the groundwater associated with the basement excavation.

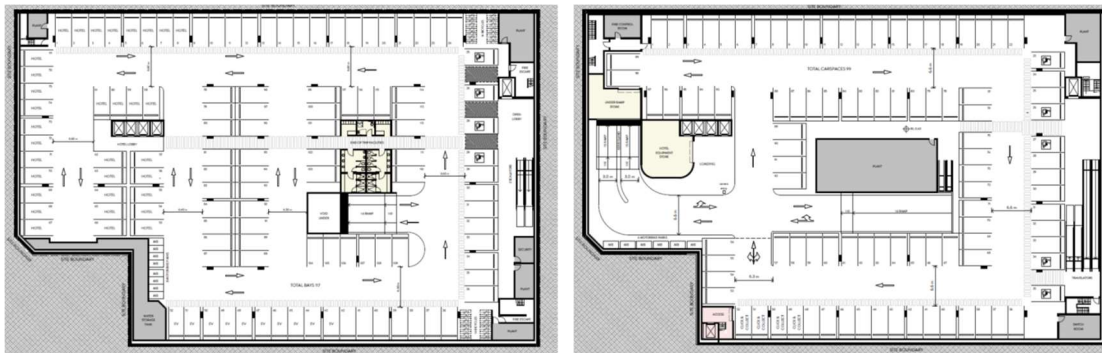


### Demolition/Excavation/Tree Removal

- Demolish all existing improvements;
- Removal of 19 trees on the site (noting the original DA also sought to remove a further 10 trees in Ramsgate Road, but these works and tree removal, associated with a former VPA are no longer proposed for removal, subject to any changes to Ramsgate Road agreed to by the Local Traffic Committee);
- Excavate to the boundaries of the site, shoring for support of two basement levels, to a level of RL -2.7 (excluding any slab and piling that may be lower, to bedrock);

## Construction

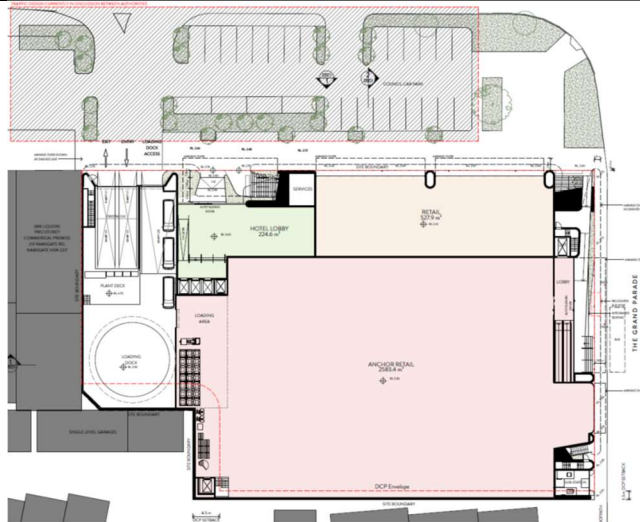
- Two basement levels for car parking (216 car spaces including 8 accessible spaces and 10 EV spaces), motorcycle parking (14), bicycle parking (28), toilets, security and CCTV, plant, storage, click and collect, ramps, access, lifts to above:



**Figure - Basement plans (2 levels), left lowest**

Ground Floor:

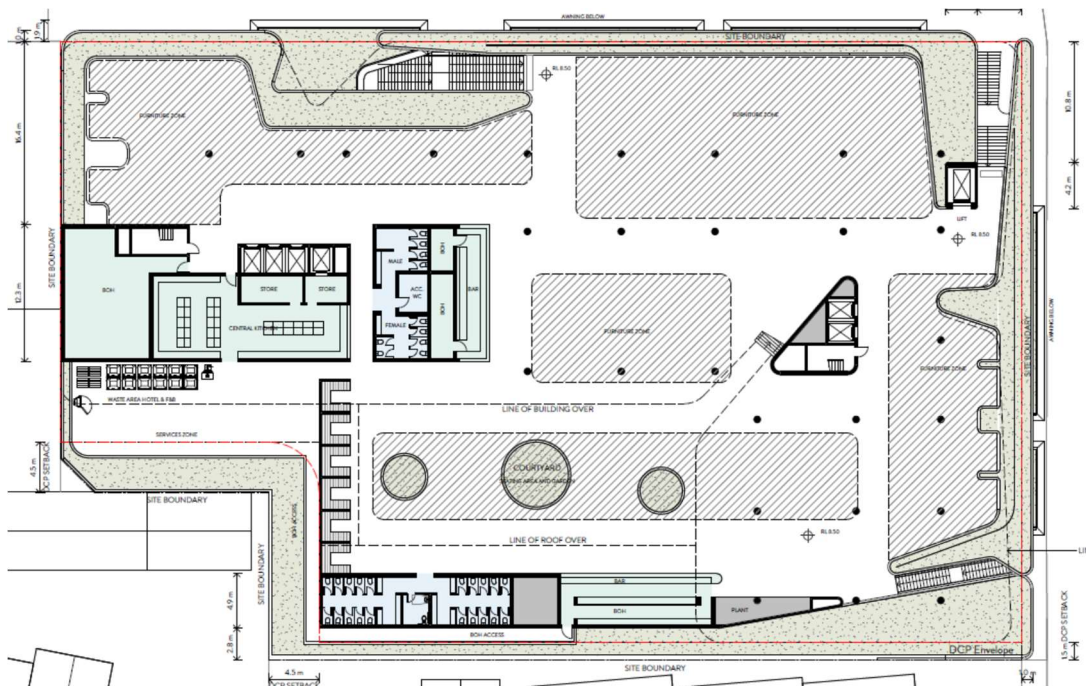
- Vehicular access from the north-western corner off Ramsgate Road (triple driveway), including ramped access down to the basement and at-grade internal loading, including a rear ground floor loading dock with turntable;
- “Anchor Retail”, referenced to be a supermarket in supporting documentation, with pedestrian access via steps and ramps to The Grand Parade;
- Hotel lobby and retailing for the Ramsgate Road frontage, with both stairs adjoining the hotel lobby to the level above and corner stairs;
- Substation in the south-eastern corner;
- Services and lifts to other levels;
- Awnings to Ramsgate Road and The Grand Parade;
- Note – the treatment of the road reserve to Ramsgate Road is being discussed with Council’s engineers and is subject to Local Traffic Committee approval, including any changes to accommodate buses or any external pick up and drop off (e.g. Taxis and Ubers);
- The plans also indicate a relocated bus stop to The Grand Parade, although this would be subject to TfNSW approval;



**Figure - Ground floor plan**

First Floor:

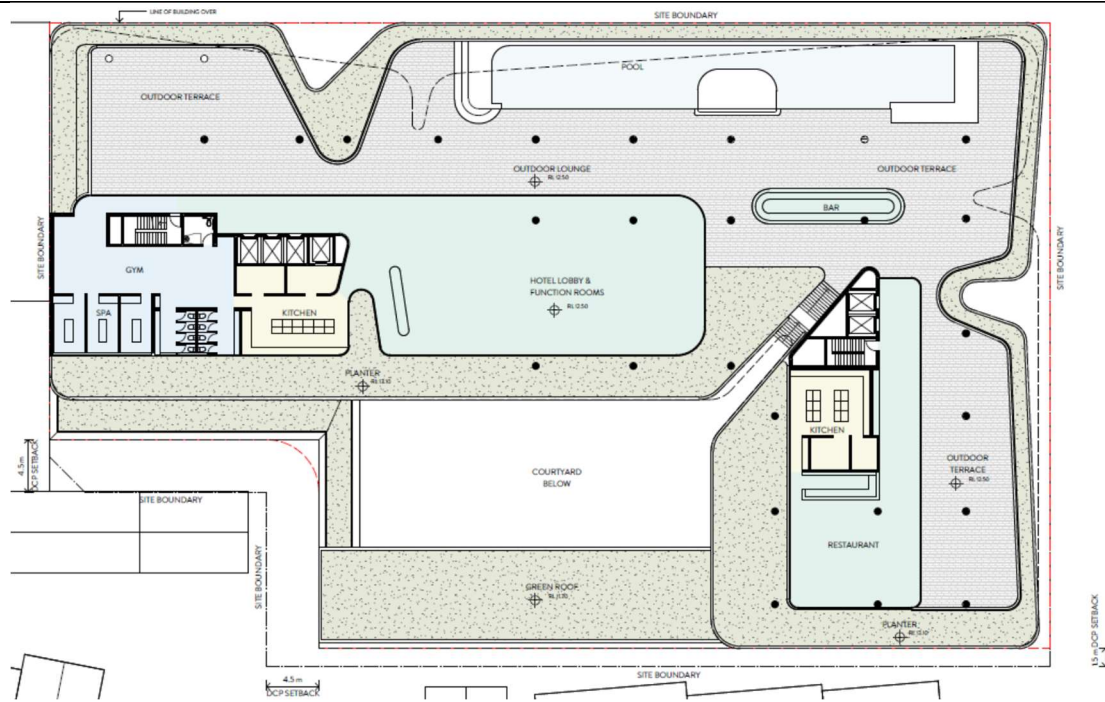
- Perimeter landscaping with some central planter beds, which also supports acoustic treatment;
- Large undercroft area for food and beverage use, including kitchen, bar, toilets, seating and back of house areas (furnishing/tables etc. not shown, although some perimeter seating areas shown and 1.5m screens noted on elevations);



**Figure - First Floor plan**

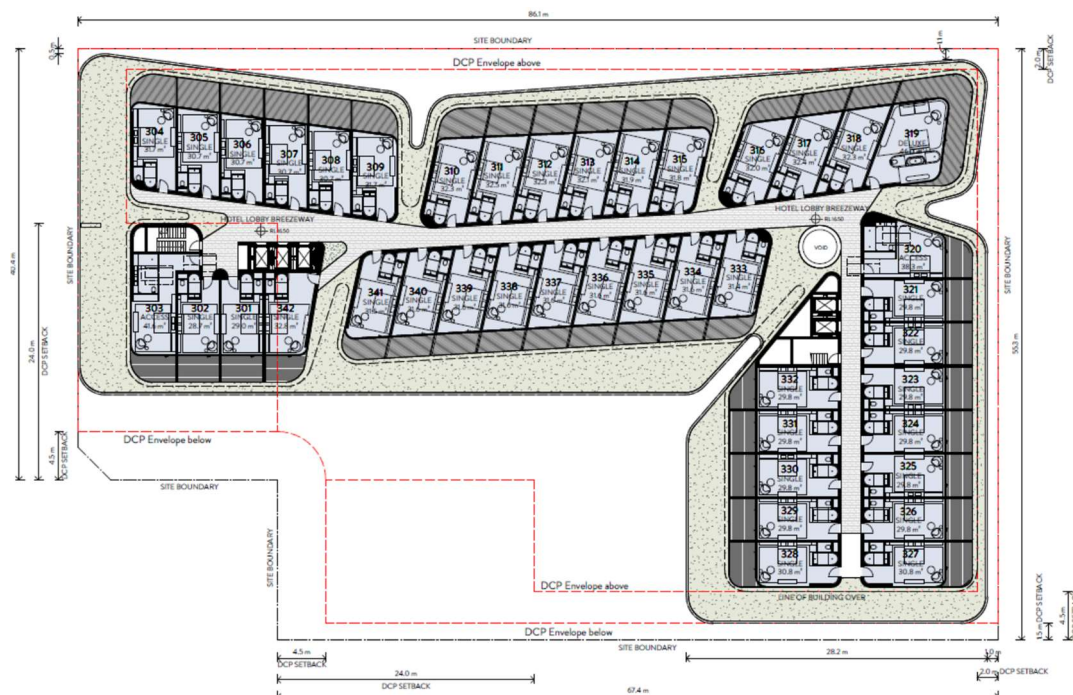
Second Floor:

- Hotel lobby and function room (central area), outdoor/undercroft terrace, bar, kitchen, restaurant, hotel pool perimeter planting and access to the levels above and below by stairs and lifts;



**Figure - Second Floor plan**

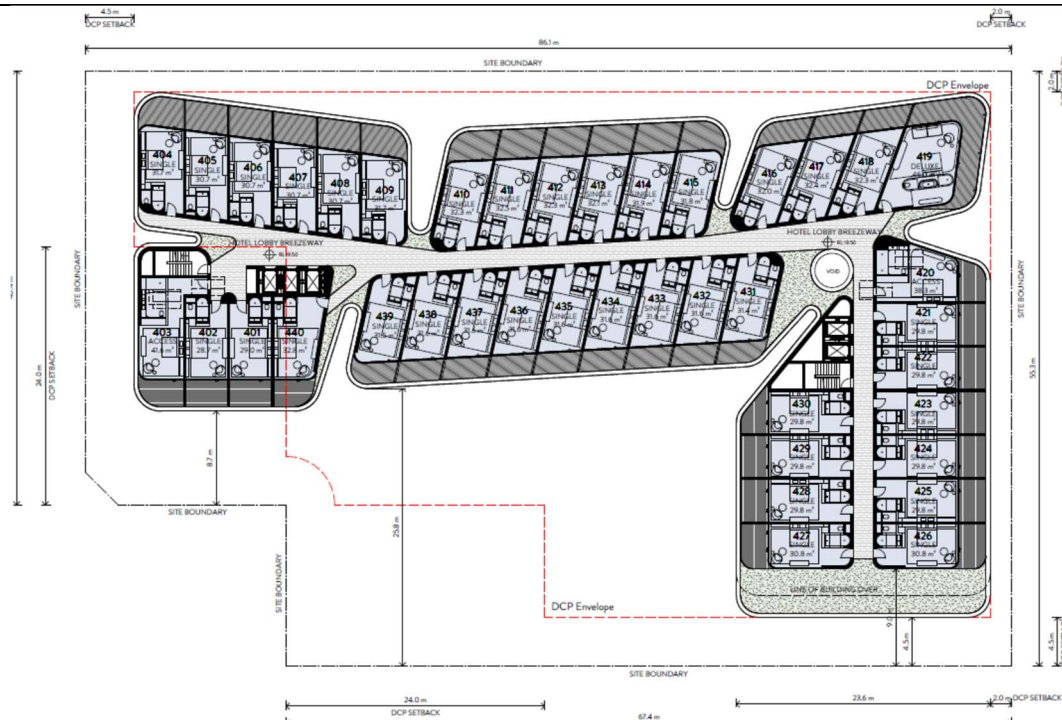
- Third Floor – lowest level of hotel rooms (x42) with balconies, oriented to the north, south, east and west, generally in an “L” shape, including perimeter landscaping, central circulation area, void and access to the levels above and below by stairs and lifts;



**Figure - Third Floor plan**

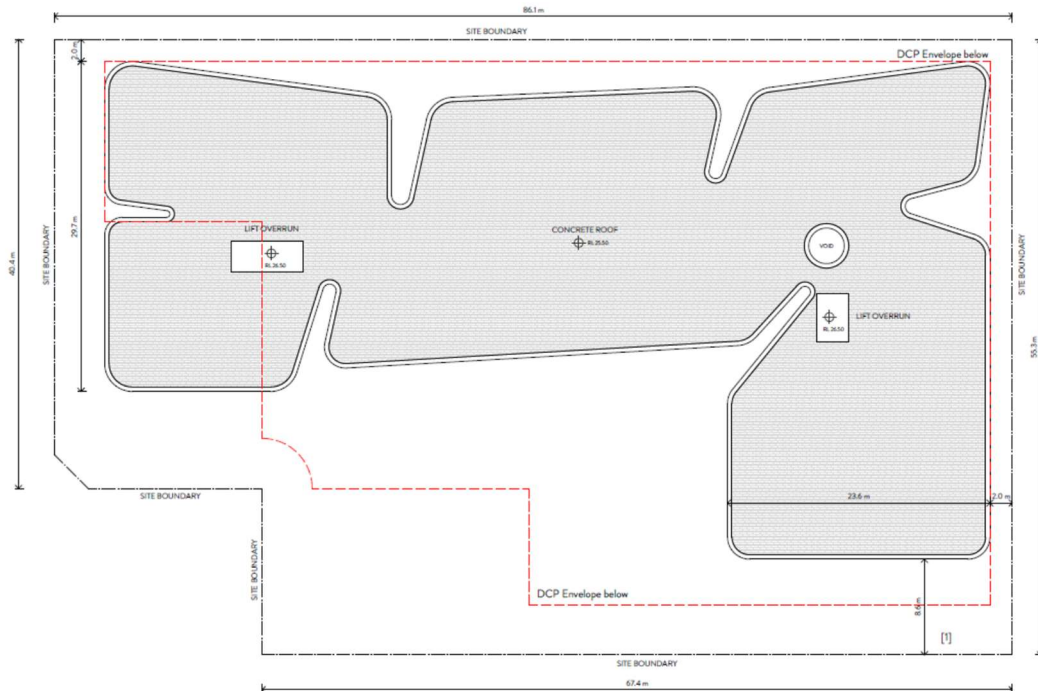
- Fourth and Fifth Floors (top 2 levels): two levels of hotel rooms (x40 each level) with balconies, oriented to the north, south, east and west, generally in an “L” shape, including perimeter landscaping, central circulation area, void and access to the levels above and below by stairs and lifts;





**Figure - Fourth-Fifth Floor plan (top two levels)**

- Roof – concrete, with void and lift overruns (x2, extra 1m in height to roof)



**Figure - Roof Plan**

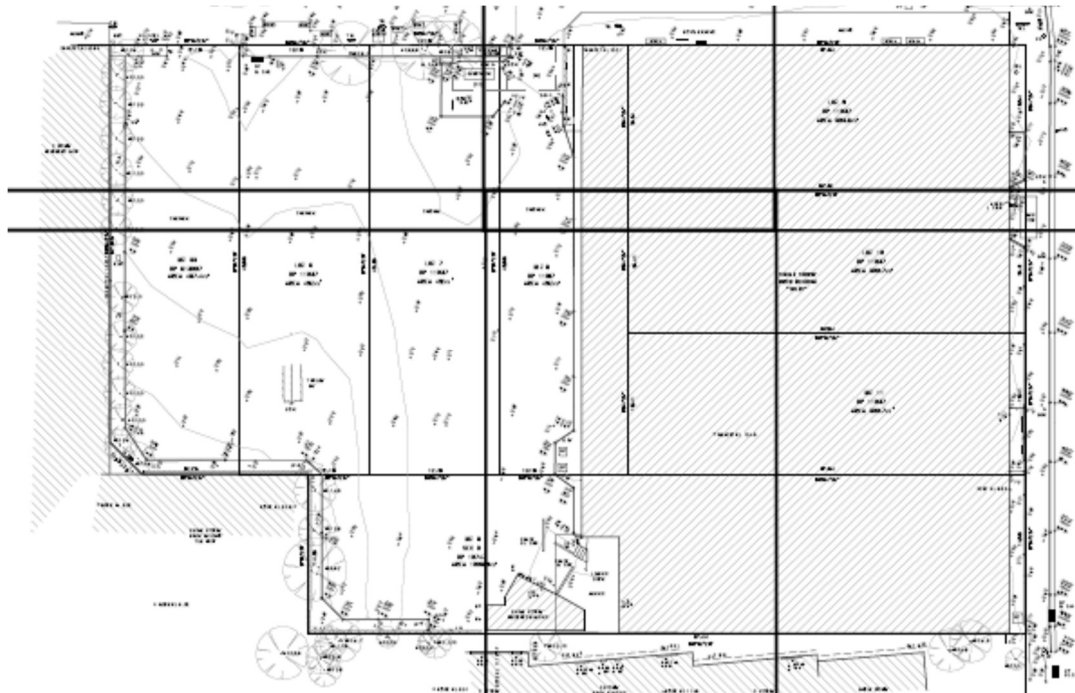
### Landscaping and Fencing

- As shown above, landscaping is provided mostly above ground and mostly as perimeter planting at Levels 1-3, with some ground floor landscaping adjoining the hotel lobby off Ramsgate Road;
- A boundary wall is also proposed to the southern boundary, of similar height to the existing boundary wall, although that existing boundary wall is only for part of the southern

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boundary (the Coles supermarket, not the carpark and western portion of the site);

- Building to the western side boundary.



**Figure - Survey Extract**

#### Subdivision

- It is not clear if subdivision (by lot amalgamation) is proposed, although this is not critical and could be subject to a condition of consent, if approved (the existing site currently contains 8 lots).

#### Signage

- No specific signage is proposed, although signage zones have been identified (as requested as part of an early RFI), including top-hamper and under-awning signage at ground floor level to both street frontages and one rooftop signage zone to each street frontage, near the corner.

#### Use/Operational Matters

- A Plan of Management (“PoM”) has been provided, as requested (and is provided as an attachment to this report). The plans within the PoM do not align with the latest current plans and the PoM needs updating, and also needs reconciling with the recent Traffic and Parking Plan and Acoustic Report;
- Aspects of the proposed operation include (assuming they remain current for the proposed revised layout), as stated in the PoM:
  - Proposed 4.5-5-star hotel;
  - The hotel will operate 24 hours a day, 7 days a week;



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- The café/grab and go style tenancies on ground level will operate from 6:00am until 5:00pm, 7 days per week. Liquor will only be sold or supplied during any hours specified in the license issued or not issued by the Liquor Authority in relation to these premises;
  - The restaurants/bars on level 1 will operate from 11:00am until 12:00am, 7 days per week. Liquor will only be sold or supplied during any hours specified in the license issued by the Liquor Authority in relation to these premises;
  - The level 2 pool will operate from 6:00am until 11:00pm;
  - The level 2 pool bars and restaurant will operate from 6:00am until 11:30pm;
  - Security will be present on level 2 from 12:00pm until 6:00am, 7 days per week;
  - The front door / hotel reception will be manned 24 hours with the receptionist able to lock the door from 11:00am until 6:00am, 7 days per week.
  - The rooftop pool will operate from 9:00am until 10:30pm 7 days per week
  - The hotel will have an electronic key system, which will control the hotel lifts, access doors into the hotel, guest rooms, and pool and gym access;
  - Maximum permitted length of stay at the hotel is 3 months;
  - 12 deliveries are allowed to the site per day, 4 for the Hotel, 4 for Coles and 4 for F&B. 1 of the 12 deliveries will be allowed before 7:00am and 2 of the 12 deliveries will be allowed after 6:00pm;
  - The hotel will have CCTV surveillance cameras in the premises in strategic places including the building entry points, hotel lobby, loading dock and common areas
  - External lighting will be provided around the building and building entries to enable clear vision and will be designed in such a manner to prevent concealment and shadowing;

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- A team of security guards for the ground level and level 1 of the hotel (excluding Coles) will be present on the site during opening hours. A second team will be devoted to the hotel and be capacity driven based on time of day, functions going on, and so on (and will maintain some presence 24 hours per day 7 days per week). A general security guard/building manager team will be devoted to loading dock areas and carpark levels with some form of presence 24 hours per day. The amount of security guards will be provided in accordance with the relevant NSW legislation/regulation. The three separate security teams will be connected and be able to communicate via 2-way radio. Security for Coles on ground floor will be run independently
  - The developer on behalf of the hotel operator and F&B tenants will consult with adjoining property owners, Police, Council and community to discuss any issues that arise and determine the most effective solutions;
  - Trolley movement will operate within the Coles tenancy and B1 and B2 carparks only. Trolley management will be organised and run by Coles involving the collection and movement of trolleys from the trolley bays in the basement including any stray trollies that may be outside trolley bays. Trolley retention systems will be installed at The Grand Parade entry/exit to eliminate theft and the scattering of trolleys around the area. The intention is trolleys will have zero access to council footpaths that adjoin the site;
  - The basement car parking provided will have:
    - 2-hours free parking,
    - charged thereafter in 30-minute increments up to a maximum of 6 hours,
    - charged thereafter at a daily rate up to a maximum of 2 days (48 hours).
    - With free parking for hotel guests for the duration of their stay.
  - There will be several green travel measures provided by the Hotel including:
    - Bicycle racks and storage in B2.
    - End of Journey facilities to encourage bike use, walking, and jogging.
    - 10 EV Charging stations in B2 upon construction completion with 10 additional provided per year thereafter.
    - An Electric Airport shuttle that will be provided for hotel guests.
    - An Electric Courtesy shuttle for local pick-ups and drop-offs of F&B guests.

## Site Location and Context

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The subject site is located on the corner of The Grand Parade and Ramsgate Road, Ramsgate Beach. The site is commonly known as No 277 The Grand Parade, Ramsgate Beach. The site comprises 8 allotments and is legally identified as Lots 6-11 DP 11037, Lot 55 DP 613007 and Lot 8 Section D DP 10747, with a total surveyed area of 4,479sqm

The following table (from the S.E.E.) outlines the 8 lots on the site and their constituent areas:

Legal Description	Area
Lot 6 DP 11037	492m <sup>2</sup>
Lot 7 DP 11037	492m <sup>2</sup>
Lot 8 DP 11037	492m <sup>2</sup>
Lot 9 DP 11037	505.6m <sup>2</sup>
Lot 10 DP 11037	500.7m <sup>2</sup>
Lot 11 DP 11037	500.7m <sup>2</sup>
Lot 55 DP 613007	487.4m <sup>2</sup>
Lot 8 Sec D DP 10747	108.9m <sup>2</sup>

**Table – Site Lot/DPs (source: SEE)**

An aerial image of the site, also from the S.E.E.is below:



**Figure – Site and surrounds**

The site is generally flat, with a level of around 2.5m-3m above sea level, and the site is subject to localised flooding. The site has a frontage of 55m to The Grand Parade and a frontage of 86m to Ramsgate Road.

The site contains a one-storey supermarket, located at the eastern portion of the site, on the corner of The Grand Parade and Ramsgate Road, while an open at-grade car park is located at the western portion of the site, which vehicular access to and from Ramsgate Road.

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The following photos illustrate the site:



**Photos - site**

To the immediate south is a townhouse/villa development, one to two storeys in height, containing 33 strata-titled dwellings at the site known as No. 86-88 Alfred Street, Sans Souci, also known as No. 280 The Grand Parade (with pedestrian access to The Grand Parade, and vehicular access to Alfred Street). This development is understood to have been erected as an aged housing development in 1992-1993, for over-55s (as stated in a submission from that property).

As previously stated, the current Coles supermarket and a rear structure abuts this site, for part of the common southern boundary.

The dwellings on the adjoining site to the south are oriented to the north, although also contain a number of trees/landscaping along the boundary and some elevated walkways and awning structures, and garage structures that currently provide some screening to outlook and sunlight, varying across the site. The following photos show part of the southern boundary and dwellings to the south, towards The Grand Parade, looking west:





**Photos** – Site and southern relationship

To the west of the site are low-scale retail/commercial/business uses, generally 2 storeys in height:



**Photo** – sites to the west (Ramsgate Road)

As shown above, there are two rows of perpendicular parking within the southern portion of the Ramsgate Road abutting the site, which is to the south of the road thoroughfare of Ramsgate Road. The area in front of the subject site provides parking for 27 cars, and various street furnishing, somewhat compromised by both the design, traffic and surrounding parking diminishing the attractiveness of area. Despite this, the mature rows of Norfolk Island Pine trees along both Ramsgate Road and The Grand Parade do provide landscape homogeneity and attraction, and also help to frame the urban context.





**Photos** – Ramsgate Road in front of site

To the north of the site, across Ramsgate Road, is a service station at the corner of Ramsgate Road and The Grand Parade, and newer infill shop-top housing. These newer developments have responded to an uplift in FSR and height in Council's LEP, being generally built to the maximum height limit of 20.5m. Such redevelopment has not occurred to the south of Ramsgate Road, despite having the same LEP height and FSR controls (although having a separate DCP rear setback control). This may also be due to the fragmented land ownership and subdivision pattern.



**Photos** – Ramsgate Road - north

To the east of the site, across the wide The Grand Parade, is Ramsgate Park and Ramsgate Beach (which is a listed heritage item in Council's Local Environmental Plan):



**Photos** – Cook Park to the east



**Photo** – Cook Park and Botany Bay to the east

There are 19 trees on the site and a further 10 trees in the road reserve in front of the site (details in the Arborist's report).

The site is not listed as a heritage item nor is the site located in a Heritage Conservation Area in Council's Local Environmental Plan.

The site is affected by flooding (relatively minor – 100mm-200mm in 1%AEP).

Soil testing done with a Preliminary Site Investigation (for the western half of the site) and Geotechnical Report lodged with the DA, indicate:

- Contamination – some asbestos and higher levels of nickel in the soil, various raised heavy metals in groundwater (2-30 times health concentrations);
- A relatively-high water table – 1.6m-2m below surface;

The site is visually prominent.

## Statutory Considerations

### ***Environmental Planning and Assessment Act, 1979***

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

### **Section 4.46 – Development that is Integrated Development**

The DA has been lodged as Integrated Development, as an approval under the Water Management Act 2000 is required, and specifically the development involves a temporary construction dewatering activity.

The proposal involves excavation of two basement car parking levels to a depth of approximately RL -2.7 AHD. Testing on site has been undertaken and the geotechnical report prepared by JK Geotechnics, dated 29 June 2022, which demonstrates that groundwater was encountered at approximately 1.8m below ground level (or approximately RL 0.9AHD).

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The application was referred to Water NSW for concurrence. In a letter dated 26 October 2022, Water NSW provided their General Terms of Approval (GTAs) for the proposal. It is noted that the referral and GTAs were based on the original DA, which has been revised. Despite this, the excavation and basement levels are very similar between the original DA and revised DA (and importantly to the same depth and excavation extent), such that the GTAs by Water NSW are considered relevant and applicable to the latest revised proposal.

## **S4.15 (1) - Matters for Consideration - General**

### **S4.15 (1)(a)(i) - Provisions of Environmental Planning Instruments**

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The following Environmental Planning Instruments are relevant to this application:

#### **State Environmental Planning Policies**

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##### **State Environmental Planning Policy (Planning Systems) 2021**

Schedule 6 of the *State Environmental Planning Policy (Planning Systems) 2021* triggers the proposed development to be determined by the Sydney Eastern City Planning Panel as the capital investment value (CIV) of the proposal is greater than \$30,000,000. The overall CIV proposed is \$77.4M (at DA lodgement).

##### **State Environmental Planning Policy (Transport and Infrastructure) 2021**

###### **Division 5 / Subdivision 2 – Clause 2.48 – Development likely to affect an electricity transmission or distribution network**

The application is subject to Clause 2.48 of the SEPP as the proposed works are within the vicinity of electricity infrastructure and therefore, in accordance with Clause 2.48(2), the consent authority must give written notice to the electricity supply authority for the area in which the development is to be carried out, inviting comments about potential safety risks, and take into consideration any response to the notice that is received within 21 days after the notice is given.

The application was referred to Ausgrid for comment. By response dated 6/9/2022, Ausgrid advised no objections were raised to the proposed development subject to the imposition of conditions of consent which would be able to be included as conditions of consent if the application is approved. While the proposed development has been amended since Ausgrid's comments, their comments and conditions are valid and applicable to the revised proposal.

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

###### **Division 17 / Subdivision 2 – Clause 2.120 - Impact of road noise or vibration on non-road development**

The proposed development is for on land in or adjacent to the road corridor with an annual average daily traffic volume of more than 20,000 vehicles and that the consent authority considers is likely to be adversely affected by road noise or vibration. However, Clause 2.120 of the SEPP only applies to residential accommodation, not tourist and visitor accommodation or retail development.

The acoustic report includes recommended design measures to meet Australian Standards, including for target sound levels in hotel bedrooms.



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**Division 17 / Subdivision 2 – Clauses 2.119 – 2.122 Development with frontage to classified road, excavation adjoining classified road and Traffic Generating Development**

The proposed development is located on land with a frontage to a classified road (in this case being the Grand Parade, a State Road, with Ramsgate Road being a classified Regional Road). In this regard, Clause 2.119 - Development with frontage to a classified road of the SEPP must be considered before consent can be granted.

The proposed development involves access to and from the site via a wide driveway from Ramsgate Road, furthest from the intersection with The Grand Parade, which is appropriate.

Provisions of the SEPP related to excavation close to a Classified Road and Schedule 3 of the SEPP (Traffic Generating Development) also apply to the proposal.

The original application was accompanied by a Traffic Report prepared by TTPP dated July 2022.

The original application was referred to TfNSW for comment. TfNSW responded on 5 September 2022 raising no objection to the proposal and recommending 4 conditions be imposed. That letter is contained in a separate Attachment to this report. The proposal has been amended since the referral comments back from TfNSW, including with pedestrian access from The Grand Parade and a relocated bus stop, as well as different options fronting the site in Ramsgate Road.

An updated traffic and parking report has been received very recently (3/11/2023 by email). However, this report seems to have outdated references within it, including reference to a 7-storey building (not 6) and 102 rooms (not 122) and a supermarket at ground/basement level (pg. 8). While plan extracts in the report annexure appear to relate to the latest revised plans, not all plans are included.

Council's engineers have reviewed the latest report (in a short period given timing), advising:

- Given Ramsgate Road is a Classified Regional Road and The Grand Parade is a classified State Road, approval from TfNSW is required for all works to the road reserve fronting the site. This approval has not been obtained and given the late submission of the traffic report, no time was available to send a referral to TfNSW to obtain their concurrence;
- Previous engineering comments have not been fully addressed;
- The loading for the hotel still occurs in front of lifts which is not a good outcome;
- Overall, there still are large critical unresolved elements of the proposed development;
- The latest comments from BTDAC are from 9/8/2023 and remain unresolved (see BTDAC comments below):

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**BTD23.016** 277 The Grand Parade RAMSGATE BEACH NSW 2217

Integrated Development - Demolition of existing structures and construction of a seven (7) storey mixed-use development comprising retail uses, hotel accommodation, food and drink premises, roof-top recreation, basement carparking, public domain works and tree removal

Committee recommendation:

- 1 That comments be obtained from TfNSW on the proposed options (in particular the reconfigured slip/merging lane and coach pick-up/drop-off on Ramsgate Road). Council's preference is option 2.
- 2 That the parallel pick-up/drop-off spaces adjacent to the hotel entry not be supported as the hotel pick-up/drop-off spaces could be provided in the coach pick-up/drop-off area.
- 3 That comments be obtained from the State Bus Transit Authority on the impacts of the widened driveway on the existing bus zone. To facilitate the development, parts of the existing bus zone will need to be converted to no-stopping to facilitate vehicle movements.
- 4 That the turning head be supported given there will be no net loss of on-street parking noting that the removal of the existing driveway provides more on-street parking and excess parking spaces provided in the basement.

The amended plans and most-recent traffic report have not been re-considered by TfNSW, or the BTAC. Based on the information and advice to date, the proposal could not be recommended for approval based on traffic grounds.

## **State Environmental Planning Policy (Resilience and Hazards) 2021**

### **Chapter 2 – Coastal Management**

The site is partially within the mapped Coastal Environment Area (Division 3) and entirely within the mapped Coastal Use Area (Division 4) of this part of the SEPP.

In terms of Division 3 of Chapter 2 of the SEPP, Clause 2.10(1) states:

- (1) *Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following—*
  - (a) *the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,*
  - (b) *coastal environmental values and natural coastal processes,*
  - (c) *the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,*
  - (d) *marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,*
  - (e) *existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*
  - (f) *Aboriginal cultural heritage, practices and places,*
  - (g) *the use of the surf zone.*
- (2) *Development consent must not be granted to development on land to which this section applies unless the consent authority is satisfied that—*

- 
- (a) the development is designed, sited and will be managed to avoid an adverse impact referred to in subsection (1), or*
  - (b) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or*
  - (c) if that impact cannot be minimised—the development will be managed to mitigate that impact.*

The site is well set-back from the coastal area, in terms of the area affected by wave water, natural processes and the like. The main potential impacts to the Coastal Area relate to groundwater management, and this can be reasonably managed and mitigated by processes associated with de-contamination and water management during construction. The de-contamination of the site should improve potential longer term groundwater impacts. Flood issues are addressed in relation to LEP controls. Foreshore access will not be affected. The proposal is satisfactory against the considerations in Clause 2.10 of the SEPP.

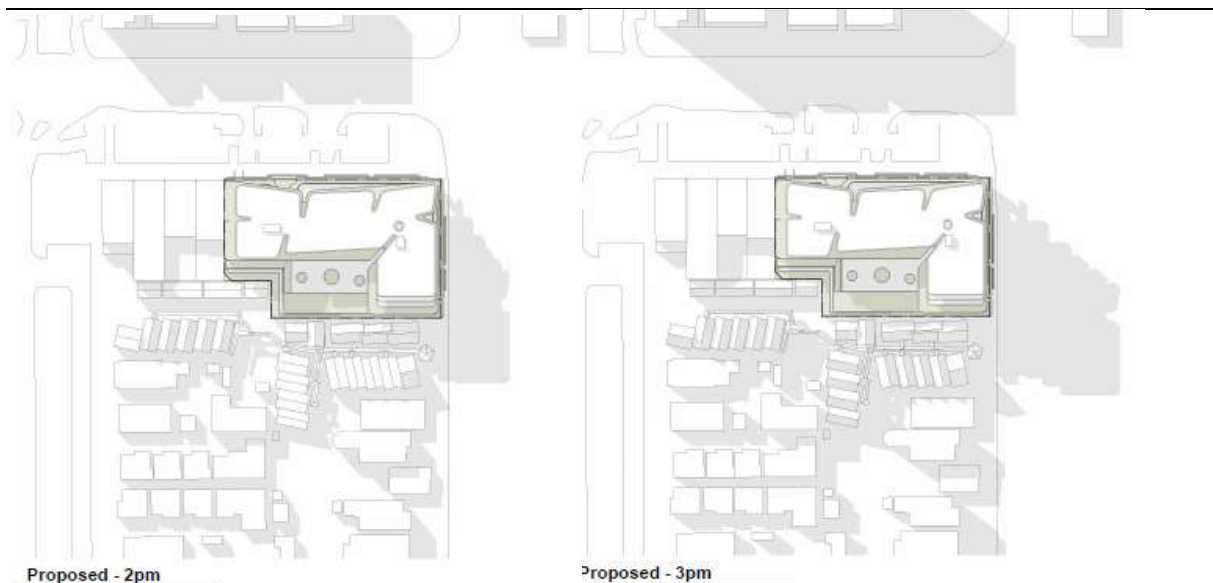
In relation to the Coastal Use Area, Clause 2.11(1) of the SEPP states:

- (1) Development consent must not be granted to development on land that is within the coastal use area unless the consent authority—*
  - (a) has considered whether the proposed development is likely to cause an adverse impact on the following—*
    - (i) existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*
    - (ii) overshadowing, wind funnelling and the loss of views from public places to foreshores,*
    - (iii) the visual amenity and scenic qualities of the coast, including coastal headlands,*
    - (iv) Aboriginal cultural heritage, practices and places,*
    - (v) cultural and built environment heritage, and*
  - (b) is satisfied that—*
    - (i) the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a), or*
    - (ii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or*
    - (iii) if that impact cannot be minimised—the development will be managed to mitigate that impact, and*
  - (c) has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.*

The proposal will not affect access along the foreshore/beach.

The proposal is not expected to cause any significant impacts on wind funnelling to the foreshores, noting the separation of the site from the foreshore, and the relative position of the site to the foreshore (to its west). The flat nature of the site and surrounds is such that the building will also not cause any significant loss of views from public places to the foreshore.

In terms of overshadowing, Cook Park only becomes overshadowed by the proposal at around 2.30-3.00pm in mid-winter. This is linked to height non-compliance, and while the time of impact does not align to periods of peak usage of the park, this is still a negative aspect of the proposal.



**Figure - Overshadowing plans – 2pm and 3pm midwinter**

When considering the exposure of the site on a corner, its visibility from the surrounding area including a coastal use area and public park, and the scale relationship with adjoining development particularly to the south, the bulk, scale and size of the proposed development is a matter of concern included in the recommended refusal of the proposal.

In these regards, the proposal is considered to adversely affect the matters identified in items (ii) and (ii) from the SEPP quoted above, namely:

- (ii) *overshadowing, wind funnelling and the loss of views from public places to foreshores,*
- (iii) *the visual amenity and scenic qualities of the coast, including coastal headlands.*

Further, in accordance with Clause 2.11(1)(b) of the SEPP, the proposal has not been designed and sited to avoid such adverse impacts, and it could and should.

This issue of context, bulk, scale and height of the proposed development is further elaborated upon in response to LEP and DCP controls, and comments from the Council's Design Review Panel.

## Chapter 4 – Remediation of Land

The provisions of Chapter 4 of the SEPP have been considered in the assessment of the proposal. Subsection 4.6 of the SEPP requires Council to be satisfied that the site is, or can be made, suitable for its intended use at the time of determination of an application. Specifically, that Clause states (emphasis added):

- (1) *A consent authority must not consent to the carrying out of any development on land unless—*
  - (a) *it has considered whether the land is contaminated, and*
  - (b) *if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and*
  - (c) *if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.*
- (2) *Before determining an application for consent to carry out development that would*

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*involve a change of use on any of the land specified in subsection (4), the consent authority **must** consider a report specifying the findings of a preliminary investigation of the land concerned carried out in accordance with the contaminated land planning guidelines.*

- (3) *The applicant for development consent **must** carry out the investigation required by subsection (2) and must provide a report on it to the consent authority. The consent authority **may** require the applicant to carry out, and provide a report on, a detailed investigation (as referred to in the contaminated land planning guidelines) if it considers that the findings of the preliminary investigation warrant such an investigation.*
- (4) ...

In accordance with the requirements and considerations of the SEPP, a Preliminary Environmental Site Investigation Report ("PSI") prepared by JK Environments and dated 28 June 2022 has been submitted. JK Environments also undertook a geotechnical investigation (29 June 2022).

The report by JK Environments outlines that:

- The site history information and site inspection identified: imported fill material; historic onsite mechanic's workshop; use of pesticides; hazardous building materials; and an off-site service station (located near site), being across Ramsgate Road;
- Soil samples were obtained from seven boreholes (to the western half of the site given the Coles Building) and groundwater sampling was undertaken from two monitoring wells. The boreholes encountered fill materials to depths of approximately 0.3m below ground level (BGL) to 1.5mBGL, underlain by sandy marine soils.
- The fill contained inclusions of igneous gravel, silt, concrete and terracotta fragments and ash. Asbestos and nickel were identified in soil at concentrations that exceeded the human health and ecological SAC respectively. Heavy metals (arsenic, copper and zinc) were also identified in groundwater above the ecological (marine) SAC;
- *"The PSI has not identified contamination that would preclude the proposed development/use of the site. However, a Detailed Site Investigation (DSI) is required to address the data gaps identified in Section 10.4, characterise the risks and establish whether remediation is necessary (and inform the preparation of a remediation action plan (RAP) where required). We recommend the following:*
  1. *Prepare a Sampling, Analysis and Quality Plan (SAQP) for the DSI;*
  2. *Undertake a DSI in accordance with the SAQP; and*
  3. *Where required (i.e. if triggered following the DSI risk assessment), develop and implement a RAP. Any requirements documented in a RAP are to be implemented and the site is to be remediated and validated."*
- The natural soil below a depth of 5mBGL is considered to be potential acid sulfate soils (PASS). An ASSMP should be prepared.

It is noted that in the SEPP, a PSI is mandatory and the consent authority may require a DESI and RAP if the PSI warrants that. This also needs to be balanced against the provisions of Clause 4.6(1)(3), namely being satisfied *that the land will be remediated before the land is used for that purpose*.

Different Councils in NSW have different approaches to this issue. Some Councils always require a DESI and RAP if that is recommended by a PSI (reading the "may" relates to if warranted by the PSI). Other Councils address requirements for a DESI and RAP as conditions of consent, based on the circumstances of the case and that requiring these at DA

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stage is not mandatory. Bayside falls in the latter category. Ultimately, the consent authority must be satisfied whether a DESI and RAP is required in terms of the provisions of Clause 4.6(3) quoted above.

The Council's specialist Contamination Officer has accepted the recommendations contained within the original PSI report as being satisfactory and has recommended conditions of consent including a HAZMAT survey, Sampling Analysis and Quality Plan and additional boreholes for a Detailed Site Investigation (all prior to CC) and an ASSMP, DESI and RAP prior to works. If approved, these conditions could be imposed.

Based on the PSI and Contamination Officer's assessment, it could be concluded the site is able to be made suitable for the proposed use(s).

It is noted a ASSMP has since been lodged by the applicant.

## **State Environmental Planning Policy (Industry and Employment) 2021**

### **Chapter 3 - Advertising and Signage**

This Chapter of the SEPP applies to all signage that is visible from a public place or public reserve except for signage that is exempt development.

Clause 3.6 states:

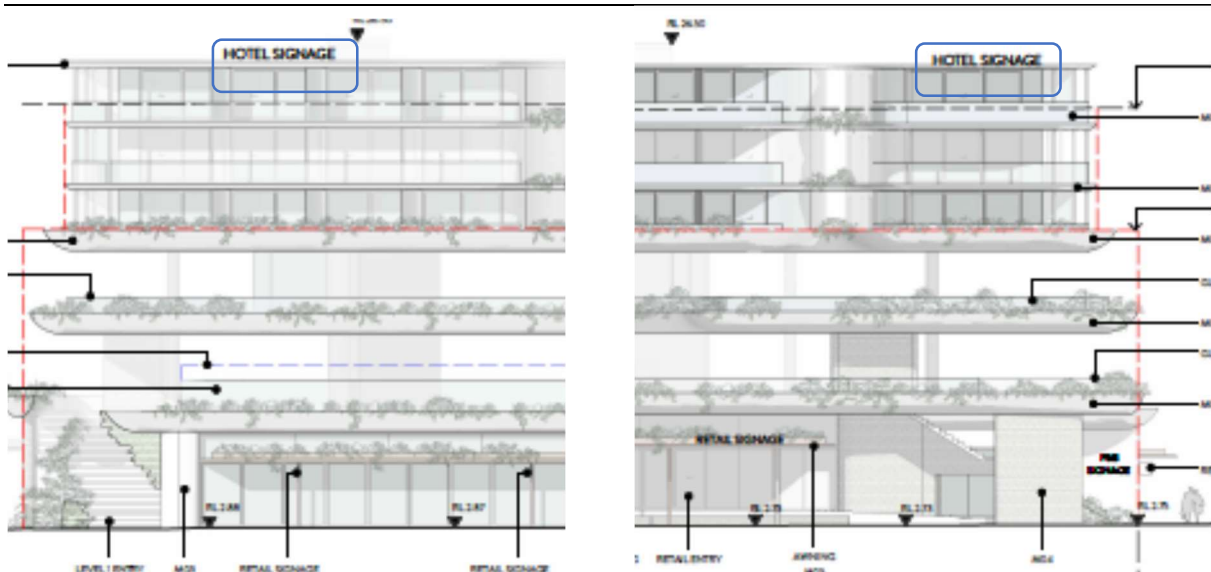
*A consent authority must not grant development consent to an application to display signage unless the consent authority is satisfied—*

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

The proposal does not seek consent for signage structures, but has nominated signage zones in the building, as requested and in response to an early RFI. This is appropriate, so the architect can consider appropriate locations for signage integrated into the design at inception, rather than as an afterthought. However, signage would still be subject to future approval, as needed.

Technically, the signage zones do not need assessment against Schedule 5 of the SEPP. However, concern is raised with the proposed roof signage, which would detract from the design and as it is inappropriately-placed (highlighted on the elevation extracts below). These signage zones are not supported, although this is not a critical aspect to the proposal and has not been included as a reason for refusal, as they could easily be removed by a condition if approved.





**Figure - Rooftop signage zones**

## State Environmental Planning Policy (Biodiversity and Conservation) 2021

### Chapter 2 Vegetation in non-rural areas

This Chapter applies to non-rural areas of the State, including the Bayside local government area and aims to (a) *protect the biodiversity values of trees and other vegetation in non-rural areas of the State*, and (b) *preserve the amenity of non-rural areas of the State through the preservation of trees and other vegetation*.

This Chapter is triggered due to the need for approval to remove vegetation/trees as outlined in Bayside DCP 2022. The proposed works involves the removal of vegetation requiring approval. This includes removal of 19 trees on the site (noting the original DA also sought to remove a further 10 trees in Ramsgate Road, but these works and tree removal are no longer proposed, subject to any changes to Ramsgate Road agreed to by the Local Traffic Committee). There are also trees close to the southern boundary on the adjoining site to the south. The 18 trees on site are essentially perimeter trees/landscaping around the at-grade car park:



**Figure - Demolition plan – tree removal**

The DA is accompanied by an Arborist's report (Abnoba Arbor, 28/7/2022). That report assessed 45 trees on and adjoining the site, including in the road reserve and on the adjoining site to the south. The report concluded trees on the adjoining privately-owned site could be retained (mainly due to fibrous roots and the existing boundary wall and conditions).

The trees along the western boundaries of the site are trees numbered 1-16, while those to the north of the carpark are trees numbered 28-30. Trees 1-13 are exotic Murrayas, 14-16 are native Coastal Tea Trees (x2), and a native Willow Myrtle. Trees 28-30 are native Robinias (False Acacias). All these trees are rated as having low retention value by the applicant's arborist.

Retention Value	Low	Med	High
Tree No.	T1, T2, T3, T4, T5, T6, T7, T8, T9, T10, T11, T12, T13, T14, T15, T16, T28, T29	T31, T32, T33, T34, T38, T42	T36, T39, T40, T41

**Table - Arborists report – Trees to be “removed and replaced” and ascribed “retention value”**

Council's Landscape Officer assessed the proposal at the stage of when works were proposed to Ramsgate Road and various street trees were to be removed. The Landscape Officer stated: *“the removal of all trees along the Ramsgate Road setback is not supported”*. This is no longer proposed.

The Landscape Officer also raised some concerns with the proposed landscape design within the building, including:

- *Landscape treatment is generally proposed as a decorative green element above structures. The design has not been designed to deliver greenery to the streetscape. Design shall evolve further to deliver planters along the periphery of the built form capable to hold planting that provides a green element to the streetscape;*
- *Ground level frontage to The Grand Parade includes a 35 meters-built form, with minor areas of landscape proposed above slab. These planting areas have a width between 200 mm and a larger planter adjacent to the north eastern staircase. Details in both architectural and landscape plans are insufficient to assess. A minimum width of 200mm for planting only provides soils volumes for small groundcovers or vines to grow. Provide top of wall and width of each proposed retaining wall to assess soil volumes. A minimum width of 750mm shall be provided for planters above slabs;*
- *The outside edge structures in architectural drawings are shaped rounded upwards, not leaving any opportunity for planting to be visually exposed to the public domain. On the contrary illustrations and photomontage show planting along all edges. This is inconsistent, and further details of built elements and structures shall be provided to ensure planting can be exposed to the streetscape;*
- *Planters proposed above slabs shall include further information to assess soil depths, drainage, height of retaining walls along pedestrian areas, and maintenance access, as well as planting proposal. The landscape plans do not indicate tree species proposed;*
- *Provide sections of interface with the external face of the building, and the relation of pedestrian walkways and planting areas. Sections shall be provided of different treatments provided and shall be enough number of details to understand the designed proposed in all planting areas;*
- *Pictures included in landscape package are not consistent with architectural drawings and intent of planting. Glass peripheric treatment around the external border of*



*planters are not consistent with architectural proposal where planting is hanging and delivers a green element to the streetscape. Provide consistent information, landscape plans include deceiving pictures of elements that are unclear resulting in being unable to assess;*

- *WSUD elements must be included in the stormwater and architectural design. Elements like Bioswales and raingardens shall be included in the stormwater design, and landscape proposal shall include adequate planting to support WSUD elements;*
- *All landscape areas shall be accessed for maintenance purpose.*

A revised Landscape Plan has not been provided with the latest revised proposal.

No objection is raised to the removal of the trees on the site. The planning controls for the site, including masterplanning provisions in the DCP, contemplate building the street edge and side boundaries, and the trees on site being removed are not significant. Wholesale excavation works and tree removal on Ramsgate Road are no longer proposed

The design intent of a landscaped edge to the development above ground floor is supported in principle and would help soften the presentation of the building on a prominent corner. The above issues of detail raised by Council's Landscape Officer should be considered and addressed in a Landscape Plan and potential changes to plans.

## Bayside Local Environmental Plan 2021

The following table outlines the relevant Clauses of Bayside Local Environmental Plan 2021 ("the LEP") applicable to the proposal, while aspects warranting further discussion follows:

Relevant Clauses	Compliance with Objectives	Compliance with Standard / Provision
1.2 Aims of the Plan	No in part - see discussion	NA (only objectives)
2.3 Zone and Zone Objectives (Mixed Uses MU1)	No in part - see discussion	Yes – the proposal is permissible with development consent
2.7 Demolition requires consent	Yes	Yes - DA lodged, including demolition
4.3 Height of buildings	No - see discussion	No - see discussion
4.4 Floor space ratio ("FSR")	Not assessed (No Clause 4.6 lodged)	No - see discussion
4.6 Exceptions to development standards	No - see discussion	No - see discussion
5.1 Relevant acquisition authority	Yes	Yes/NA - Site not identified for acquisition
5.10 Heritage conservation	Yes - see discussion	Yes - see discussion
5.21 Flood planning	No - see discussion	No - see discussion
6.1 Acid Sulfate Soil - Class 3	Yes - see discussion	Yes/Able - see discussion

Relevant Clauses	Compliance with Objectives	Compliance with Standard / Provision
6.2 Earthworks	Yes - see discussion	Yes/Able - see discussion
6.3 Stormwater and water sensitive urban design	No - see discussion	No - see discussion
6.9 Active street frontages	Yes and No - see discussion	Yes - see discussion
6.10 Design Excellence	NA - see discussion	NA - see discussion
6.11 Essential services	Yes	Yes - Site adequately serviced

**Table – LEP relevant Clauses summary**

## **1.2 - Aims of the Plan**

While not a stated mandatory consideration for DAs, the aims of the Plan are relevant insofar as considering environmental planning instruments within Section 4.15(1)(a)(i) of the Act. Clause 1.2 of the LEP illustrates the strategic intent of the LEP and its provisions, and is considered relevant to the assessment of this application. Clause 1.2 of the LEP Plan includes a range of aims, namely:

- (aa) *to protect and promote the use and development of land for arts and cultural activity, including music and other performance arts,*
- (a) *to protect, conserve and enhance Aboriginal cultural heritage and the environmental, cultural, scenic, built and landscape heritage of Bayside,*
- (b) *to provide high quality open space areas and recreational facilities,*
- (c) *to reduce community risk and improve resilience to, and from, urban and natural hazards,*
- (d) *to encourage sustainable economic growth and development in Bayside,*
- (e) *to create a liveable urban place through the application of design excellence in all elements of the built environment and public domain,*
- (f) *to encourage diversity in housing to meet the needs of, and enhance amenity for, Bayside residents,*
- (g) *to encourage walking, cycling and use of public transport through appropriate intensification of development densities surrounding transport nodes,*
- (h) *to encourage development that demonstrates efficient and sustainable use of energy and resources in accordance with ecologically sustainable development principles,*
- (i) *to enhance and protect the functions and roles of the international trade gateways of Sydney Airport and Port Botany,*
- (j) *to increase urban tree canopy cover and enable the protection and enhancement of green corridor connections,*
- (k) *to promote and enhance the amenity of Botany Bay's foreshores and Bayside's waterways.*

The proposal is consistent with most of these general aims.

However, given aim 1.2(e) highlighted red above, it is wholly appropriate to consider the

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comments of Council's Design Review Panel, who Council regularly uses for new buildings to help inform the achievement of good design. It is also noted that Section 1.3 of the Act includes the following object:

*(g) to promote good design and amenity of the built environment,*

The DRP has reviewed the proposal on 3 occasions. This included at each stage of amendment/revision. Indeed, the proposal has been amended and reviewed having regard to the DRP feedback. The most recent DRP feedback in August 2023 was based on plans submitted prior to the current DA, but similar to them in terms of siting and layout of the building. However, a number of changes were made to the proposal following the August DRP advice, including reducing the Building Height (including deleting the rooftop level) and FSR.

The DRP comments outline the 3 stages of feedback (different colours under different considerations) and their comments are provided as a separate attachment to this report. The applicant's response to the August 2023 DRP comments, including changes made to the proposal in the current revised proposal, is also provided as a separate attachment to this report.

Some key summarised negative feedback from the DRP included:

- The proposal is too large in terms of bulk, scale and height for the context;
- The proposal has been modified in an attempt to align its FSR with the LEP's 2:1 density requirement. The Panel notes that hotel corridors and the huge semi enclosed undercrofts have not been included in GFA calculations;
- The proposed built form also exceeds the 20.5m height limit for the site, by as much as 4m to its raised balustrade, 5.3m to its level 6 setback roof and nearly 7m to its lift cores [Note – the height breach has since been reduced, including by deleting the rooftop accessible area]. It is difficult to accept that such a breach of height is necessary, when the built form includes so much undercroft space – currently not counted as GFA;
- Regardless of the legal conclusion of the FSR definition, the Panel believes that the building is simply too large for the context and has significant negative impacts on streetscape and adjacent properties that include;
- The visual bulk of the building is overwhelmingly long and too massive for this otherwise low to midscale context with long unarticulated spandrels failing to address the fine grain aspirations of both street frontages;
- Excessive height;
- Inadequate 3m floor-floor height for the hotel rooms;
- Lack of built form transition from the scale of Ramsgate Road to the lower scale buildings south along The Grand Parade. The 0m setback to the southern boundary and The Grand Parade creates a very blunt built form transition on the south eastern corner (the panel recommends a 1.5m setback to the ground floor);
- The Grand parade footpath does not suit pedestrian entry to the supermarket;
- Inadequate and non-compliant southern setback;
- Acoustic impacts including from unrealistic retractable barriers;
- Excessively deep balconies and planter areas on each level which add to bulk;
- Inappropriate corner stair presentation;
- The proposal's excessive bulk is matched by its highly inefficient building design;
- Likely enclosure of undercroft areas in inclement weather/lack of flexibility of design;

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- Various concerns regarding design detail;
  - While the Panel has consistently been concerned by the proposal's bulk and scale, the concept of layered green architecture featuring landscape within built form has been generally supported. However, removing its reliance on height breaches to sustain large open undercrofts has been consistently recommended.

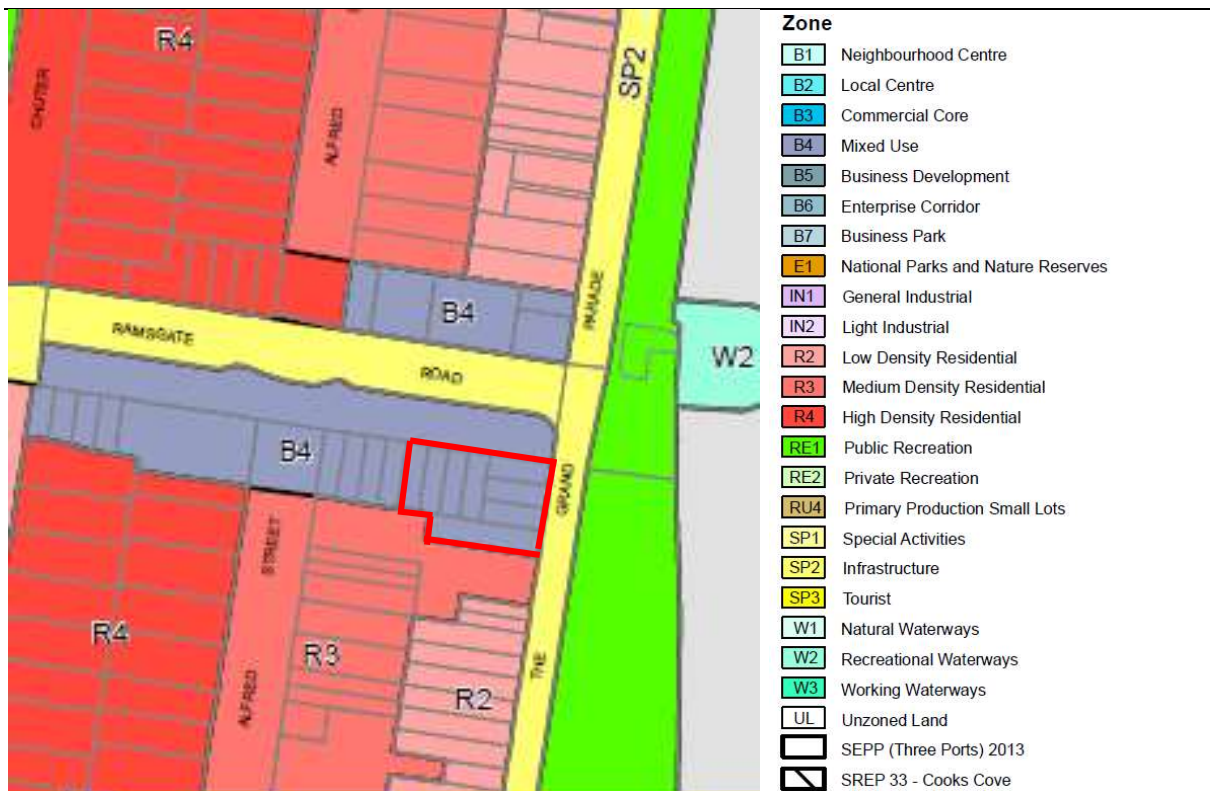
As mentioned, the latest scheme has included changes to the plans considered by the Panel meeting in August 2023. However, having been to the three (3) panel meetings and deliberations, and given the feedback and changes made, it is still safe to conclude the DRP would remain unsupportive of the latest proposal.

The comments of the DRP can be read as being critical and unsupportive of the proposal. I am a town planner and not an urban designer. I do have some different views about the ground floor southern setback to the boundary (for reasons outlined in response to the Clause 4.6 request), although I do understand the DRP's proposition (and the southern neighbour) and opinion that a 1.5m setback to the southern wall would improve interface issues, reduce impacts to the south and provide some landscape opportunities. I also do not share the same concern of the DRP with the corner stair, which may help provide informal public seating areas and help visually encourage people up to the first-floor area, which can be a challenging design issue. However, I do fully concur with the view of the DRP that the FSR is excessive, areas not counted as FSR considerably add to the building bulk, concerns with interface issues related to undercroft areas, concerns with the bulk, scale and height relationship with the surrounds, particularly to the south, and with non-compliant setback controls at upper levels given the context. These concerns do lead to a conclusion that a building with one storey less is a reasonable outcome and expectation given the excluded GFA, controls and setting/context. Such a change is warranted by environmental and contextual considerations and further elaboration to concerns is provided in following sections of this report.

Noting the concerns with the design outlined by the Design Review Panel, particularly related to bulk, scale and scale relationship to the south and throughout this report, it is considered the proposal is inconsistent with aims (e) related to design excellence and (k) related to enhancing the amenity of Botany Bay's foreshores within Clause 1.2 of the LEP.

### **2.3 - Zoning**

The subject site is zoned Mixed Use MU-1 under the provisions of the LEP. The proposal is defined as tourist and visitor accommodation, shop, and retail premises (noting there is no specific definition of a supermarket). These uses constitute permissible development only with development consent.



**Figure - Zoning Map extract (Note B4 = MU1)**

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 first, fourth and fifth objectives of the zone.

In terms of the second objective, the proposal does provide active street frontages. The DRP has raised concern with the solution of providing pedestrian entrance to the supermarket of the Grand Parade, given the narrow footpath width, nature and setting of the footpath area to The Grand Parade. This concern is shared. A better solution would have been to provide pedestrian entrance to the supermarket to Ramsgate Road, as originally proposed, but with windows to The Grand Parade. This would have met the design and operational desire for one entrance/exit for the supermarket, but this was not favoured by the applicant in the revised proposal. Alternatively, if the entrance via The Grand Parade is pursued, a larger setback (3-5 metres) along The Grand Parade would be warranted, as recommended by the DRP.

The proposal is likely to lead to the function of the footpath of the Grand Parade being compromised, due to its width, the bus stop and pedestrian/trolley activity, despite best intentions



regarding trolley management and the proposed relocation of a bus stop.



**Figure and Photo - Ground floor plan and The Grand Parade**



**Photo - The Grand Parade looking north**

In terms of the third objective *To minimise conflict between land uses within this zone and land uses within adjoining zones*, the uses are appropriate for the site. The provision of retailing/supermarket uses at ground/first floor and hotel above, with basement parking, is suitable for the zoning, site and strategic context for the Ramsgate Beach controls.

However, the site is at the interface with a change in zoning (Medium density R3), with a medium

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density residential development of 33 dwellings very close to the southern boundary of the site.

The three key interface issues of relevance (and concern for the neighbouring development) are the building wall to the southern boundary, the open nature of the proposed food and beverage/uses at the first and second floor adjoining the southern boundary and the setback at upper levels.

In terms of building to the southern side boundary, there exists a wall on the boundary for part of the southern boundary and this is being extended for the full width of the southern boundary(s). The architect has prepared a section which shows the comparison of the proposed new wall and the existing Coles wall (shown dashed), as below. This shows the proposed wall to be lower at the boundary than the existing wall, with a landscaped setback at the first and second floor (although the sound attenuation measures relative to landscaping is not clear in the section). However, for the remainder of the new boundary wall, this will be on the boundary replacing metal fencing, an awning/loading area or low boundary wall with adjoining garages.



**Figure and Photo - Section and photos – Southern boundary**

As also shown in the section above (red dashed), the architect has shown a DCP control of a 1.5m setback at ground floor from the southern boundary. If that setback was provided and the proposal was not built to the southern boundary, this would afford some greater visual relief (although

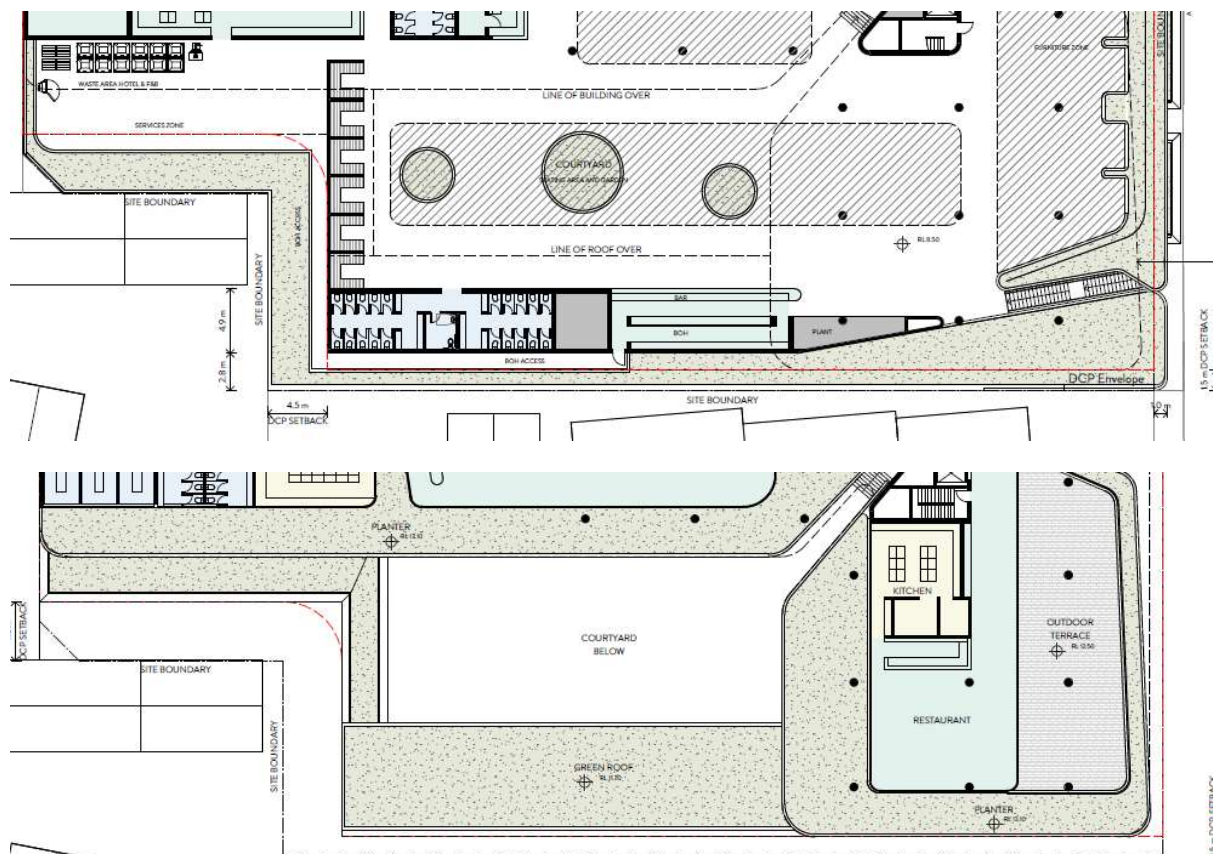


limited landscaping options given a carpark below). However, this depiction of the DCP setback is not agreed as there are DCP controls for Ramsgate Beach which allow building to the side boundary (and no requirements for a rear setback). Given the existing situation and relationship between sites, building to the southern boundary as proposed at ground floor is considered reasonable, despite views/concerns expressed by the DRP and neighbours.

In terms of the open nature of the first and second floor relative to the southern boundary, this has been significantly improved in the most recent plans, compared to the original DA, with greater walls for shielding than previously proposed, and greater setbacks at the second floor to actively-used spaces.

However, the back of house access at first floor is close to the boundary and compromises greater landscaping, while the two storey “open” courtyard on Level 1 (under the building above), will lead to likely adverse acoustic impacts due to reverberation from the soffit. Similarly, the outdoor terrace to the east of the restaurant on Level 2 is close to the southern boundary and not enclosed. These areas have been excluded from Gross Floor Area (“GFA”) calculations.

The design at first floor could be amended to remove the back of house area/access, but the second-floor design, and non-compliance with the 24m southern setback at the upper levels (addressed in a subsequent section in response to the DCP controls), leads to an inappropriate land use interface with the site and the adjoining residential site/zoning to the south, and is therefore considered to be inconsistent with the third objective of the zone.



**Figure - Plan extracts – First Floor (top) and Second Floor relative to southern boundary**



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### **4.3 - Height of Buildings**

A maximum height standard of 20.5m metres applies to the subject site.

The recent buildings on the northern side of Ramsgate Road are visually consistent in height, as shown in the photo below.



**Photo** – Recent Buildings on the northern side of Ramsgate Road, opposite the site

The proposal has a maximum height of 23.64 metres (RL 26.5 AHD) to the lift overruns (x2), which does not comply with the numerical development standard of 20.5m. This exceedance represents a 3.14m or 15.4% non-compliance.

The roof level of the proposal is also over the height limit (by 1m less than the lift overruns, representing a 2.14m or 10.5% non-compliance).

The survey levels of existing ground below the lift overruns have been checked and these appear be around RL 2.9 for the western lift and around RL 2.8 for the eastern lift (although the level of the supermarket is not specified on survey it may be higher than this, so this is not likely material). This accords with the applicant's calculation and any difference, if there is any, is immaterial.

The height non-compliance is discussed in Clause 4.6 – Exceptions to Development Standards below.

### **4.4 – Floor Space Ratio (“FSR”)**

A maximum FSR standard of 2:1 (equating to a Gross Floor Area, or “GFA” of 8,958sqm) applies to the subject site and proposal.

The proposal has a stated maximum GFA of 8,433.7sqm which equates to an FSR of 1.88:1 and which would comply with the FSR standard (under by around 5.5%).

However, since the original DA lodgement, in the RFI and in meetings since, concerns have been expressed by the assessing officer (and the DRP) regarding exclusions from the GFA calculations, particularly related to undercroft areas internal corridor areas and some minor ancillary areas.

The plans include diagrams showing which areas have been included and excluded from GFA, which is good practice and appropriate.

The definition of Gross Floor Area in BLEP 2021 is “standard” being:

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

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

*but excludes—*

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

The following areas excluded from GFA warrant close consideration. These are discussed, level by level:

In terms of Basement 1 and 2, the whole area is considered a basement. In the context of the GFA definition, it is reasonable to exclude bicycle and motorcycle parking, in my view, as this can be considered part of “vehicular access” (or as basement storage), although there is an argument that parking areas are different to access to such parking, and storage. In the plain consideration of excluding car parking and loading areas in basements (or otherwise), excluding ancillary parking for other vehicles seems consistent with the intent of the definition, in my view. While there is an argument that the security area and toilet areas are basement “service” areas and should be excluded, I do not consider them to be service areas, given their designation to accommodate people (although accepting they are not habitable), and as such they should be included in GFA, in my view. This conclusion is not beyond doubt.



**Figure – Basement 1 and 2 – toilets/change, security, bicycle storage and motorcycle parking**

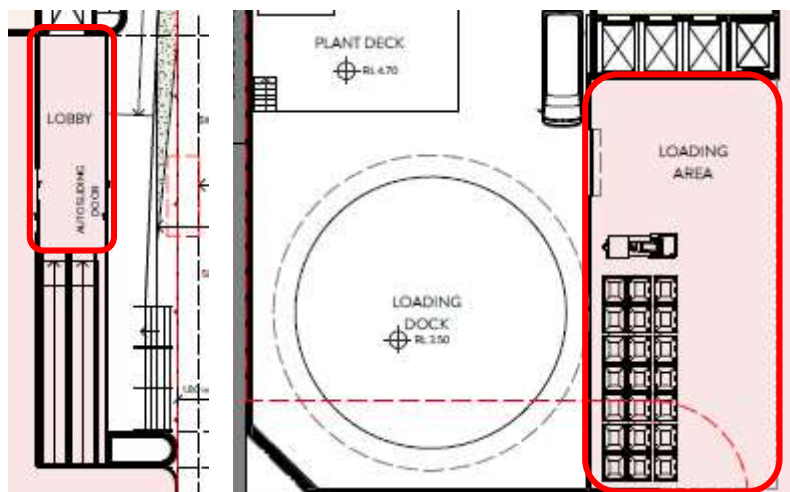
There is also an argument that areas adjoining plant and adjoining the fire control room, not providing access to car parking, should also be included in GFA.

In terms of the ground floor. The two areas warranting consideration are the supermarket “lobby” and the “loading” area to the east of the truck loading areas off Ramsgate Road (see below).

The supermarket lobby area is internal. It should be included in GFA, in my view.

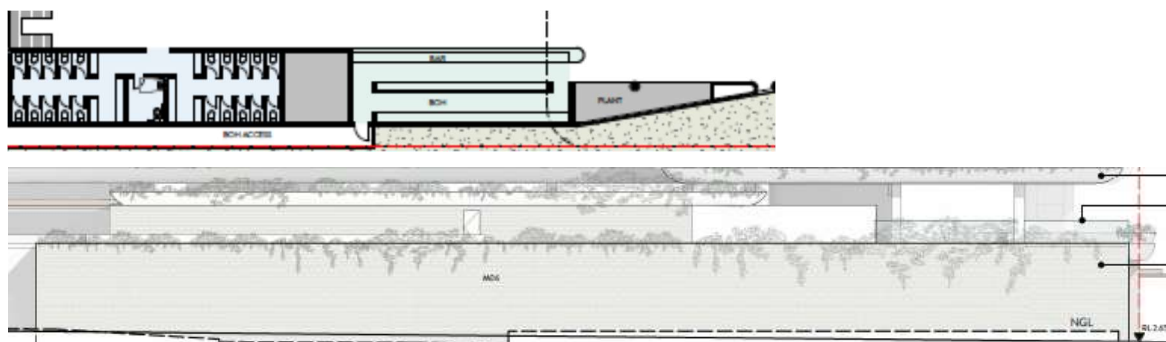
The loading dock and area off Ramsgate Road has been excluded (white below). This is appropriate.

The internal loading area adjoining the truck loading dock at the western end of the supermarket (shaded pink and labelled “Loading Area” below) could be argued to be *any space used for the loading or unloading of goods (including access to it)*. However, the area appears to be part of the supermarket and based on the design as shown, while also not beyond doubt, I prefer including that area as GFA.

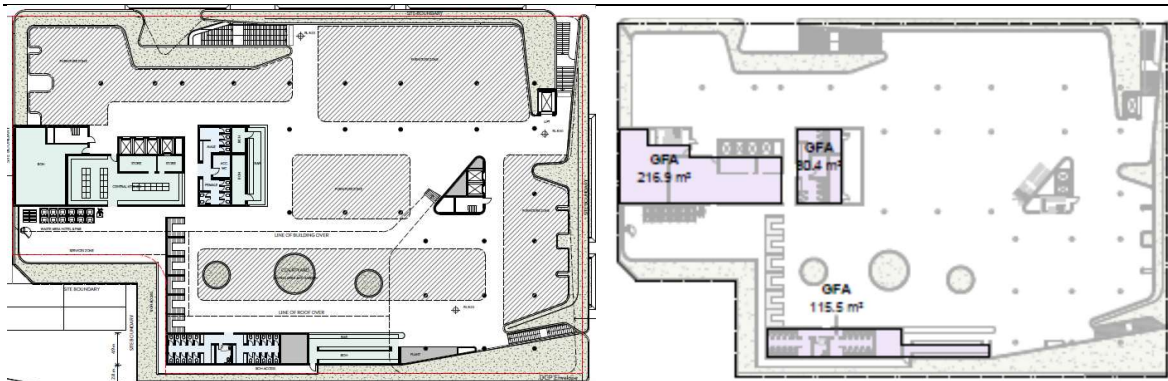


**Figure** – Ground Floor – Lobby and internal loading area

At the first floor (level 1), the areas warranting consideration are the southern bar and all the “undercroft area” not counted as GFA. While not fully enclosed, this area is surrounded by southern walls to the toilet bar and plant (assumed full height from the elevation and functional need) or noise attenuating measures (which constitute a wall, and walls may be glazed, in my view) of over 1.4m. The exact location of the acoustic screening is not clear on the plans, although screens at 1.5m are shown on elevations and well over that in the most recent acoustic report.





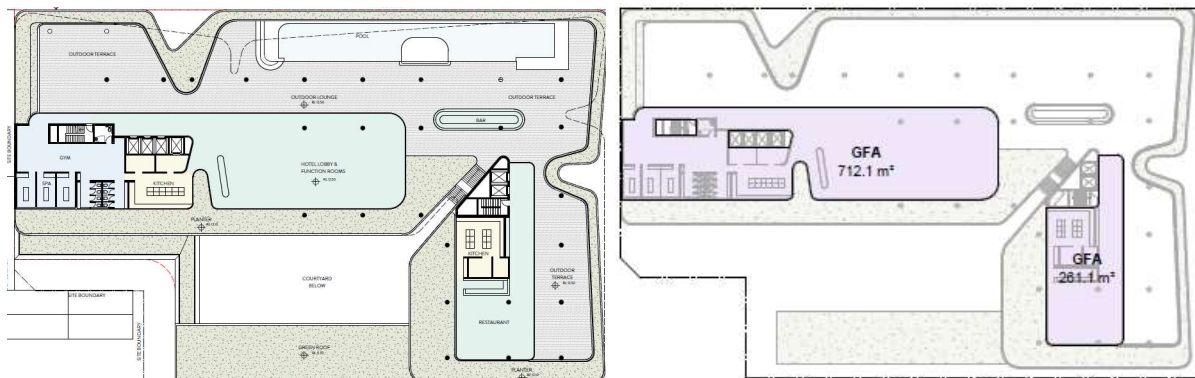


**Figure** – First Floor plan, elevation and GFA calculation extracts

Only half of the southern bar area is included in GFA, which seems illogical and incorrect.

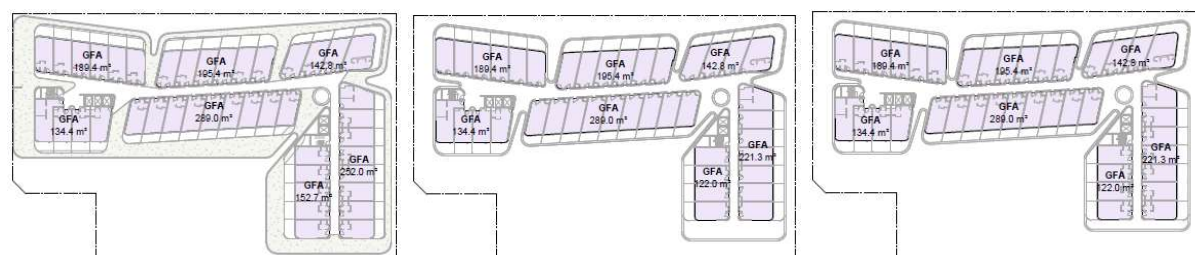
In terms of the remainder of the internal undercroft area (white in the GFA plan extract above), this should be included in GFA, in my view, given the enclosing southern wall and external enclosing acoustic walls being higher than 1.4m. However, part of this area (the two-storey void) may be appropriate to exclude as GFA as a void.

For the second floor, the same “undercroft” exclusion issue applies, for the white areas to the north and east of the areas included in GFA shown below:



**Figure** – Second Floor plan and GFA calculation extracts

For levels 3-5, the areas warranting consideration are all essentially the same, being corridor areas. While not entirely clear, it is assumed that the balustrade height is 1m (or below 1.4m) for all the “ends” of the internal corridors. If so, this is questionable from a functional point of view given the exposed nature of the corner site, particularly to wind and rain from the south, south-east and north-east. In any event, the prevailing nature of these spaces is considered to be internal, due to the location of hotel rooms on both sides. In my view, these internal corridor areas are essentially shielded from the outside elements and are internal, and should be included as GFA.



**Figure** – Levels 3-5 GFA calculation plans



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In summary, the following areas excluded from GFA should have been included, in my view:

- Basement toilets and security room (approx. 90-110sqm);
- Ground floor lobby and internal area adjoining loading dock (approx 210-220sqm);
- First floor bar and undercroft area (approx 2,350sqm);
- Second floor northern and eastern undercroft area and terrace (approx 1,300sqm);
- Levels 3-5 internal corridors (approx 400sqm).

These areas equate to around 4,400sqm, although this is a rough estimate from scaling. In turn, if my interpretation of GFA is correct, this would equate to GFA of around 12,833sqm, or an FSR of 2.87:1, being around 43% above the FSR control, rather than 5-6% below it. This difference is significant.

As the DA is stated to comply with the FSR, no Clause 4.6 contravention request to the FSR has been lodged.

At the suggestion of the assessing officer to the applicant if the corridor areas and undercroft areas were continued to be excluded in the latest plans, the applicant has provided legal advice of the interpretation of GFA, by Mills Oakley lawyers. That is provided to the Panel but not as a publicly-available attachment, in case it is subject to legal privilege. The essence of that advice was that “end of trip” basement facilities should be excluded from GFA calculations (being non-habitable space), and in relation to undercroft, terrace and corridor areas, there was “a good case” to exclude such space, although subject to some qualifications and suggestions. I have read this advice and it is not definitive and does not alter my view expressed above.

Legal advice received from Council will be provided to the Panel, also subject to legal privilege.

#### **4.6 - Exceptions to Development Standards**

##### **Building Height (Clause 4.3)**

This discussion is limited to the Building Height development standard, as the applicant has not submitted a written submission for the FSR development standard, as discussed above.

It is also related to Clause 4.6 of the LEP as applied at the time of DA lodgement and the time of the subsequent current written Building Height Contravention request, noting that from 1 November 2023 the NSW Department of Planning and Environment has altered the provisions of Clause 4.6, the main change being deletion of former Clause 4.6(4) and 4.6(5) related to zone objectives and the development standard objectives, and concurrence from the Secretary respectively

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

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

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

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

- Section 4(a)(1)- the applicant's written request is satisfactory in regards to addressing subsection (3) above, and*

- ii. *Section 4(a)(ii)- the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives of the relevant zone.*

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

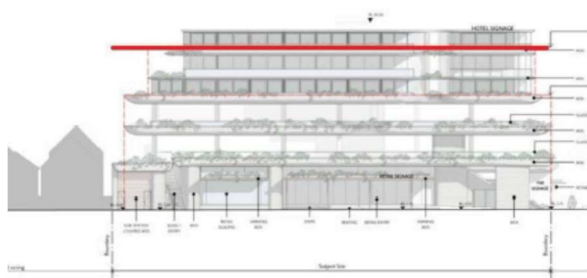
- in order for there to be 'sufficient' environmental planning grounds to justify a written request under section 4.6, the focus must be on the aspect or element of the development that contravenes the development standard and the environmental planning grounds advanced in the written request must justify contravening the development standard, not simply promote the benefits of carrying out the development as a whole; and
- there is no basis in Section 4.6 to establish a test that the non-compliant development should have a neutral or beneficial effect relative to a compliant development.

As previously outlined, the applicant is seeking to contravene the 20.5m Building Height development standard by 3.14m, representing a two-dimensional 15.4% non-compliance. This is to the top of the two lift motor rooms on the roof. The height of the remainder of the non-trafficable roof is 23m (using a ground level of 2.5m), which contravenes the 20.5m Building Height development standard by 2.5m, representing a two-dimensional 12.2% non-compliance.

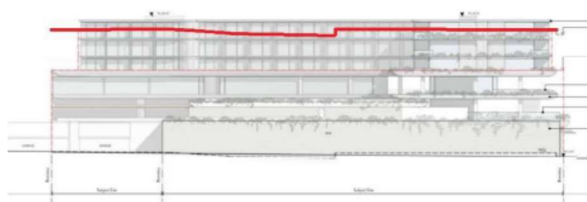
Diagrammatically, the height non-compliance is illustrated within the Clause 4.6 contravention request in accordance with Clause 4.6 of the LEP ("Clause 4.6 Request"), as follows:



proposal facing Ramsgate Road (with height limit in red)



proposal facing The Grand Parade (with height limit in red)



proposal (with height limit in red)

**Figure** – extract of height non-compliance in Clause 4.6 request

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The Clause 4.6 request, seeking to justify the proposed building height contravention, has been prepared by Planning Ingenuity, in support of the amended and latest plans. That contravention request is provided as a separate Attachment for the Panel's consideration.

The applicant's Clause 4.6 request argues that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case there and are sufficient environmental planning grounds to support the non-compliant Building Height. These components are summarised below, with the assessing officer's response provided:

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

Applicant Comments/Arguments (summarised):

- Using the accepted planning principle in the "Wehbe", the proposal is consistent with the objectives of the development standard, so therefore compliance can be considered unnecessary and unreasonable;
- The reasons given by the applicant regarding consistency with the objectives of the Building Height development standard are summarised in a following section.

Officer Comment:

- It is agreed that if the proposal is found to be consistent with the objectives of the development standard, so therefore compliance can be considered unnecessary and unreasonable.
- The response to the reasons given by the applicant regarding consistency with the objectives of the Building Height development standard are summarised in a following section.

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

Applicant Comments/Arguments (summarised):

- The proposal is compliant with the FSR and redistributes the built form to the north and east, away from low density properties to the south and greater than required by the DCP;
- 6 storeys are proposed, to be expected from the control;
- The non-compliance partly arises from floor-floor ceiling heights needed for the supermarket, which is a use providing a significant public benefit;
- The building must be elevated to RL 3.5 to accommodate flooding requirements, around 700mm higher than the existing ground level;
- The proposed 5-star hotel satisfies a local and regional need and elements of the height breach can be attributed to ceiling heights for the hotel, F&B, function space and the like (greater than ceiling heights for residential);
- The combined additional height for the supermarket (1.3m), flood affectation (0.7m), ceiling heights at levels 1 and 2 compared to residential (1.8m) total 3.8m and this is more than the breach being sought;
- The impact or burden of removing a level of the building to comply is disproportionate and unwarranted given the impacts of the minor non-compliance;
- The lift overrun(s) are well setback from the building edge and not readily visible, yet provide equitable access, being a benefit and avoids discrimination;
- Design measures like a thin-line roof and avoiding other structures minimises the non-compliance;

- 
- The benefits of the proposed non-compliance from additional hotel rooms and supermarket outweighs the impacts, with such impacts being reasonable;
  - The proposal meets the objectives of the development standard and zone;
  - The proposal is consistent with the Objects of the Act (Section 1.3);
  - The development provides a high-quality development with excellent internal amenity and will not prejudice the character or appearance of the streetscape or amenity to neighbours;
  - Requiring strict compliance with the height control is not justified by the impacts.

Officer Comment:

There are some aspects to the arguments provided by the applicant that have merit. It is accepted that, in principle, the uses are appropriate for the site (despite interface issues previously discussed), and that issues of flood-affectation and internal ceiling heights may provide a reasonable basis for some height non-compliance, for a proposal that otherwise complies with the FSR standard and DCP setbacks.

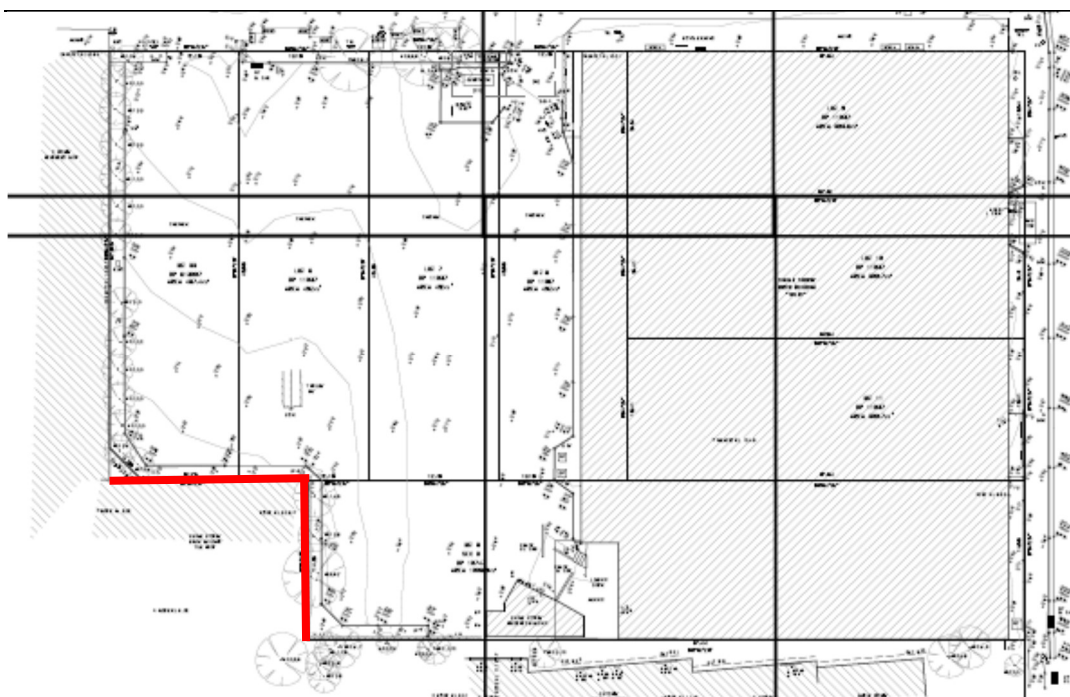
However, there are several contrary points which are relevant to the applicant's arguments (apart from compliance with the objectives of the development standard and zone objectives which are addressed in the following section), namely:

- The arguments about disturbing bulk towards the north and east, and away from the southern more sensitive interface with low density residential development is based on the assumption and proposition the proposal complies with the FSR. The proposal is not considered to comply with the FSR, for reasons outlined in detail in the previous section of this report. The FSR non-compliance is significant and essentially equates to a level of the building, which roughly represents the height non-compliance. The controls of FSR and height can and should "work together", other controls such as setbacks are also relevant and there should not be an assumption an envelope can be "fully filled", as in the planning principles of *PDE Investments No 8 Pty Ltd v Manly Council [2004] NSWLEC 355*.
- The site is at a zone boundary to the south (MU-1 to R3) and at a marked difference in height standards (20.5m versus 8.5m). The planning principles in *Seaside Property Developments Pty Ltd v Wyong Shire Council [2004] NSWLEC 117* are relevant and this relationship needs to be considered.
- The proposed setback to the south is stated to comply with the DCP envelope as part of the justification within the Clause 4.6 request. Setting aside the ground floor setback, there is a difference in view between the applicant's planner and the assessing planner regarding the southern setback above the fourth floor complying with the DCP. There are specific controls for the Ramsgate Beach Area in Part 7.3 of Bayside DCP 2022. This Section of the DCP is provided as a separate attachment to this report. In particular, Control C8 states:

*C8. For development situated on the southern side of Ramsgate Road, any part of a building above the 4th floor must provide a minimum rear setback of 24m*

- This matter and control gives rise to the characterisation of what the "side" and "rear" boundaries of the site are. The applicant argues that the front boundaries are those to both street frontages (which is accepted), the side boundaries are those perpendicular to the front boundary (being the western and southern boundary) and the rear boundary is the southern and western "kink" in the boundary, parallel to the front boundaries, as shown in red below:





**Figure** – Survey Extract highlighting applicant’s nominated rear boundary (red)

- There is a different view that the southern boundary is the rear boundary. The main argument supporting this is that the site essentially fronts Ramsgate Road (the wide boundary), the entrance is to Ramsgate Road and the DCP implies the southern boundary is the rear, on the southern side of Ramsgate Road. This is the view held by Council staff and expressed at pre-DA advice.
- Despite the view of Council staff at pre-DA stage, at a high-level conceptualisation, the characterisation of side and rear boundaries put forward by the applicant’s planner has merit. A corner site can in theory just be a site with two frontages and two side boundaries and no rear boundary. Despite taking the technical view that the southern boundary may be argued to be a side boundary, I still also take the view that for the purposes of Control C8 in Part 7.3 of the DCP quoted previously, that the DCP intent is for there to be a 24m setback to the south above the fourth floor. In this regard I disagree with the applicant in their designation of the “DCP envelope” and the stated compliance with the southern setback above the fourth floor. The 5<sup>th</sup> and 6<sup>th</sup> level have a setback of 9m, not 24m. The intent of setting back 24m from the south for properties on the southern side of Ramsgate Road is clear.
- The DRP’s comments from August 2023 relate to plans which are similar to the current proposal and are provided as a separate attachment to this report. However, there was a larger height and FSR non-compliance in the plans the DRP considered in August 2023 than the current proposal dated October 2023. The DRP has commented, relative to the height and FSR (summarised):
  - The proposal is too large in terms of bulk, scale and height for the context;
  - The proposal has been modified in an attempt to align its FSR with the LEP’s 2:1 density requirements. The Panel notes that hotel corridors and the huge semi enclosed undercrofts have not been included in GFA calculations;
  - The proposed built form also exceeds the 20.5m height limit for the site, by as much as 4m to its raised balustrade, 5.3m to its level 6 setback roof and nearly 7m to its lift cores [Note – the height breach has since been reduced, including by deleting the rooftop accessible area]. It is difficult to accept that such a breach of height is

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necessary, when the built form includes so much undercroft space – currently not counted as GFA;

- Regardless of the legal conclusion of the FSR definition, the Panel believes that the building is simply too large for the context and has significant negative impacts on streetscape and adjacent properties that include;
- The visual bulk of the building is overwhelmingly long and too massive for this otherwise low to midscale context with long unarticulated spandrels failing to address the fine grain aspirations of both street frontages;
- Excessive height;
- Inadequate 3m floor-floor height for the hotel rooms;
- Lack of built form transition from the scale of Ramsgate Road to the lower scale buildings south along The Grand Parade. The 0m setback to the southern boundary and The Grand Parade creates a very blunt built form transition on the south eastern corner (the panel recommends a 1.5m setback to the ground floor);
- The Grand parade footpath does not suit pedestrian entry to the supermarket;
- Inadequate and non-compliant southern setback;
- Acoustic impacts including from unrealistic retractable barriers;
- Excessively deep balconies and planter areas on each level which add to bulk;
- Inappropriate corner stair presentation;
- The proposal's excessive bulk is matched by its highly inefficient building design;
- Likely enclosure of undercroft areas in inclement weather/lack of flexibility of design;
- Various concerns regarding design detail;
- While the Panel has consistently been concerned by the proposal's bulk and scale, the concept of layered green architecture featuring landscape within built form has been generally supported. However, removing its reliance on height breaches to sustain large open undercrofts has been consistently recommended.

As mentioned, the latest scheme has included changes to the plans considered by the Panel meeting in August 2023. However, having been to the three (3) panel meetings and deliberations, and given the feedback and changes made, it is safe to conclude the DRP would remain unsupportive of the latest proposal.

The comments of the DRP can be read as being critical and unsupportive of the proposal. I am a town planner and not an urban designer. I do have some different views about the ground floor southern setback to the boundary (for reasons outlined previously), although I do understand the DRP's proposition and view that a 1.5m setback to the southern wall would improve interface issues, reduce impacts to the south and provide some landscape opportunities. I also do not share the same concern of the DRP with the corner stair, which may help provide informal seating areas for the public and help visually encourage people up to the first-floor area, which can be a challenging design issue. However, I do fully concur with the view of the DRP that the FSR is excessive, areas not counted as FSR considerably add to the building bulk, concerns with interface issues related to undercroft areas, concerns with the bulk, scale and height relationship with the surrounds, particularly to the south, and with non-compliant setback controls at upper levels given the context. These concerns do lead to a conclusion that a building with one storey less is a reasonable outcome and expectation given the controls and setting/context and FSR exclusions. This will have a significant impact on the design and yield, as the Clause 4.6 states, although such a change is warranted by environmental and contextual considerations.

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

Officer Comment:

An assessment of Clause 4.6(3) has been undertaken, as outlined above. The justification provided by the applicant has not provided sufficient environmental planning reasons to support the height non-compliance, while a different conclusion is also reached regarding consistency with the building height standard and the zone objectives (see below).

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

As mentioned previously, this provision no longer exists in Clause 4.6 of LEPs from 1 November 2023. However, they remain relevant in any event under Section 4.15 of the Act.

These considerations relate to the whole development, not just the issue of non-compliance leading to the Clause 4.6 Contravention Request, and refers to matters the consent authority must be satisfied with, independent of the Clause 4.6 Contravention Request. In this context, the following commentary and consideration is provided:

The objectives of the MU-1 Mixed Use zone are as follows:

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 first, fourth and fifth objectives of the zone. As outlined previously in response to the zoning provisions and zone objectives, the proposal is inconsistent with the 3<sup>rd</sup> and 4<sup>th</sup> objectives above.

The objectives of the relevant Building Height standard 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.*

The applicant argues the proposal is consistent with the above objectives, as outlined in the Clause 4.6 request.

However, the proposal is not considered to be consistent with the objectives of the Building Height

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standard, for the following main reasons:

*a) to ensure that building height is consistent with the desired future character of an area*

The desired future character is affected by existing development, existing urban and landscape fabric, surrounding development, likely transition and likely future adjoining development. The scale of the adjoining development to the south, its recent construction, limited potential in terms of development potential (FSR of 0.6:1 and height limit of 8.5m) and existing 33 strata-titled dwellings is such that the adjoining development is likely to remain unchanged in scale for some time. The non-compliant proposed height, scale and inadequate setbacks result in a compromised outcome for the character of the area, and particularly the height and built form relationship to the south.

The site is adjoined by a strong landscape element to both The Grand Parade and Ramsgate Road by rows of Norfolk Island Pine trees. These provide a framework for relationship with the built fabric, and having a consistent built form edge on both sides of Ramsgate Road to frame these strong and positive landscape elements would be desirable. This is not accommodated by the proposal and proposed height non-compliance.

There are strategic planning desires for the site and area, as specifically included in masterplanning provisions in Bayside DCP 2022 (Part 7.3 – Ramsgate Beach). The proposal is inconsistent with these provisions, particularly related to setback controls, including for the non-complying height. The proposal is the first major redevelopment to the southern side of Ramsgate Beach and may compromise the achievement of an appropriate relationship of built form to both the north and the south.

The comments of the DRP are also relevant in considering the consistency of the proposal with the desired future character of the area.

*b) to minimise visual impact of new development, disruption of views, loss of privacy and loss of solar access to existing development*

The SEE lodged with the original DA included a view impact assessment (although from interpolation and access to photos within documents on the website rather than direct inspection). However, that analysis is considered reasonable, when considering the landform and nature of existing development and trees, as well as directions towards views and building separation. The non-compliant building height is unlikely to adversely affect any views compared to a complying development, mainly due to relative heights of land and the flat terrain.

In terms of privacy associated with the non-complying height, the main issue is the height distribution to the southern boundary and non-compliance with the southern setback in the south-eastern and south-western portions of the proposal, both for existing and future development to the west. This is a compromised impact compared to a complying proposal which could reasonably be expected given excluded GFA and the scale relationship to the south.

The applicant's solar analysis compares the shadowing of the proposed building to a DCP envelope. The two issues with this are the assumption that an envelope can be filled, and that there is no 24m setback above the fourth floor from the south. Both these assumptions are flawed. The other relevant matter is the proposed FSR being considerably above the FSR standard, which is not accounted for in any comparison or justification (with the justification in the Clause 4.6 stating a complying FSR).

What is clear is the additional non-complying height, and the non-complying southern setback causes additional overshadowing the properties to the immediate south, for a very wide building length of close to 80m.



The applicant has provided hourly overshadowing plans in midwinter, although these do not highlight the overshadowing impacts from the non-complying height, or provide “views from the sun” as reasonably suggested by the DRP.

Based on the information provided, while there are data gaps, it is reasonable to conclude the non-complying height causes additional overshadowing to existing development, causing adverse amenity impacts.

*c) to nominate heights that will provide an appropriate transition in built form and land use intensity*

The inappropriate transition in built form and height and excessive land use intensity are key reasons the proposal is recommended for refusal.

This matter has been outlined previously in response to the FSR calculations, the applicant’s environmental planning reasons and in the comments from the DRP, also previously summarised and separately attached.

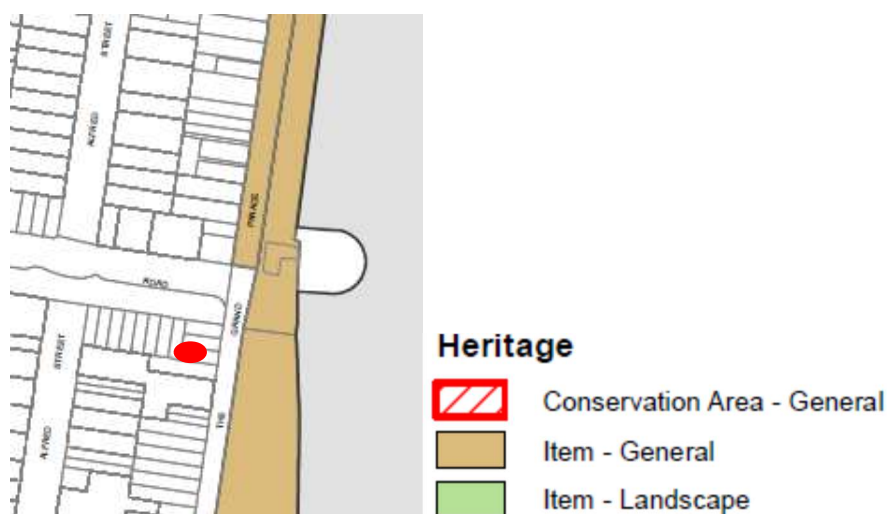
It is noted the reference to “intensity of development” is relevant whether the excluded GFA is GFA or not (particularly as the largest excluded areas are the undercroft areas which are used and add to building intensity), and it is inarguable the building is bigger and higher due to the exclusion of large areas of undercroft.

In summary, the proposal is considered inconsistent with both the objectives of the zone and the Building Height development standard, so the consent authority can reasonably conclude the proposal is not in the public interest in the context of Clause 4.6(4) of the LEP.

In terms of Clause 4.6(5) of the LEP, The NSW Department of Planning and Environment has advised, through Planning Circular PS 20-002 dated 5 May 2020, that the Secretary’s concurrence (required by that Clause) may be assumed by Council staff for numerical development standard contraventions up to 10%, or to the relevant Local or Regional Planning Panel in other circumstances (and as previously noted this provision has been removed from Clause 4.6 from 1 November 2023).

## **5.10 – Heritage Conservation**

The subject site is not identified as a Heritage Item and is not within a Heritage Conservation Area.



**Figure – LEP Heritage Map extract**

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The subject site is located within the vicinity of Cook Park, a row of Norfolk Island Pines on The Grand Parade, which are all identified as heritage items in Schedule 5 of the LEP.

The original DA was referred to the Council's heritage adviser. The heritage adviser stated:

*"The proposal has the potential to have an adverse impact upon the significance of the heritage items I219 and I223 in the following way:*

- The current ground floor plan presents a blank wall to The Grand Parade and effectively turns its back to the heritage items and Botany Bay. Heritage Items I219 and I223 are located to the east and north of the site. There is opportunity to provide a more interactive ground floor on the eastern elevation to respond more appropriately to these heritage items as well as the views to the park and bay.*
- Level one is located above the ground floor. The proposed furniture zones are ambiguous. It is unclear what this level is for and how it interacts with the heritage items or significant views to the bay. This level could potentially provide views, particularly to the north along the avenue of Norfolk Island Pines."*
- Positive aspects of the design include the setback of the upper levels to reduce the overall bulk and the potential for a town square on the north."*

Since those comments, the proposal has been amended to include an active frontage to The Grand Parade, although significant former VPA works to Ramsgate Road have been removed and the setbacks altered.

The heritage adviser did recommend a HIS be provided. However, this is not considered warranted, given the site is not heritage listed, the site is setback around 40m from the park, Norfolk Island Pines will not be affected by the proposal and the planning controls do envisage a relatively substantial building on the site. However, as previously outlined, there remain concerns with the height, bulk and scale.

There are no expected impacts on archaeological items.

## **5.21 – Flood Planning**

Council records indicate that the lot is subject to flooding in a 1% AEP event.

The original DA was accompanied by a Flood Impact Assessment by SCP. The Council's engineers provided advice regarding the original DA, stating:

*The 1% AEP flood level is RL 3.30m AHD and PMF flood level is RL 3.30m AHD. Since PMF flood level is lower than 1% AEP flood level + 500mm freeboard, there is potential to reduce some areas floor level/crest level down to RL 3.30m.*

*I spoke to Pulak (Council Floodplain Engineer) and it was agreed (on merit) to permit the retail tenancy to have a minimum floor level set at RL 3.0m AHD (1%AEP flood level) and the hotel lobby and basement crest set at RL 3.30m AHD (PMF flood level) with the remainder of the development (supermarket, loading dock) set at RL 3.50m AHD*

The floor levels of the development are therefore acceptable.

There were aspects of detail and impacts of concern raised by Council's engineers as follows:

*It should be noted that the flood impact assessment report incorrectly stipulates some areas (e.g. hotel lobby/retail) as non-habitable areas, this is incorrect and the correct definition of these areas is a habitable area.*

*Basement to be fully protected from floodwaters by physical measures (crest on any*

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openings e.g., vehicular ramp & fire stairs).

*From a preliminary review, they are proposing compensatory storage to reduce the negative flood impacts (40-60mm or more along the car park). Council does not permit any increase in flood levels as a result of developments greater than 10mm.*

*I could not find any flood impact maps including the mitigation option. Council will request the flood impact maps with the development plus the mitigation options.*

*100m<sup>3</sup> of flood storage tanks are proposed in flood impact assessment report due to impacts being calculated to be a displacement of 100m<sup>3</sup> of floodwaters. The report appears to indicate that the tank is proposed to be located below the 300m<sup>3</sup> rainwater tank. Very limited details provided which is not supported. Flood impact assessment states that the flood storage tank will drain via a pump system which is not supported, it must be able to drain via gravity to councils inground stormwater system.*

*The flood risk management plan utilising the template in the flood advice letter is not appropriate for a development of this scale. A comprehensive flood risk management plan needs to be provided for the development*

The previous comments by Council's engineers were provided to the applicant.

With the amended plans in April 2023 (prior to the current plans), the applicant responded, including an updated letter from SCP (dated 2/3/2023), which stated:

*The 40 to 60mm predicted increase in flood level is the increase in flood level that would be caused by the proposed development prior to providing compensatory storage. See report extract below.*

*Providing 100m<sup>3</sup> of storage in the proposed tank will more than compensate for the impact of the development calculated at up to 60mm height increase or 96m<sup>3</sup> of storage volume. .*

Other than addressing the capacity, no other comments were provided in response to issues raised by Council's engineers.

The latest plans indicate a "water storage area" in the south-western corner of Basement 2 (the lowest level). This still has limited detail (including not nominating the capacity) and would also rely on pump out. No further detail or report has been provided with the latest plans (October 2023).

In very recent comments dated 6 November 2023, Council's engineers have advised:

*The applicant has not provided the amended flood modelling as required and has not demonstrated a sufficient design and volume for the flood storage tanks. The applicant's response to RFI is not acceptable... [Previous] engineering were not fully addressed. The floor levels have not been adjusted as required. Flooding issues have not been resolved.*

Clause 5.21 of the LEP states:

- (2) Development consent must not be granted to development on land the consent authority considers to be within the flood planning area unless the consent authority is satisfied the development—
  - (a) is compatible with the flood function and behaviour on the land, and
  - (b) will not adversely affect flood behaviour in a way that results in detrimental increases in the potential flood affectation of other development or properties, and

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- (c) *will not adversely affect the safe occupation and efficient evacuation of people or exceed the capacity of existing evacuation routes for the surrounding area in the event of a flood, and*
  - (d) *incorporates appropriate measures to manage risk to life in the event of a flood, and*
  - (e) *will not adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses.*
- (3) *In deciding whether to grant development consent on land to which this clause applies, the consent authority must consider the following matters—*
- (a) *the impact of the development on projected changes to flood behaviour as a result of climate change,*
  - (b) *the intended design and scale of buildings resulting from the development,*
  - (c) *whether the development incorporates measures to minimise the risk to life and ensure the safe evacuation of people in the event of a flood,*
  - (d) *the potential to modify, relocate or remove buildings resulting from development if the surrounding area is impacted by flooding or coastal erosion.*

Based on the information received and the advice to date, including recent advice from Council's engineers, it cannot be concluded that the proposal is acceptable having regard to Clause 5.21 of the LEP.

### **6.1 – Acid Sulfate Soils**

Acid Sulfate Soils (ASS) – Class 3 affect the property by the LEP mapping. Development Consent is required as the proposal involves excavation of more than 1m, in accordance with Clause 6.1 of the LEP.

Given the potential for Acid Sulfate Soils and the depth of excavation proposed (i.e. around 6m), a preliminary assessment of the proposed works was submitted with the original application, by JK Geotechnics (part of the PSI). That report is considered valid, given the excavation and basement design on the site has remained similar throughout amendments to the plans. That report stated:

*The natural soil below a depth of 5mBGL is considered to be potential acid sulfate soils (PASS). An ASSMP should be prepared once specific details of the development are known, including final depths of disturbance etc. The need for additional sampling and analysis for ASS characteristics should be assessed as the design progresses*

A ASSMP was subsequently submitted with the previously-revised yet superseded plans, by JK Geotechnics (12/1/2023). This satisfies Clause 6.1(3) of the LEP which states:

*(3) Development consent must not be granted under this clause for the carrying out of works unless an acid sulfate soils management plan has been prepared for the proposed works in accordance with the Acid Sulfate Soils Manual and has been provided to the consent authority.*

None of the boreholes indicated a pH level to meet ASS thresholds. However, boreholes were limited and the ASSMP outlines processes for further testing and updating of the ASSMP, including of groundwater.

### **6.2 – Earthworks**

Substantial excavation is proposed to a depth of approximately 6-6.5m below existing ground levels (to RL -.27, excluding slab thickness and any secant piers to bedrock, which may be another 7m deep). As previously outlined in response to contamination, there is groundwater at



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around 1.6m below the surface.

The applicant has submitted a geotechnical report with the original DA (JK Geotechnics). This was also updated with the previous amendment (report dated 7/2/2023, essentially outlining and summarising recommendations as requested in the RFI). Those reports are considered valid, given the excavation and basement design on the site has remained similar throughout amendments to the plans.

The basement will need to be fully tanked and the boundaries shored for the excavation. The report outlines options of anchors or internal bracing or internal diaphragm. Any anchors would need the consent from the adjoining owners (of the road or to the south), as excavation is to the boundary.

No additional issues apart from contamination and Integrated Development/water management arises, other than the quantum of soil and excavation to the boundaries.

Providing basement parking is appropriate, despite flooding, contamination and the groundwater, due to the desirability of providing active street frontages. As previously outlined, the additional intensity from undercroft area does increase parking demand (although at Level 2 areas can reasonably be considered ancillary to the hotel) and this in turn increases parking demand.

Clause 6.2(3) states:

- (3) *In deciding whether to grant development consent for earthworks (or for development involving ancillary earthworks), the consent authority must consider the following matters—*
- (a) *the likely disruption of, or any detrimental effect on, drainage patterns and soil stability in the locality of the development,*
  - (b) *the effect of the development on the likely future use or redevelopment of the land,*
  - (c) *the quality of the fill or the soil to be excavated, or both,*
  - (d) *the effect of the development on the existing and likely amenity of adjoining properties,*
  - (e) *the source of any fill material and the destination of any excavated material,*
  - (f) *the likelihood of disturbing relics,*
  - (g) *the proximity to, and potential for adverse impacts on, any watercourse, drinking water catchment or environmentally sensitive area,*
  - (h) *any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.*

The removal of spoil will have impacts associated with construction and truck movements to neighbouring residents and businesses. The contamination testing does not indicate odorous material, although contaminants do exist based on partial testing.

The above matters and considerations in Clause do not warrant refusal.

### **6.3 – Stormwater and WSUD**

The development does not propose an on-site detention system (OSD) due to flooding considerations (and noting no increase in impervious area).

The original DA was accompanied by a report by a Civil Design Report by SCP (15/7/2022). That report identified 3 stormwater pits to the north of the development in Ramsgate Road and two to the south-east on the Grand Parade. The report stated:

The proposed site development area is 0.4479Ha. As the development proposes a boundary-to-boundary building, the building drainage shall be captured via the building hydraulic stormwater system and reticulated to a 300kL rainwater tank (RWT) located in Basement Level 1. Flows from the RWT will discharge into the existing stormwater pit located in the existing Council carpark. OSD shall not be required as discussed in Section 6.1.2 of this report.

In order to comply with Bayside Council's stormwater quality requirements, the proposed treatment system has been modelled in MUSIC (Model for Urban Stormwater Improvements Conceptualisation). MUSIC conceptually models and estimates the performance of the proposed treatment devices, which is then compared against the performance targets specified for the project. The pollutants modelled in MUSIC include TSS, TP, TN, and GP.

POLLUTANT	SOURCES	RESIDUAL LOAD	REDUCTION ACHIEVED (%)	REDUCTION TARGET (%)
Gross Pollutants (GP)	125	0	100	90
Total Suspended Solids (TSS)	962	192	80	80
Total Phosphorus (TP)	1.53	0.395	74.2	55
Total Nitrogen (TN)	11.4	3.43	70	40

As demonstrated by the results above, the stormwater quality targets meet those specified by Bayside Council.

**Figure** – extracts of Civil Design Report

At that stage, there was a stormwater tank indicated on the plans within Level 1. The current and most recent plan does not indicate such a tank.

The Council's engineers provided the following comments regarding the original DA:

*Site is located in a downstream location of the catchment that is significantly flood affected. Furthermore, the site is essentially directly discharging into the ocean via the councils ocean outfall pipes connected to The Grand Parade. Therefore, OSD can be exempted because it will not provide much benefit. Provision for flood storage tank system is be accommodated for instead of an OSD tank system to reduce flood impacts of the development.*

*Development proposes 300kl rainwater tank. Extremely limited details provided in drawings.*

*The water quality improvement system purely relies on the rainwater tank to address pollutant reduction targets. How a single rainwater tank could possibly address all pollutant reduction targets is disputed. Trafficable roof areas are being drained to the rainwater tank which in principle is not supported however, given the limited actual non trafficable roof areas available (most roofs in this development are trafficable areas with only a very small non-trafficable lift overrun/plant room roof on the highest level) in order for a proper outcome to be achieved some trafficable roof areas will have to drain into the rainwater tank. There will need to be pit inserts (gully pit insert/basket) provided in the pits in the trafficable areas to remove gross pollutants and suspended solids (or some other device).*

*Basement needs to be fully tanked and waterproofed due to high groundwater table and marine sand soils.*

*The overall quality of the civil plans is so poor that no proper assessment can be made. No sections or details were provided. Based on the overall area (60m<sup>2</sup>) provided for the flood storage tank (100m<sup>3</sup>) and rainwater tank (300m<sup>3</sup>) there is no possible way for the entire system to work within the area provided. It will result in a tank that needs to be 6.7m deep and if it were to be located just below the ground floor slab (RL 3.5m AHD) it would extend to a depth of RL -3.2m AHD which is lower than the B2 slab level*

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The trafficable roof area has been removed in the latest plans. The intention is to fully tank and waterproof the basement.

The comments by Council's engineers were provided to the applicant with the original RFI. There has been no updated Civil Design Report with the latest plans.

Clause 6.3(2) of the LEP states:

- (2) *Before granting development consent to development on any land to which this Plan applies, the consent authority must be satisfied that—*
- (a) *water sensitive urban design principles are incorporated into the design of the development, and*
  - (b) *riparian, stormwater and flooding measures are integrated as part of the development, and*
  - (c) *the stormwater management system includes all reasonable management actions to avoid adverse impacts on the land to which the development is to be carried out, adjoining properties, native bushland, waterways, receiving waters and groundwater systems, and*
  - (d) *if a potential adverse environmental impact cannot be feasibly avoided, the development minimises and mitigates the adverse impacts of stormwater runoff on adjoining properties, native bushland, waterways receiving waters and groundwater systems, and*
  - (e) *the development is designed to maximise the use of water permeable surfaces on the site having regard to the soil characteristics affecting on-site infiltration of water.*

Recently (6/11/2023), Council's engineers have advised:

*The development has not resolved the above-mentioned stormwater issues. It has not been demonstrated that the water quality pollution reduction targets have been met. The basement tanking design has not been shown. The designs of the flood storage tank need further work to demonstrate they will be functional and work as intended. The engineering comments made on 25/09/2023 (23/275608) were not fully addressed. The floor levels have not been adjusted as required. Stormwater issues have not been resolved.*

Based on the plans, information received and the advice to date, it cannot be reasonably concluded that the proposal is acceptable having regard to Clause 6.3(2) of the LEP.

## **6.9 – Active Street Frontages**

The subject site is required to provide an active street frontage at ground floor level, along both Ramsgate Road and The Grand Parade.

The provision of retail uses at the ground floor level to both street frontages facilitates the activation of the development to the adjoining public domain, as required by the Clause. The proposal is technically satisfactory in this regard.

Despite this, concerns have been raised by the DRP about the impact of the main pedestrian entrance to the busy Supermarket on the narrow The Grand Parade. These concerns are shared. A preferable solution would have been to maintain the pedestrian entrance to Ramsgate Road, as originally proposed, and provide windows to the Supermarket to The Grand Parade (or a much larger setback to The Grand Parade). This would have had the benefits of providing activity and surveillance to The Grand Parade while avoiding problems associated with a narrow footpath and relatively hostile environment, while also meeting the design and operational

objectives of one controlled access and egress point for the supermarket. Despite suggestions, this was not favoured by the applicant in the latest plans.

#### **6.10 – Design Excellence**

Technically this Clause is not relevant to the proposal (as it only applies to Arncliffe and Banksia/other mapped areas).

The comments of the DRP have been addressed previously (and are also a separate Attachment).

### **S4.15(1)(a)(ii) - Provisions of any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority**

There are no known draft environmental planning instruments of direct relevance to the proposal.

### **S4.15 (1)(a)(iii) - Provisions of any Development Control Plan**

The following Development Control Plan is relevant to this application:

#### **Bayside Development Control Plan 2022**

The application is subject to the Bayside Development Control Plan 2022 (“the DCP”). This is the comprehensive DCP relevant to the proposal. The DCP was adopted by the elected Council on 22 March 2022 and came into effect on 10 April 2023, and supports the provisions of the LEP.

The following table outlines the relevant Clauses of the DCP applicable to the proposal, while aspects warranting further discussion follows:

<b>Relevant Clauses</b>	<b>Compliance with Objectives</b>	<b>Compliance with Standard / Provision</b>
<b>PART 3 – GENERAL DEVELOPMENT PROVISIONS</b>		
3.1 Site Analysis and Locality	No – See Comments	No – See Comments.
3.2 Design Excellence	NA, as LEP Clause 6.10 does not apply	NA, as LEP Clause 6.10 does not apply
3.3 Energy and Environmental Sustainability	Yes	Yes. However, some observations and concerns were raised by the DRP of how sustainability measures could be improved (some of which have been done).
3.4 Heritage	Yes - see discussion	Yes - for reasons outlined in response to the LEP controls
3.5 Transport, Parking and Access	No - see discussion	No - see discussion



Relevant Clauses	Compliance with Objectives	Compliance with Standard / Provision
3.6 Social Amenity, Accessibility and Adaptable Design	No - see discussion	No - see discussion
3.7 Landscaping, Private Open Space and Biodiversity	Yes - see discussion	Able - see discussion
3.8 Tree Preservation and Vegetation Management	Yes - for reasons outlined in response to the LEP controls	Yes - for reasons outlined in response to the LEP controls
3.9 Stormwater Management and WSUD	No - for reasons outlined in response to the LEP controls	No - for reasons outlined in response to the LEP controls
3.10 Flood Prone Land	No - for reasons outlined in response to the LEP controls	No - for reasons outlined in response to the LEP controls
3.11 Contamination	Yes - for reasons outlined in response to the SEPP controls	Yes/Able - for reasons outlined in response to the SEPP controls
3.12 Waste Minimisation and Site Facilities	Yes/No - see discussion	Yes/No - see discussion
3.14 Noise, Wind, Vibration and Air Quality	No - see discussion	No - see discussion
3.15 Late Night Trading	Yes - see discussion	Yes/Able - see discussion
3.16 Signs and Advertising	Part - for reasons outlined in response to the SEPP controls	Part - for reasons outlined in response to the SEPP controls
3.18 Utilities and Mechanical Plant	Yes/Able	Yes/Able
<b>PART 6 – NON-RESIDENTIAL DEVELOPMENTS</b>		
6.1.1 General Controls	Yes - see discussion	Yes - see discussion
6.2.6 Preparation and Storage of Food	Yes/Able - see discussion	Yes/Able - see discussion
<b>PART 7 – SPECIFIC PLACES</b>		
7.3 Ramsgate Beach	Yes/No - see discussion	Yes/No - see discussion
<b>PART 8 – MANAGING RISK AND ENVIRONMENTAL CONSIDERATIONS</b>		
8.2 Soil Management	Yes - for reasons outlined in response to the LEP controls	Yes - for reasons outlined in response to the LEP controls

**Table** – DCP considerations

The following Sections elaborate on Key matters from the above table.

Part 7 is dealt with first, as the DCP states: “Provisions in the chapter [7] prevail over any similar provisions in other sections of the DCP”.

### Part 7.3 – Ramsgate Beach

This section of the DCP provides controls and guidelines for 17 areas within the Local Government Area. Not all areas are included. The areas chosen are either unique or have been subject to detailed masterplanning controls, with more specific controls to guide development.

As stated, the provisions of this Section prevail over other sections of the DCP, including where there is any inconsistency.

The site is located within the Ramsgate Beach Area as identified in Part 7.3 of the DCP.

#### Description

The description of the locality, as relevant to the proposal, includes:

*Ramsgate Beach commercial area is a vibrant local centre situated adjacent to the Botany Bay foreshore. It is situated in the southern area of the City, and serves the regular shopping needs of residents living on the peninsula. The current lot subdivision, prime beach side location, and generous public domain at Ramsgate Road offer the potential for the Centre to grow as a local centre, providing a greater range of retail services to residents, as well as becoming a lively beach side destination*



**Figure – Ramsgate Beach Commercial Area**

#### Desired Future Character/Vision

The desired future character relevant to the proposal includes:

*Ramsgate Beach commercial area will grow and be revitalised in a way that takes advantage of its unique character, and become a vibrant, lively and attractive beach side centre. Redevelopment on both sides of Ramsgate Road which complements the generous and well landscaped public domain will provide a boulevard feel. As well as the redevelopment of older building stock on the southern side of Ramsgate Road, new*

*development on the north side will expand the Centre to create additional commercial opportunities and a 'loop' for pedestrian with improved connection to the foreshore.*

*The Centre will be characterised by diverse buildings with a sense of openness and lightness, typical of successful beach side centres. New buildings will create a generous scale to Ramsgate Road with breaks between them to ensure sunlight penetrates to the street, and overshadowing is minimised which will improve the Centre's ambience.*

*The Centre will continue to be convenient to visit for pedestrians and private motor vehicle users. New developments will include sufficient carparking to meet demand, some of which will be provided at-grade to respond to the high water table which limits excavation for basement parking. Parking will be located so that it does not detract from commercial activity within the Centre*

The development of the site is a very important opportunity for the area and precinct. As previously mentioned, the proposed uses are supported in principle and development of the site has the potential to meet the strategic aspirations for the area (although there are interface issues). The proposal is the first major development on the southern side of Ramsgate Road.

## Controls

The following table responds to the Controls for the locality:

Provision	Comply?	Comments
<b>Objectives</b>		
<i>To facilitate growth and revitalisation of Ramsgate Beach commercial area which enhances the Centre's commercial functions.</i>	Yes	The proposal would help to revitalise the centre.
<i>To provide high quality buildings which create a varied and interesting streetscape which reflects to the Centre's beach side location.</i>	Yes/No	The building has a number of positive features and would improve the contribution of the site to the area, although as previously outlined, concerns are held regarding key aspects of the proposal.
<i>To ensure new development allows significant solar access to Ramsgate Road, and creates a sense of openness in the Centre, allowing distant skyline views from the public domain.</i>	Yes/No	Solar access to Ramsgate Road will not be affected, although some skyline views will be affected by the proposal including non-compliant height and bulk.
<i>To protect the amenity of the low and medium residential areas which adjoin the Centre.</i>	No	The adjoining dwellings to the south will be adversely affected by the proposal including arising from DCP non-compliances outlined below.
<b>Controls</b>		
<i>Where the water table restricts excavation for basement carparking necessary to meet the carparking requirements in Section 3.5, at-grade parking is permitted at the rear of the site</i>	Yes	Basement parking is proposed, which is appropriate and preferred to at-grade parking.
<i>At-grade parking is not to be visible from the street frontage, except for a single access driveway, and it is to be located behind active retail uses which are at least 12m deep and address the street frontage</i>	Yes/NA	As above.

Provision	Comply?	Comments
<i>A landscape screen is to be provided between any open at-grade parking and adjoining residential properties</i>	Yes/NA	As above.
<i>All developments are to express a 3 storey podium along Ramsgate Road which is to be built to the front property boundary</i>	Yes	Generally built to the front boundary.
<i>To create variation and articulation in street frontage facades, the levels of buildings above the podium should be setback at least 2m from the front property boundary</i>	Yes	Above the podium the setback varies from 2m at the eastern and western ends to more in the central portion.
<i>The podium of all developments is to be built to the side boundary at the street frontage, except where vehicle or pedestrian access to the development is provided along the side boundary. Where this is required, the podium may be setback from the side boundary up to 4.5m</i>	Yes	The podium is built to the side boundaries (note this control does support the nil-setback to the south).
<i>The levels of all buildings above the podium are to have a side setback of 4.5m on sites with a street frontage width greater than 30m, and 3m on sites with a street frontage width less than 30m</i>	Yes	From level 3 and above the side setback is at least 4.5m.
<i>For development situated on the southern side of Ramsgate Road, any part of a building above the 4th floor must provide a minimum rear setback of 24m</i>	No	As previously explained, the proposal is only setback 9m at the upper two levels, not 24m. This is a significant non-compliance and adds to impacts.
<i>The Ramsgate Road facade of any development is to be heavily articulated with variations to the building edge, and is to include a high proportion of balconies and avoid large expanses of blank walls</i>	Yes/Generally	Varied and articulated façade. However, the building is around 80m in frontage to Ramsgate Road and is very wide.
<i>Developments should respond to the Centre's beachside location by using a variety of environmental protection elements such as screens and louvres and a palette of materials which create a sense of lightness and openness and evoke a beachside feel</i>	Yes/No	There is potential for this to be achieved with further details (e.g. landscaping). Concern is raised by the DRP (and shared) with the exposed nature of undercroft areas, which are exposed to wind and rain.
<i>For buildings with a width at the street frontage greater than 30m, the facade of the levels of building above the podium is to be broken with significant recesses. These are to be at intervals no greater than 24m and are to give the impression of breaks between buildings. They should be at least 4.5m wide and 3m deep</i>	Generally	There are significant recesses. While some building portions exceed 24m, these lengths are not significantly more, and the intent of providing significant articulation and recesses is achieved (although the building is still very wide at approximately 80m).

**Table – DCP Part 7.3 Response**

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## **PART 3 – GENERAL DEVELOPMENT CONTROLS**

### **Part 3.1 – Site Analysis and Locality**

The proposal is considered to be inconsistent with the following objective in Part 3.1.1 of the DCP, for reasons previously outlined in relation to scale, bulk, height, context and relationship with The Grand Parade.

*04. To ensure all new developments are well integrated with adjoining development and the wider street by responding to urban form, topography and landscape, view corridors and the local street and pedestrian networks*

The proposal is considered to be inconsistent with the following objective and control in Part 3.1.2 of the DCP, for reasons previously outlined related to the relationship with The Grand Parade.

*01 To ensure that all ground level elements of buildings visible from the streets and parks make a positive contribution to the public domain*

*C5. Comfortable public places with high-quality public furniture, good shade and interesting outlooks within the public domain and open space shall be provided*

The proposal is also considered to be inconsistent with objectives and controls related to active street frontages in Part 3.1.4 of the DCP, for reasons previously outlined related to the relationship with The Grand Parade.

### **Part 3.5 – Transport, Parking and Access**

In principle, the location of the parking facilities on the site is acceptable having regard to the nature of the site and roads. There is essentially a triple driveway to the western end (two lanes for cars, one for loading). This is wider than ideal, although the width for loading has been reduced by providing an internal turntable for trucks to allow forward entry and exit, while the size of the development and supermarket use means further reduction of the driveway width is not likely to be practical.

The applicant has been in discussion with the Council's engineers, who in turn have been liaising with the Bayside Traffic Development Advisory Committee (BTDAC). No in-principle agreement has been reached or given by the BTDAC or TfNSW.

The proposed plans state: "*traffic design currently in discussion between authorities*" in relation to potential works on Ramsgate Road. This is understood to be because of discussions regarding bus/coach drop off, whether an existing bus stop could be utilised and provisions for drop-off and pick-up of taxis/ubers. This outstanding issue does give rise to some concern that drop-off may not be able to be accommodated on the street (although in theory this could occur in the basement, and/or be subject to a condition related to bus/coach size servicing the site).

As mentioned in response to the *SEPP (Transport and Infrastructure) 2021* provisions, the original application was accompanied by a Traffic Report prepared by TTPP dated July 2022.

The original application was referred to TfNSW for comment. TfNSW responded on 5 September 2022 raising no objection to the proposal and recommending 4 conditions be imposed. That letter is contained in a separate Attachment to this report. The proposal has been amended since the referral comments back from TfNSW, including with pedestrian access from The Grand Parade and a relocated bus stop, as well as different options fronting the site in Ramsgate Road.



An updated traffic and parking report has been received very recently (3/11/2023 by email). However, this report seems to have outdated references within it, including reference to a 7-storey building (not 6) and 102 rooms (not 122) and a supermarket at ground/basement level (pg. 8). While plan extracts in the report annexure appear to relate to the latest revised plans, not all plans are included.

Council's engineers have reviewed the latest report (in a short period given timing), advising:

- Given Ramsgate Road is a Classified Regional Road and The Grand Parade is a classified State Road, approval from TfNSW is required for all works to the road reserve fronting the site. This approval has not been obtained and given the late submission of the traffic report, no time was available to send a referral to TfNSW to obtain their concurrence;
- Previous engineering comments have not been fully addressed;
- The loading for the hotel still occurs in front of lifts which is not a good outcome;
- Overall, there still are large critical unresolved elements of the proposed development;
- The latest comments from BTDAC are from 9/8/2023 and remain unresolved (see BTDAC comments below):

**BTD23.016** 277 The Grand Parade RAMSGATE BEACH NSW 2217

Integrated Development - Demolition of existing structures and construction of a seven (7) storey mixed-use development comprising retail uses, hotel accommodation, food and drink premises, roof-top recreation, basement carparking, public domain works and tree removal

Committee recommendation:

- 1 That comments be obtained from TfNSW on the proposed options (in particular the reconfigured slip/merging lane and coach pick-up/drop-off on Ramsgate Road). Council's preference is option 2.
- 2 That the parallel pick-up/drop-off spaces adjacent to the hotel entry not be supported as the hotel pick-up/drop-off spaces could be provided in the coach pick-up/drop-off area.
- 3 That comments be obtained from the State Bus Transit Authority on the impacts of the widened driveway on the existing bus zone. To facilitate the development, parts of the existing bus zone will need to be converted to no-stopping to facilitate vehicle movements.
- 4 That the turning head be supported given there will be no net loss of on-street parking noting that the removal of the existing driveway provides more on-street parking and excess parking spaces provided in the basement.

The amended plans and most-recent traffic report have not been re-considered by TfNSW, or the BTAC.

Concerns have been raised by the DRP about the impact of the main pedestrian entrance to the busy Supermarket on the narrow The Grand Parade. These concerns are shared. A preferable solution would have been to maintain the pedestrian entrance to Ramsgate Road, as originally proposed, and provide windows to the Supermarket to The Grand Parade (or a much wider setback to The Grand Parade). This would have had the benefits of providing activity and surveillance to The Grand Parade while avoiding problems with that narrow footpath and relatively hostile environment, while also meeting the design and operational objectives of one

controlled access and egress point for the supermarket. Despite suggestions, this was not favoured by the applicant in the latest plans.

The current proposal provides two basement levels for car parking (216 car spaces including 8 accessible spaces and 10 EV spaces), motorcycle parking (14), bicycle parking (28).

In terms of car parking, the recent Traffic and Parking Assessment is provided as a separate attachment to this report and provides the following car parking assessment in terms of demand, noting some assumed overlapping demand between the hotel and other spaces:

PROJECTED FUTURE OFF-STREET PARKING REQUIREMENTS			
Use	Proposed Yields		Parking Required
Specialty Retail	528m <sup>2</sup>	1/40m <sup>2</sup>	13.2 spaces
Coles Supermarket	2,583m <sup>2</sup>	1/25m <sup>2</sup>	103.3 spaces
Hotel Lobby GF	225m <sup>2</sup>	n/a	n/a
Restaurant Kitchen/Services L1	469m <sup>2</sup>	1/40m <sup>2</sup>	11.7 spaces
Restaurant Seating Area L1	1,482m <sup>2</sup>	1/40m <sup>2</sup>	37.1 spaces
Hotel Lobby & Function Space L2	450m <sup>2</sup>	n/a	n/a
Bar & Restaurant L2	229m <sup>2</sup>	n/a	n/a
Gym L2	173m <sup>2</sup>	n/a	n/a
Hotel	102 rooms	1/4 rooms	30.5 spaces
<b>TOTAL PARKING REQUIRED</b>			<b>195.8 spaces</b>

**Figure** – Extract of Applicant's parking assessment

The Council's engineers have recently provided the following comments in response:

*The development has 122 hotel rooms, 527.9m<sup>2</sup> GFA retail, 2583.4m<sup>2</sup> GFA supermarket, 1951m<sup>2</sup> of restaurant/F&B seating area and 450m<sup>2</sup> GFA function room. It's not clear how the area (m<sup>2</sup>) of the restaurant, F&B and function room areas were determined. The applicant proposes a parking rate of 1 space per 40m<sup>2</sup> for the function room which is not justified. The amended plans have 33 hotel spaces and 183 retail/restaurant/F&B spaces.*

*It's possible for all the retail, supermarket, restaurant, F&B and function room car parking spaces to be all located in a single ticketed/LPR time-controlled car park. Some overlap of parking demands and sharing of parking is also possible but requires more detailed justification. Generally insufficient information has been provided to determine the acceptability of on-site car parking provision. See breakdown of carparking provision below:*

Component	Required	Provided	Compliance
Retail (527.9m <sup>2</sup> )	1 space per 40m <sup>2</sup> GFA = 14 spaces	183	Not fully resolved
Supermarket (2583.4m <sup>2</sup> )	1 space per 25m <sup>2</sup> GFA = 104 spaces		
Restaurant/F&B (1951m <sup>2</sup> )	1 space per 40m <sup>2</sup> GFA = 49 spaces		
Function room (450m <sup>2</sup> )	Unresolved (applicant proposes 1 per 40m <sup>2</sup> which is not sufficiently justified)		
On-site parking to replace lost public parking spaces	Not shown or calculated by applicant		
Total of the above	167 (not fully resolved)	33	Yes (excess)
Hotel (122 rooms)	1 space per 4 rooms = 31 spaces		

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In terms of loading and drop-off, Council's engineers have advised:

*The required pick-up/drop-off area for the hotel is at least 1 x12.5m long HRV coach bay and 2 taxi bays can only really be provided in the public domain. Council is generally supportive of this aspect being provided in the public domain along with a lot of other public domain changes required to facilitate the development.*

The original DA was accompanied by a detailed Operational Waste Management Plan. Council's Waste Contracts Supervisor was satisfied with the waste arrangements with the original DA. The current DA should be accompanied by an updated or addendum report, given the redesign particularly of the hotel and ancillary areas.

At this stage, it cannot be concluded the proposal satisfies the transport, access and parking requirements of the DCP.

### **Part 3.6 – Social Amenity, Accessibility and Adaptable Design**

The proposal has been designed so that the development is accessible from the public domain and internally. The development provides level access/ramping from the footpath, disabled bathrooms and access to the levels of the building affected by the proposal through the lift core.

The development provides 8 accessible car spaces located within the basement level and these spaces are located generally near the lift to the supermarket, but not to the hotel. There should be accessible parking closer to the hotel lift from the basement.

The applicant has provided an access report with the original DA (by BCA Access). The latest proposal is significantly different and an updated Access report (or addendum) is warranted, but has not been provided at the time of writing this report.

A Social Impact Assessment is not required for this proposal under the provisions of the DCP.

A Plan of Management ("PoM") was requested by the RFI and provided with the current proposal. Aspects of the PoM have been previously outlined in the description of the proposal.

The PoM addresses a range of issues consistent with an appropriate PoM. However, the PoM has not been reviewed by the Council's Health Department at the time of writing this report. The PoM also has outdated plans within it and some references to aspects of the proposal which are no longer proposed. Also, the PoM has not considered or addressed the most-recent acoustic report relevant to the current plans.

A key issue is the management of trolleys, particularly given the location of the entry on The Grand Parade. The PoM states:

*Trolley retention systems will be installed at The Grand Parade entry/exit in order to eliminate theft and the scattering of trolleys around the area. The intention is trolleys will have zero access to council footpaths that adjoin the site.*

This is appropriate, although is expected to be difficult to manage, as many supermarkets with measures to limit trolleys to within their premises (e.g. locks) do not stop trolleys being removed from the premises.

### **Part 3.7 and 3.8 – Landscaping, Private Open Space, Biodiversity and Tree/Vegetation Management**

There are no specific requirements for landscape or private open space for the proposed use(s)

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in the DCP.

The site is not identified as having high biodiversity value in the LEP.

Tree removal has been addressed previously in response to LEP provisions. Given the proposed removal of trees from the site, some compensating tree planting would be reasonable, although is not proposed and is dependent on any associated roadworks.

The proposal seeks to provide a landscaped edge to various parts of the building, which is conceptually appropriate given the tree-lined nature of the surrounding streets, park opposite and bayside setting.

A Landscaping Plan has not been submitted with the current Plans and is needed prior to any positive determination. This should also clarify and reconcile the plans and recommendations within acoustic and wind reports, as well as provide details outlined by Council's landscape officer.

### **Part 3.12 – Waste Minimisation and Management**

The proposal involves full demolition and excavation, with no plans for reuse of material. Given the current state of the site, this is understandable. Conditions requiring classification and separation of waste to maximise recycling would be imposed if approval was recommended.

As mentioned previously, the original DA was accompanied by a detailed Operational Waste Management Plan. Council's Waste Contracts Supervisor was satisfied with the waste arrangements with the original DA. The current DA proposal should be accompanied by an updated or addendum Operational Waste Management Plan, given the redesign particularly of the hotel and ancillary areas.

### **3.14 - Noise, Wind, Vibration and Air Quality**

In terms of operational noise from the proposal, an acoustic report was submitted with the original DA proposal, prepared by Renzo Tonin and Associates. This report was reviewed by Council's Environmental Health Officer who outlined issues with conflicting information in the plans and report. An addendum report was prepared (6/2/2023) with the previous superseded plans.

Very recently, on 6/11/2023, an updated acoustic report has been submitted. This is provided as a separate attachment to this report. Due to the report being received on the afternoon this report was to be finalised, no detailed review was able to be undertaken, and of course no review was able to be undertaken by expert Council staff.

The recent acoustic assessment makes some assumptions or recommendations, including:

- Retail space (ground floor north) being closed at 6pm, which seems unrealistic and contrary to objectives to enliven the centre;
- Northern acoustic treatment up to a height of 1.4m (fixed) with operable element to 2.3m, the latter being locked/closed after 10pm (also relevant for the FSR calculation);
- 2m high acoustic screen to the south, at the eastern end of Level 1 (higher at the western portion), also relevant for the FSR calculation;
- Other measures such as sound absorption to the soffit and various operational matters related to hours, speaker/amplification, access restricted to 10pm, capacity of different areas and times, and the like.





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Acoustic impacts from the proposal, particularly the open undercroft areas and terraces at the first and second floor upon the immediate residential property to the south, is obviously an important issue for the applicant to justify and to consider prior to any positive determination. Also, given the issue with the GFA calculation and difference of opinion regarding that calculation, the proposed acoustic barriers support the contrary FSR conclusion to the applicants, as argued earlier in this report.

Based on current information, it cannot be concluded acoustic impacts will be acceptable.

In terms of potential wind impacts, the original DA was supported by a wind impact assessment report (Vipac, 14/7/2022), with a further update report with the current proposal (6/10/2023). The updated report stated that the wind impacts of the revised proposal would be “slightly better” than as previously assessed and the findings/recommendations of the earlier report remain relevant, including for levels 1 and 2.

The DCP says wind tunnel testing may be required for buildings over 5 storeys. The July 2022 wind report did not include wind tunnel testing (instead relying on experience with previous similar proposals), and made the following observations and conclusions:

- There are some benefits to the design in terms of wind impacts to the public domain, including setbacks from the podium, rounded corners and open undercroft areas;
- Level 1 and 2 – minimum 1.5m high wind shields “at the outer perimeter of these areas” but inside the landscaped beds (or alternatively 1m landscaped solid beds and 0.5m landscaping, with possible other measures subject to wind tunnel testing).

Vipac recommended “*that a quantitative wind analysis be conducted to ensure the wind levels throughout the public realm are suitable for purpose*” [i.e. wind tunnel testing].

Given the DCP states wind tunnel testing may be required, the issue of GFA calculation differences, landscaping intent and need to reconcile and integrate design, landscaping and acoustic measures, wind tunnel testing should occur prior to any positive determination of the application.

### **3.15 – Late Night Trading**

This Section of the DCP is relevant as the proposal involves various trading hour past 10pm, as outlined in the PoM:

- *The hotel will operate 24 hours a day, 7 days a week*
- *The café/grab and go style tenancies on ground level will operate from 6:00am until 5:00pm, 7 days per week. Liquor will only be sold or supplied during any hours specified in the licence issued or not issued by the Liquor Authority in relation to these premises.*
- *The restaurants/bars on level 1 will operate from 11:00am until 12:00am, 7 days per week. Liquor will only be sold or supplied during any hours specified in the licence issued by the Liquor Authority in relation to these premises.*
- *The level 2 pool will operate from 6:00am until 11:00pm*
- *The level 2 pool bars and restaurant will operate from 6:00am until 11:30pm*

An updated acoustic report has been received, however recommendations withing that report and the above within the PoM have not been reconciled, and neither have been reviewed by Council’s Environmental Health Officer (other than the Environmental Health Officer noting “*the Current Plan of management (POM) states that the premises will have a rooftop pool*”

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*however amended plans show no pools on the rooftop, conflicting information” and requesting all information be updated and re-referred for comment) .*

Based on the above hours and capacities in the PoM, the proposal would be a high impact premises as defined in the DCP. The proposal involves licensed premises with a capacity of over 120 patrons.

The site is conceptually suited to the uses, provided acoustic impacts are properly resolved. Late night trading until 12 midnight within a centre sought to be enlivened and activated is also conceptually appropriate. The proposed hours are consistent with those permitted in the DCP.

The use of the retail and licensed areas open to the public could be subject to a separate approval, if approval was recommended.

## **PART 6 – NON-RESIDENTIAL DEVELOPMENT**

### **Part 6.1 – General Controls**

An awning is proposed to both street frontages, which is appropriate for this site and proposed uses, given the location.

This part of the DCP has a requirement that at least 10% of the site is provided as landscaped area and for sites over 2,000sqm (like this site), front landscaping is in addition to that requirement, meeting the DCP control.

No deep soil landscaping is proposed. Landscaping is proposed in small pockets adjoining the hotel lobby off Ramsgate Road, and in perimeter areas fronting both streets from level 1 and above. This is conceptually appropriate, given the site-specific controls in Part 7.3 of the DCP encourage building to the street and side boundaries for the podium. However, no updated Landscape Plan has been submitted with the latest proposal and, as previously outlined, many other reports which need to be done which may affect screening and realising the landscape intent.

No new fencing is proposed, noting the proposal is built to the boundaries of adjoining sites.

#### **6.2.6 - Uses Involving the Preparation and Storage of Food**

There is a lack of detail regarding food preparation areas, although this is not critical given the application is recommended for refusal. The use of the retail and licensed areas open to the public could be subject to a separate approval, if approval was recommended.

### **S4.15(1)(a)(iii) – Provisions any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4**

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There is no planning agreement applicable to the current proposal (the previous VPA offer was withdrawn with the latest proposal).

### **S4.15(1)(a)(iv) - Provisions of the Regulation**

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In terms of provisions of the Regulation:

- The DA submission has not included sufficient information to enable environmental assessment of the application (Clause 24);

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- Concurrences and other approvals are addressed in the “Proposal” section of this Statement or in response to relevant SEPPs. Terms of approval have been received by NSW Water, while TfNSW and Ausgrid have raised no objections to the proposal;
  - No approval under the Local Government Act 1993 is sought as part of this DA (Clause 31(3)); and
  - Demolition works are able to meet the provisions of Australian Standard (“AS”) 2601 and this could be addressed by conditions of consent, if approval was recommended (Section 61(1)).

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

## **S4.15(1)(b) - Likely Impacts of Development**

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This Section of the Act requires consideration of natural and built environmental impacts, and social and economic impacts. The potential and likely impacts related to the proposal have been considered in response to SEPPs, LEP and DCP controls. The impacts that have not already been addressed or warrant some elaboration or summation are as follows:

### **Natural Environmental Impacts**

#### Trees

While 19 trees are proposed to be removed within the site, most are exotic Murrays, and no significant trees are proposed to be removed within the site. Previously-proposed tree removal outside the site is no longer proposed since works to Ramsgate Road (apart from the driveway) have been removed from the scope. Compensatory tree planting in the public domain in lieu of the trees being removed would be a reasonable expectation.

#### Flooding

The site is subject to flooding.

There is a nominated (unspecified in terms of capacity) water storage tank, but further details are required to address previous issues raised by Council’s engineers, related to the most recent and current proposal.

#### Stormwater Quality and Quantity

Insufficient details have been provided regarding stormwater management (quantity and quality), related to the most recent and current proposal. Issues raised by Council’s engineer have not been resolved.

#### Contamination

The site is contaminated, as found by testing conducted in 7 boreholes, for part of the site, which found Asbestos and nickel were identified in soil at concentrations that exceeded the human health and ecological SAC respectively. Heavy metals (arsenic, copper and zinc) were also identified in groundwater above the ecological (marine) SAC. A Preliminary Site Investigation (“PSI”) found data gaps, namely the need for additional boreholes in the place of Coles Supermarket and further testing of groundwater for potential Acid Sulphate Soils.

The PSI found: “*The PSI has not identified contamination that would preclude the proposed development/use of the site*”, but recommended a process for filling the data gaps to inform a Detailed Site Investigation (“DSI”), and Remediation Action Plan (“RAP”), if needed.

These additional reports have not yet been done. The Council's expert Contamination Officer is satisfied these matters could be addressed by conditions of consent, if approval was recommended.

#### Acid Sulphate Soils and Groundwater

The borehole testing on the site found groundwater at around 1.6-2m below existing ground level.

De-watering of the site will be required. Water NSW have issued General Terms of Approval.

A preliminary acid sulphate soils assessment has been conducted, and a following acid sulphate soils management plan completed, as required by Clause 6.1 of the LEP. The testing to date did not find actual acid sulphate soils in the borehole tests, but like the situation for contamination, further data gap closure and subsequent testing is required (although not required as approval is not recommended).

#### Excavation and Earthworks

The proposal involves full site excavation to a depth of around 6-6.5m below existing ground level. The applicant has submitted a detailed geotechnical report (19/6/2022), with a follow-up summary document with recommendations dated 7/2/2023, as requested by an RFI.

Given the testing found sand and loose soils (as opposed to bedrock), not surprising given the coastal location and historical dune zone, care would be needed in excavation due to the potential for subsiding soils and undermining of adjoining sites and assets. This in turn would require internal bracing or rock/soil anchors. The latter typically involves long tensioned cables/screws into adjoining land. This could only occur with the consent of adjoining land owners (road authorities and private land owners to the south and west), or otherwise internal bracing and support for adjoining land is needed. This matter could be addressed by conditions of consent, if approval was recommended. Dilapidation surveys (pre and post work) would also be needed, as well as piling and detailed methodology to be directed and supervised by a qualified structural engineer.

Part of the terms of the concurrence of TfNSW requires further details of excavation.

### **Built Environmental Impacts**

#### Heritage

The site is not heritage-listed. While a HIS was not submitted as originally suggested by Council's heritage adviser, it is reasonable to conclude the proposal will not cause any significant adverse impacts on the heritage significance of listed heritage items near the site. However, the height of the proposal provides inconsistency with buildings across Ramsgate Road and greater height consistency (including for potential future buildings to the west) would help complement Norfolk Island Pines, which are heritage items.

#### Streetscape, Bulk and Scale

The main issues with the streetscape, bulk and scale issues are:

1. Excessive and non-complying height and height distribution, which adds overshadowing, and visual impacts at a sensitive zone interface with lower density residential development close to the south, with very limited future development potential;
2. Excessive bulk, reflected by a significant FSR non-compliance (estimated to be over

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40%) if undercroft areas and areas enclosed by screens are included (which also add to bulk and intensity of use either way);

3. Inadequate and non-complying southern setbacks, particularly at the upper levels;
4. Resulting discordant bulk and scale relationship and transition in form to the south and missing an opportunity to match the height of recent buildings on the opposite side of Ramsgate Road for better urban framing in an area where strong landscape elements of Norfolk Island Pines also support a matching urban form or frame;
5. Added overshadowing to the public park to the east (albeit limited to the mid-late afternoon) and overshadowing of land to the south, linked to excessive bulk, scale and height, which could reasonably be avoided; and
6. Inappropriate pedestrian entrance to the supermarket off The Grand Parade.

The submitted contravention request in accordance with Clause 4.6 of the LEP is not supported.

The proposal is not considered to meet design excellence and there are many concerns raised by the DRP.

The DRP, in terms of context and neighbourhood character has stated:

*The proposal has been modified to remove the works outside the boundary, which is supported by the panel.*

*The urban design analysis should consider the existing and future context of the area. This includes the existing qualities and characteristics of the context, including built form, prevailing setbacks, lanes, landscapes which have only been partially identified, let alone integrated into design objectives and/or strategies. The analysis should also include environmental impacts on adjacent properties, including loss of view, overshadowing and acoustic impacts – all of which appear not to have been accurately calculated.*

*The architectural and urban design reports and drawings illustrate that the proposal is too large in terms of bulk, scale and height for the context. Overlooking and acoustic impacts have also not been adequately addressed in terms of their response to the existing and future context.*

*Solar analysis should be undertaken that compares the impacts of the proposal on adjacent properties and public domain and the impacts of the existing condition. This should include sun eye diagrams and an analysis of the number of hours of solar access into each impacted dwelling.*

The DRP has also raised many issues regarding bulk, height, scale and streetscape impacts.

The DRP and the assessing officer have some differences in view related to the southern boundary wall at ground floor and the corner stairs, although the primary and significant concerns are shared. These concerns would not be resolved by providing additional details and reports.

In addition to the bulk and scale impacts on the public domain, the proposal will also have adverse visual impacts to adjoining land, particularly the residential dwellings immediately to the south of the proposed development, exacerbated by the non-complying height and setbacks.

### Views

The proposal will affect some outlook (as opposed to views) from adjoining sites and will also



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likely affect some views towards water from units to the north of the site currently able to look over the roof of the Coles building in a southerly or south-easterly direction.

However, the planning controls encourage redevelopment of the site for greater height and density, including to realise strategic objectives for the town centre and such outlook is likely to be affected by any redevelopment of the site.

Due to the flat terrain, trees, separation distances and nature of likely views and view directions, it is not anticipated the proposal will lead to view impacts that warrant refusal, including related to the non-complying height and bulk.

### Overshadowing

In terms of overshadowing, Cook Park only becomes overshadowed by the proposal at around 2.30-3.00pm in mid-winter. This is linked to height non-compliance, although the time of impact does not align to periods of peak usage of the park. Despite this, the impact is negative and could be reasonably avoided, and adds to other cumulative concerns.

The applicant's solar analysis compares the shadowing of the proposed building to a DCP envelope. The two issues with this are the assumption that an envelope can be filled, and that there is no 24m setback above the fourth floor from the south. Both these assumptions are flawed. The other relevant matter is the FSR being considerably above the FSR standard, which is not accounted for in any comparison.

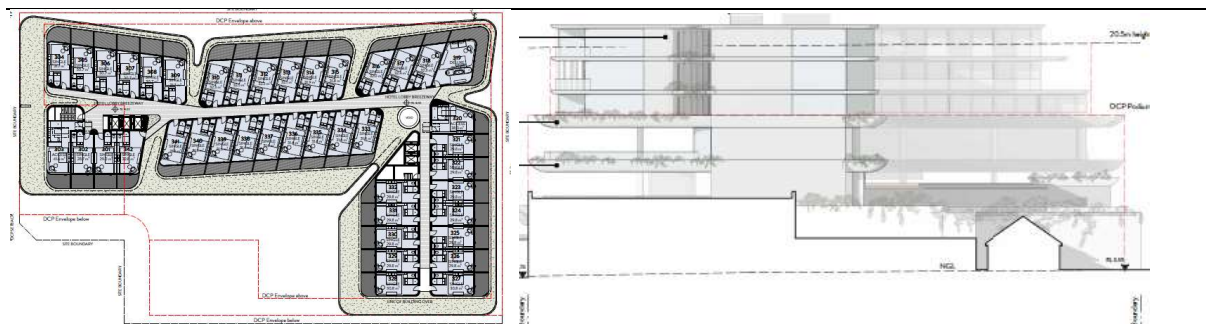
The applicant has provided hourly overshadowing plans in midwinter, although these do not highlight the overshadowing impacts from the non-complying height, or provide "views from the sun".

What is clear is the additional non-complying height, and the non-complying southern setback, causes additional overshadowing the properties to the immediate south, for a very wide building length of close to 80m. Based on the information provided, while there are data gaps, it is reasonable to conclude the non-complying height causes additional overshadowing to existing development, causing adverse amenity impacts.

### Privacy (Visual)

The design has considered visual impacts to the south at lower levels due to building to the side boundary with no openings and landscaped setbacks at the two upper levels. However, the non-complying southern setback at the upper levels of the building adds to adverse privacy impacts. At Level 3, it would be important to ensure the landscaped edge around the hotel building was not accessible to users of the building (with potential hatches for maintenance). Similarly, the southern edge of balconies of the southern-most hotel rooms should be screened.

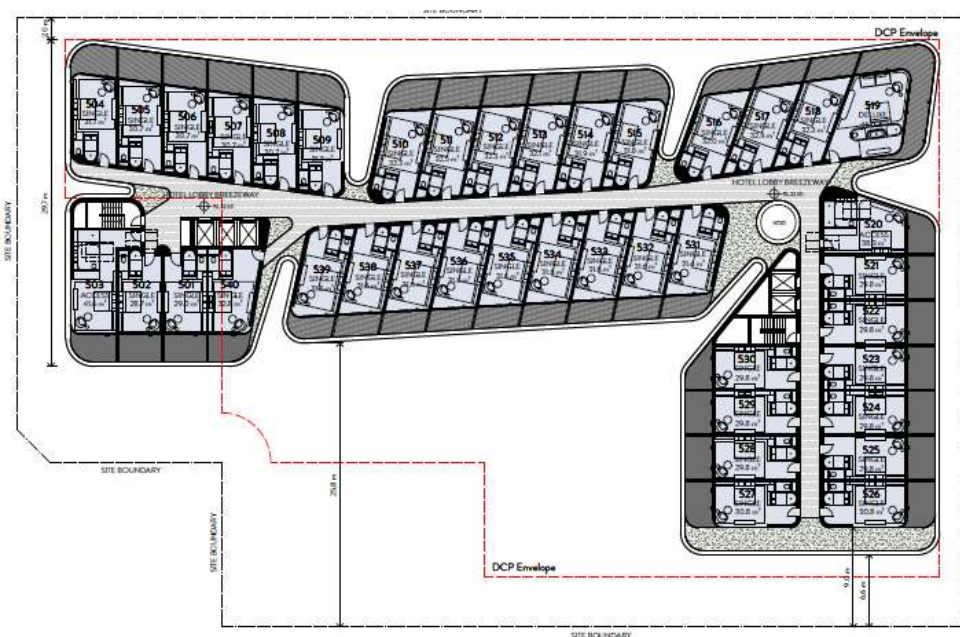
There is a potential privacy issue to the west, particularly as this portion of the building well exceeds the minimum 24m southern setback at upper levels. This has been largely considered by blank walls, although side screening to rear terraces would also be warranted.



**Figure – Level 3 and West Elevation**

At the upper two levels, the key privacy concern is the southern privacy (and visual) interface with the portion of the building fronting The Grand Parade, within the 24m southern setback control. There is a landscaped bed shown, which may be effective, depending on planting, soil depth and ability to withstand southerly salt-laden winds.

The size of balconies for hotel rooms (particularly given the room sizes) is generous. For the rear-facing central balconies, an edge landscaped planter bed should be provided and would be consistent with the design, and reasonably reduce privacy and visual impacts to the south.



**Figure – Top two levels**

### Acoustic Impacts

In terms of operational noise from the proposal, an acoustic report was submitted with the original DA proposal, prepared by Renzo Tonin and Associates. This report was reviewed by Council's Environmental Health Officer who outlined issues with conflicting information in the plans and report. An addendum report was prepared (6/2/2023) with the previous superseded plans.

Very recently, on 6/11/2023, an updated acoustic report has been submitted. Due to the report being received on the afternoon this report was finalised, no detailed review was able to be undertaken, and of course no review was able to be undertaken by expert Council staff.

The recent acoustic assessment makes some assumptions or recommendations, including:

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- Retail space (ground floor north) being closed at 6pm, which seems unrealistic and contrary to objectives to enliven the centre;
  - Northern acoustic treatment up to a height of 1.4m (fixed) with operable element to 2.3m, the latter being locked/closed after 10pm (also relevant for the FSR calculation);
  - 2m high acoustic screen to the south, at the eastern end of Level 1 (higher at the western portion), also relevant for the FSR calculation;
  - Other measures such as sound absorption to the soffit and various operational matters related to hours, speaker/amplification, access restricted to 10pm, capacity of different areas and times, and the like.

Recommended acoustic shields are not shown on the architectural plans. Obviously, screening and enclosure of spaces is needed related to the latest proposal, reconciled with the plans/elevations, wind report, landscape plan details and PoM.

Acoustic impacts from the proposal, particularly the open undercroft areas and terraces at the first and second floor upon the immediate residential property to the south, is obviously an important issue for the applicant to justify and to consider prior to any positive determination. Also, given the issue with the GFA calculation and difference of opinion regarding that calculation, the proposed acoustic barriers support the contrary FSR conclusion to the applicants, as argued earlier in this report.

Based on current information, it cannot be concluded acoustic impacts will be acceptable.

#### Operational Impacts

In terms of hours of operation, conceptually, the hours of operation appear reasonable, and in line with those permitted by Council's DCP.

It would be relatively standard practice to require separate DA(s) for the use of retail tenancies at ground and first floor that are publicly accessible, so issues of acoustic details, capacity, operating hours, and outdoor seating, compliance with the Food Act signage, the reasonableness of any trial for later hours and the like could be considered.

The Plan of Management ("PoM") includes various measures to manage impacts, consider neighbours, address security and licensing considerations, as is appropriate. No review or comments on the latest PoM have been received at the time of this report. In any event, the PoM needs updating.

#### Parking and Traffic

In principle, the location of the parking facilities on the site is acceptable having regard to the nature of the site and roads. There is essentially a triple driveway to the western end (two lanes for cars, one for loading). This is wider than ideal, although the width for loading has been reduced by providing an internal turntable for trucks to allow forward entry and exit, while the size of the development and supermarket use means further reduction of the driveway width is not likely to be practical.

The original application was referred to TfNSW for comment. TfNSW responded on 5 September 2022 raising no objection to the proposal and recommending 4 conditions be imposed. The proposal has been amended since the referral comments back from TfNSW, including with pedestrian access from The Grand Parade and a relocated bus stop, as well as different options fronting the site in Ramsgate Road.

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An updated traffic and parking report has been received very recently (3/11/2023 by email). Council's engineers have reviewed the latest report (in a short period given timing), advising of various concerns which remain outstanding.

The amended plans and most-recent traffic report have not been re-considered by TfNSW, or the BTAC.

Concerns have been raised by the DRP about the impact of the main pedestrian entrance to the busy Supermarket on the narrow The Grand Parade. These concerns are shared. A preferable solution would have been to maintain the pedestrian entrance to Ramsgate Road, as originally proposed, and provide windows to the Supermarket to The Grand Parade (or a much wider setback to The Grand Parade). This would have had the benefits of providing activity and surveillance to The Grand Parade while avoiding problems with that narrow footpath and relatively hostile environment, while also meeting the design and operational objectives of one controlled access and egress point for the supermarket. Despite suggestions, this was not favoured by the applicant in the latest plans.

The current proposal provides two basement levels for car parking (216 car spaces including 8 accessible spaces and 10 EV spaces), motorcycle parking (14), bicycle parking (28). Council's engineers believe the parking demand aspects of the proposal warrant further justification, although are generally supportive of proposed pick-up and drop off in Ramsgate Road, subject to feedback from TfNSW and BTAC.

At this stage, it cannot be concluded the proposal is satisfactory regarding traffic and parking.

### Construction Impacts

Temporary construction-related impacts do affect amenity and this is partially inevitable from demolition, excavation and constructing new works. The excavation into sandy soil laden by a watertable will be challenging and likely extend over many months. This is likely to cause impacts to the public domain for a temporary period, given full site excavation, and this is also likely to affect the visual and pedestrian amenity, which in turn may affect attraction to the area and therefore some impact to businesses for a temporary period. These construction-related impacts are not considered reasonable grounds for refusal, despite undoubted impacts to neighbours for the period of construction.

### **Social Impacts**

There are positive, neutral and negative social impacts associated with this proposal, as outlined throughout this report. While there are some benefits to the proposal, the impacts and various non-compliances outweigh the benefits overall, leading to the recommendation for refusal of the proposal.

### **Economic Impacts**

In terms of economic impacts, the proposal will cause some anticipated potential negative economic impacts during phases of construction for a temporary period although would result in net positive economic impacts from the materials and labour needed for construction and ongoing use of the proposal, including from the people and businesses accommodated on the site, to the wider benefit of Ramsgate centre. The economic benefits of the proposal outweigh the impacts.

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## **S4.15(1)(c) - Suitability of the Site**

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The relevant matters pertaining to the suitability of the site for the proposed development have been considered in the assessment of the proposal, throughout this report. The uses are suited to the site, but the proposal is found to be unsuitable for the reasons in the recommendation.

## **S4.15(1)(d) - Public Submissions**

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The development has been notified in accordance with the DCP on three occasions, as outlined in the Background section of this report.

There were 32 submissions during the first public notification (including 1 on support), 23 in the second and 19 in the third notification period (latter as at 31/10/2023, after closing of that notification period).

The objections have been summarised by issues raised, as below. These in turn have been grouped so that generally the issues raised most often are first and those least often last. Most submissions, unsurprisingly, were from residents to the immediate south of the site. Some residents lodged submissions during each notification period.

Some issues of a similar nature have been grouped. A comment is provided in response to each issue raised, as below. Some comments are brief given previous discussion and analysis in this report.

### **Issue 1: Noise impacts from use / acoustic measures not shown on plans / Noise from rooftop bar and undercroft bar and other areas / Noise impacts from construction**

Comment: The rooftop area has since been removed from the plans. It is agreed acoustic measures are not shown on plans. Acoustic impacts cannot be verified as acceptable at this stage. Noise impacts from construction would ordinarily be addressed by conditions of consent if approved.

### **Issue 2: Overshadowing / Will cause dampness / impacts on solar panels**

Comment: This is a valid concern(s) given the excessive height, excessive bulk/FSR, sensitive interface with buildings to the south due to the relative orientation and the zoning and FSR/height interface.

### **Issue 3: Property damage during construction / need for dilapidation reports / insurance cover / other construction impacts (cranes etc.)**

Comment: Impacts from construction would ordinarily be addressed by conditions of consent if approved.

### **Issue 4: Out of character with the area**

Comment: Agreed.

### **Issue 5: Too high / Height non-compliance**

Comment: Agreed.

### **Issue 6: Unsightly southern wall / Inadequate setbacks / DCP non-compliance / visual impacts**

Comment: The concern and suggestion for a 1.5m setback at ground floor is understood given visual impacts, shadowing concerns and the plans showing a DCP 1.5m setback. However, I do not read the DCP controls in Part 7.3 of the DCP as requiring a 1.5m setback at a side boundary



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(or rear), but rather a podium built to the side boundaries. The basement is built to the boundary and a wall, higher than proposed, currently exists on a significant portion of the southern side boundary, while open loading area and fences exist on the remainder, with adjoining garages to the west. The wall could support existing and climbing plants. A setback with windows would also potentially give rise to other impacts given the close proximity of neighbours.

#### Issue 7: Anti-social behaviour from patrons / users of the site

Comment: This is not considered to be a reasonable ground for refusal and could be addressed by provisions in the PoM and conditions of consent, if consent was granted.

#### Issue 8: Use as a hotel is inappropriate

Comment: Disagreed. A hotel is a use very well suited to the site, given the zoning and strategic aspirations for the site and area. However, there are concerns with the siting and design.

#### Issue 9: Traffic Impacts/loading

Comment: The proposal has the potential to have acceptable traffic impacts, although approval from TfNSW and BTDAC is needed.

#### Issue10: Block breezes

Comment: This is likely to be a negative impact from the proposal due to the boundary wall and long 80m building width to the north. The open nature of Levels 1 and 2, while not ideal for acoustic impacts, may help breeze flow.

#### Issue 11: Parking impacts to the surrounding area/inadequate parking

Comment: Council's engineers believe additional parking justification is warranted. The location of disabled parking is not ideal.

#### Issue 12: Loss of income/property value/need for compensation

Comment: This is not a relevant consideration under Section 4.15 of the Act.

#### Issue 13: Block views/outlook

Comment: There will be blocking of outlook (as opposed to views). This is partly inevitable given the planning controls applying to the site.

#### Issue 14: Privacy impacts

Comment: This issue is considered to be exacerbated by the non-compliant height and non-compliant southern setback at upper levels.

#### Issue 15: Excessive scale/FSR

Comment: Agreed.

#### Issue 16: Smells from kitchens

Comment: This matter would be expected to be mitigated and managed by appropriate mechanical ventilation, and conditions of consent if consent was recommended. Kitchen areas are generally well removed from neighbours.

#### Issue 17: Trolley management to the Grand Parade

Comment: This is addressed in the PoM, although may be difficult to manage.

#### Issue 18: Flooding and drainage impacts

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Comment: There is insufficient information and detail to confirm the proposal is acceptable. Previous concerns have been expressed by Council's engineers, which remain outstanding.

**Issue 19: Impacts on bore water/groundwater**

Comment: This matter has not been specifically addressed or justified by the proponent and would justify a response, assuming the bore holes are authorised.

**Issue 20: Heritage impacts on Cook Park / Negative impacts on public domain and park by users**

Comment: The heritage impacts do not warrant refusal, although lowering the height would assist in the urban and landscape framework of the surrounding area.

**Issue 21: Increased stress from development and change / Neighbouring site to the south accommodates elderly – quietness, open space and sun are important to their amenity**

Comment: While an understandable concern, stress from redevelopment would not be a reasonable ground for refusal.

**Issue 22: Tree removal**

Comment: The reduction in tree removal with the latest proposal results in acceptable impacts and could be mitigated by replacement planting.

**Issue 23: Contamination impacts**

Comment: This issue has been found to be acceptable to expert Council officers, subject to further work, testing, monitoring and review, by conditions.

**Issue 24: Lighting impacts/CCTV cameras**

Comment: This is not a matter that would warrant refusal of the proposal and has the potential to be managed and mitigated, subject to conditions, if approval was granted.

**Issue 25: Impacts on infrastructure/rubbish**

Comment: This matter is able to be managed and mitigated.

**Issue 26: Fire Safety**

Comment: This issue could be addressed by conditions, and processes associated with the certification in construction.

**Issue 27: Lack of updated studies with the latest proposal, including acoustic assessment**

Comment: Agreed. The proposal cannot be approved based on current information, plans and details.

**Issue 28: Various corrective changes including works to the neighbouring property (suggested by southern Body Corporate)**

Comment: The Body Corporate for the property immediately to the south wrote detailed submissions regarding the proposal. As well as raising a wide range of concerns, a large number of suggested changes were outlined, including various noise amelioration measures, independent dilapidation report, vibration monitoring, 1.5m setback at ground level to the south, compliant height and various works to the neighbouring property to mitigate impacts (skylights, glazing etc.).

In the initial RFI to the applicant, the applicant was requested to respond to this submission and associated requests and did so, generally outlining various features or benefits of the proposal, without agreeing to specific works to the neighbouring property or to compensatory works.

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As the matter is recommended for refusal no further detailed analysis is warranted.

#### Issue 29: Geotechnical peer review commissioned by southern neighbours (Morrow Geotechnics)

Comment: The southern neighbour also commissioned a peer review of the geotechnical reports done for the applicant by JK Geotechnics, which was undertaken by Morrow Geotechnics, related to the current and most recent proposal. This review report outlined the data gaps in the report(s) by the applicant (which have been outlined in this report and acknowledged by the applicant's reports), and varying depths of boreholes undertaken. The report also questioned the 500mm (from scaling) shoring wall, outlined risks with an internal bracing system/diaphragm wall and piling below the excavation to bedrock (a further 7m is mentioned in applicant documents below the basement). The report also outlined ground water testing did not address permeability and long-term ground water monitoring and modeling was not done. The report concludes the applicant's document is inadequate and that approval for the development may be required from TfNSW, Sydney Water and WaterNSW.

Many of the data gaps (but not all) identified were acknowledged by the applicant's consultant. Further information was included in the PSI regarding contamination. Council's contamination officer was satisfied with the applicant's documents, subject to conditions including additional testing, review and reporting. No previous objection was raised by TfNSW (although their subsequent comments on the current proposal is needed), while Water NSW issued GTA's. The proposal is a DA, not for construction and it is accepted further studies, detail and review is needed, to meet statutory requirements. This issue is potentially able to be addressed by condition(s), if consent was recommended.

#### S4.15(1)(e) - Public interest

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Granting consent would not be in the public interest.

### S7.11/S7.12 - Development Contributions

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A cost report was submitted with the DA, by a quantity surveyor (not updated for the revised proposal). The application would be subject to a Development Contributions if approved.

### Conclusion and Reasons for Decision

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The proposed development at 277 The Grand Parage, Ramsgate Beach has been assessed in accordance with Section 4.15 of the *Environmental Planning and Assessment Act 1979* including relevant environmental planning instruments and Bayside Development Control Plan 2022.

The proposed development, being a mixed-use building including supermarket, retailing and hotel, with basement parking, is a permissible land use within the zone with development consent. In response to the three public notification periods, 32 submissions were received during the first public notification (including 1 on support), 23 in the second and 19 in the third notification period (latter as at 31/10/2023, after the exhibition close). Some residents lodged a submission in each exhibition period. The matters raised in these submissions include a very wide range of concerns and suggested changes. These matters have been discussed and addressed in this report and many of the concerns raised are shared, while others are not considered to warrant a reason for refusal.

The proposal is recommended for refusal. The reasons are outlined in the recommendation

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itself, at the beginning of this report, and are not duplicated or re-worded here, to avoid ambiguity and repetition.

As outlined at the beginning “Key Issues” Section of this report, and as outlined throughout the report, there are many areas or issues where additional information and reports are needed prior to any favourable determination, if the Panel was minded to approve the proposal. While it therefore may be considered premature to report the matter to the Panel, there are also crucial aspects of concern with the proposal, that additional information would not remedy. The applicant, to their credit, have made many changes, including relatively significant changes in response to issues raised, particularly by the DRP. However, the application is over 14 months old, and more significantly, there are key and fundamental concerns with the proposal, particularly related to height, bulk/FSR, setbacks and context/streetscape, held by both the DRP and assessing officer. So in the interests of providing certainty to the applicant and community, to avoid ongoing delay, and to avoid further sunk costs from the applicant for additional material that would not resolve these fundamental concerns, it is nonetheless appropriate to report this matter for determination to the Panel.

If the Panel comes to a contrary conclusion than this report and recommendation and is minded to support the application, the DA is not in a position to be approved. Considerable additional information, plans, reports and details would be required, and these would also need to be reviewed and assessed by various Council and others (such as the BDTAC and TfNSW). This is likely to take a further 6 months or so, depending on the timing of submission and review by others.

Jason Perica, Director  
B.Sci.(ARCH), M.U.R.P.



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### List of Attachments

1. Latest/Current Plans
2. Previous Plans considered by DRP
3. DRP Comments
4. Applicant's summary of changes and DRP response
5. Clause 4.6 (Height) Request
6. S.E.E. (Original DA)
7. Plan of Management
8. Traffic and Parking Report (Latest)
9. Acoustic Report (Latest)
10. NSW Water GTA
11. TfNSW Response
12. Council Engineering Comments
13. Council Contamination Officer Comments
14. PreDA Advice
15. RFI
16. Mills Oakley Advice – FSR (Legal Privilege)
17. Council Legal Advice - FSR (Legal Privilege)