

## COUNCIL ASSESSMENT BRIEFING REPORT TO PANEL

### SYDNEY EASTERN CITY PLANNING PANEL

<b>PANEL REFERENCE &amp; DA NUMBER</b>	PPSSEC-301 – DA-2023/345
<b>PROPOSAL</b>	Demolition of existing structures and construction of an eleven (11) storey building comprising tourist and visitor accommodation, single level of above ground car parking incorporating car stackers, associated landscaping and signage zones.
<b>ADDRESS</b>	125-131 Baxter Road, Mascot Lot 63 DP 979354
<b>APPLICANT</b>	The Trustee for Boston Atlas Hotels Trust
<b>OWNER</b>	Mr Theo Isaak
<b>DA LODGEMENT DATE</b>	8 December 2023
<b>APPLICATION TYPE</b>	General Development
<b>REGIONALLY SIGNIFICANT CRITERIA</b>	CIV >\$30 million
<b>CIV</b>	\$46,213,335
<b>CLAUSE 4.6 REQUESTS</b>	Bayside LEP 2021 Clause 4.4 – Floor Space Ratio
<b>LIST OF ALL RELEVANT PLANNING CONTROLS (S4.15(1)(A) OF EP&amp;A ACT)</b>	State Environmental Planning Policy (Planning Systems) 2021 State Environmental Planning Policy (Sustainable Buildings) 2022 State Environmental Planning Policy (Resilience & Hazards) 2021 State Environmental Planning Policy (Industry & Employment) 2021 State Environmental Planning Policy (Transport and Infrastructure) 2021 Bayside LEP 2021 Bayside DCP 2022
<b>TOTAL &amp; UNIQUE SUBMISSIONS</b>	Nil
<b>DOCUMENTS</b>	Architectural & Landscape Plans

<b>SUBMITTED FOR CONSIDERATION</b>	Statement of Environmental Effects Clause 4.6 – Exception to Development Standards (FSR)
<b>HOUSING PRODUCTIVITY CONTRIBUTIONS</b>	Commercial Development rate applies (\$30 per sq/m)
<b>RECOMMENDATION</b>	Approval
<b>DRAFT CONDITIONS TO APPLICANT</b>	Yes
<b>PLAN VERSION</b>	Revision C & D
<b>SCHEDULED MEETING DATE</b>	26 February 2025
<b>PREPARED BY</b>	Fiona Prodromou – Senior Assessment Planner
<b>DATE OF REPORT</b>	December 2024

## EXECUTIVE SUMMARY

The subject site is located within the Mascot Station Precinct, and as such the Design Excellence provisions of BLEP 2021 apply. The final revised scheme was peer reviewed by the Design Excellence Panel on 31 October 2024. The Panel confirmed on 31 October 2024 that the revised scheme as presented satisfies the Design Excellence requirements of BLEP 2021.

The subject site has historically been utilised for industrial purposes and accordingly requires remediation to ensure the site is suitable for the proposed use. A Remediation Action Plan has been prepared and conditions of consent have been imposed to ensure the appropriate remediation of the site.

The subject site benefits from a maximum FSR of 3:1 (3,306.6 sq/m) as per the requirements of Bayside LEP 2021. The proposal seeks to vary the maximum FSR, proposing an FSR of 3.73:1 (4,113.6sq/m GFA). This is a variation of 0.73:1, equating to a surplus gross floor area of 807sq/m. The applicant has submitted a 4.6 – Exception to Development Standards with respect to the proposed variation. The non-compliance is discussed in Clause 4.6 – Exceptions to Development Standards of this report and supported for the justification provided in this assessment.

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

The officers involved in writing and authorizing 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.

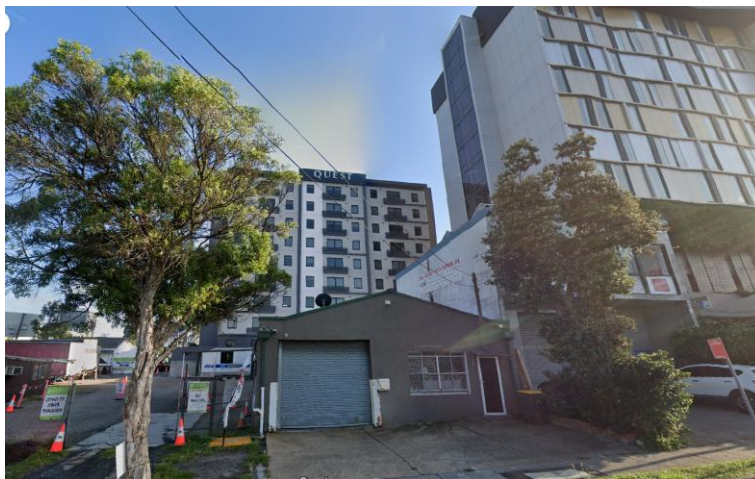
## 1. THE SITE AND LOCALITY

The subject site is legally known as Lot 63 DP979354, Lot 64 DP979354 and Lot 100 DP1141283 and comprises three allotments. The site has a combined site area of 1,102.2sq/m with a frontage of 34.32m to Baxter Road. Vehicular & pedestrian access to the site is via Baxter Road, which is a no through road further to the east.



*Aerial context of subject site*

The western allotment comprises a vacant car parking lot with the two eastern allotments incorporating 1 x single storey and 1 x two buildings facing Baxter Road. The site is utilised as an automotive repair workshop. The site is devoid of any existing vegetation and is relatively flat. A sewer line runs horizontally across the rear of the site approximately 1.3m from the rear boundary of the property. A sewer man hold is located in the rear north western corner of the site.



*Site viewed from Baxter Road*

Two existing street trees are located within the nature strip along the frontage of the site to Baxter Road. Two x telstra pits are located within the footpath and “No Stopping” signs do not allow for stopping or parking along Baxter Road at the site frontage.

Context surrounding the site is detailed and identified in the diagram below. The site is located to the east of Kingsford Smith Airport, to the south of Mascot Railway Station and is



positioned within an area of diverse land use (i.e. residential, commercial and industrial) and built form character (i.e. vacant sites to 14 storey buildings). The built form character and context surrounding the site is diverse and varied.



*Aerial context surrounding site*

1. Directly to the rear of the site (north) is an existing 9 storey hotel building incorporating 91 serviced apartments known as Quest Mascot at 108-114 Robey Street, Mascot. Consent for this development was issued in 2000 and modified in 2006. This existing building is setback 3m from the common rear boundary with the subject site. Robey Street accommodates a mixture of commercial industrial buildings, uses and low-density residential development.



*Quest*

2. To the north east at the rear, at 102-106 Robey Street, DA-2022/423 for the demolition of existing structures and construction of a 12 storey hotel with 77 rooms; associated facilities and signage was approved by the Bayside Local Planning Panel on 5 December 2023 with a variation to the 3:1 FSR standard. This development was approved with an FSR of 3.77:1, incorporating a surplus gross floor area of 590sq/m overall.
3. Directly adjoining the site to the east at 113-121 Baxter Road is Citadines Connect an existing 8 storey hotel building incorporating 150 rooms, setback 0.8m – 3m from the common shared side boundary with the subject site. This building has a 9.7m front setback to Baxter Road.



*Citadines*



*Mariott Moxy*

4. To the south east opposite Baxter Road is the recently completed Mariott Moxy Hotel which was approved by the Regional Planning on 8 October 2020 comprising the construction of a 13 storey hotel with 301 rooms.
5. Opposite the site to the south on Baxter Road is 56-60 Baxter Road, this property is currently vacant and incorporates existing elevated advertising signage. This site benefits from an existing development consent for an eight storey hotel with 230 rooms.
6. Immediately adjoining the site to the west, on the corner of Baxter Road and O'Riordan Street, is 133-137 Baxter Road. This property benefits from an existing development consent (DA-2021/450) approved in September 2022, for the demolition of existing structures and construction of a twelve (12) storey hotel.
7. Sir Stamford Plaza hotel building, 14 storeys in overall height.



*Sir Stamford*



*Holiday Inn Express*

8. Holiday Inn Express an existing 9 storey hotel building.
9. Sydney Water property at 111 Baxter Road, further to the east is currently vacant and is zoned SP2 – Infrastructure. This site has Sydney Water materials and containers stored on site.



**10. Branksome residences an 8 storey building incorporating serviced apartments.**



*Branksome Residences*

The subject site is zoned E3 – Productivity Support and benefits from a 3:1 FSR and 44m height limit. The site is located within the Mascot Station Precinct and is subject to the provisions of 6.10 – Design Excellence of BLEP 2021.

Council records identify that the subject site is affected by the following constraints;

- Potential Contamination
- Class 4 Acid Sulfate Soils
- Contributions Plan – Mascot Station Precinct
- Between 25 - 30 ANEF (2039) contours

## **2. BACKGROUND**

Pre DA – Correspondence issued to Applicant on 21/12/2022

Demolition of existing structures and the construction of a serviced apartment development.

## **3. THE PROPOSAL**

The proposed development seeks to undertake the demolition of existing structures and construction of an eleven (11) storey building comprising tourist and visitor accommodation, single level of above ground car parking incorporating car stackers, associated landscaping and signage zones.

The proposal is described in more detail below.

### Demolition

The proposal seeks to undertake the demolition of existing structures and hard stand areas on site.

### Excavation

Excavation on site is proposed in order to facilitate footings, dual lift pit, on site detention and associated stormwater systems.

### Ground

Vehicular entry / exit via Baxter Road to loading dock facilitating trucks up to a medium rigid vehicle (MRV) and single car lift. Car lift and car parking areas on site are proposed to be accessed and managed via valet service only. A 7.5m width turntable and vertical head

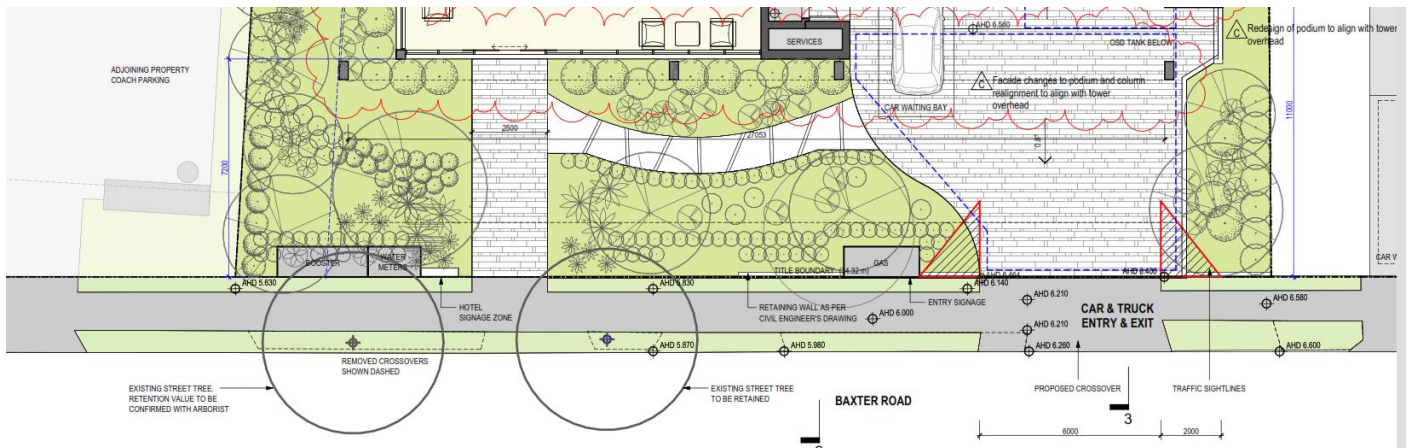
height clearance of 4.5m within the loading dock facilitates forward entry and exit of trucks to the loading dock.

Landscaping is proposed forward of the building line, in addition to pedestrian pathways providing access from the public domain. Landscaping as proposed includes a range of groundcovers, shrubs and trees. Landscaping is proposed along the periphery of the site to all boundaries of the property.

A paved publicly accessible outdoor seating area is provided within the western side boundary setback of the site, with direct access from the internal hotel lobby / lounge. A paved walkway facilitates pedestrian access to the adjoining western site and its coach parking bay.

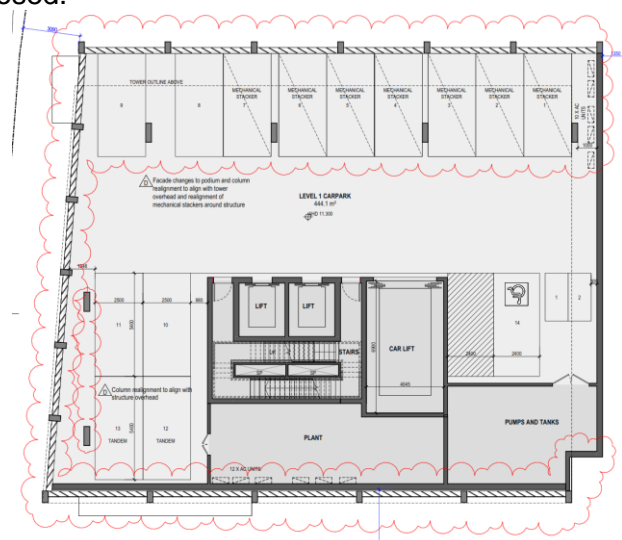
The ground floor level of the building incorporates the hotel reception, check in, dual lift core, fire exits, accessible toilet facilities, meeting room, storage room, services, waste holding room and staff open space / seating area within the rear setback.

Services including a fire booster, gas and water meter are proposed to align with the front property boundary in addition with a signage zone.



### Level 1

Above ground car parking incorporating 7 x 2 vehicle car stackers. This car parking level accommodates 21 vehicles, of which 14 are within dual level car stackers, 4 are tandem and 3 are standard spaces. One accessible car space is also provided. Dual lift core, fire stairs and plant / service rooms are also proposed.



*Proposed car stacker system & L1 Layout*

#### Level 2 / 3 / 4 / 5 / 6 / 7 / 8 (per floor)

10 x studio rooms, 1 x 1 bed room and 1 x 2 bed room. Associated service cupboards, dual lift core, fire stairs and bin storage.

#### Level 9

Hotel common room with adjoining kitchen facilities and back of house, 96.6sq/m balcony fronting Baxter Road. Dual lift core, fire stairs, toilet facilities and 2 x hotel offices.

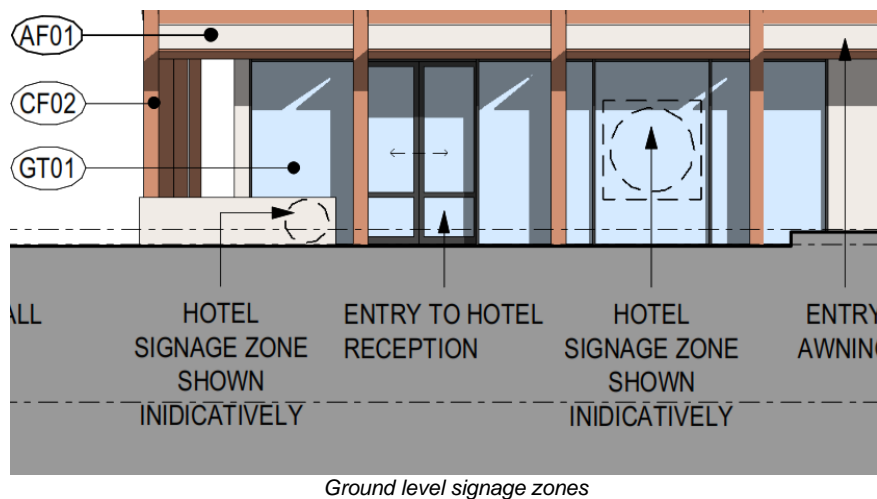
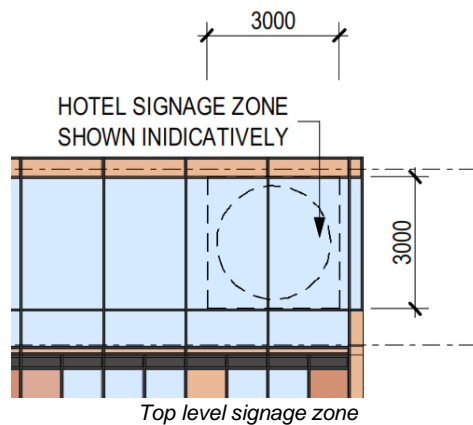
#### Roof

Lift overrun, air conditioning plant.

#### Signage Zones

The proposed development seeks consent for a signage zone upon the southern (Baxter Road) and eastern elevations of the development at the top most level. The signage zone is 3m in length and 3m in height and subject to future content details.

The following signage zones are proposed on site at ground level. Signage upon glazed windows to the hotel and adjoining the front property boundary to Baxter Road.







*Photomontage of proposal*

#### **4. STATUTORY CONSIDERATIONS**

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

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

These matters are further considered below.

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

The following Environmental Planning Instruments are relevant to this application.

- *State Environmental Planning Policy (Planning Systems) 2021*
- *State Environmental Planning Policy (Sustainable Buildings) 2022*
- *State Environmental Planning Policy (Resilience & Hazards) 2021*
- *State Environmental Planning Policy (Industry & Employment) 2021*

- *State Environmental Planning Policy (Transport and Infrastructure) 2021*
- *Bayside LEP 2021*

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

In accordance with Schedule 6 subclause 2 of the SEPP, as the proposed development has a capital investment value of greater than \$30 million i.e. \$46,213,335.00 it is thus referred to the Regional Planning Panel for determination.

### **State Environmental Planning Policy (Sustainable Buildings) 2022**

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

The SEPP encourages the design and delivery of more sustainable buildings across NSW. It sets sustainability standards for residential and non-residential development and starts the process of measuring and reporting on the embodied emissions of construction materials.

#### **3.2 Development consent for non-residential development**

*(1) In deciding whether to grant development consent to non-residential development, the consent authority must consider whether the development is designed to enable the following.*

- (a) the minimisation of waste from associated demolition and construction, including by the choice and reuse of building materials,*
- (b) a reduction in peak demand for electricity, including through the use of energy efficient technology,*
- (c) a reduction in the reliance on artificial lighting and mechanical heating and cooling through passive design,*
- (d) the generation and storage of renewable energy,*
- (e) the metering and monitoring of energy consumption,*
- (f) the minimisation of the consumption of potable water.*

#### **Comment**

The proposal was accompanied by a Sustainability Report, prepared by NDY dated 20 September 2024. The report considered the relevant requirements of the SEPP, in conjunction with Bayside Development Control Plan 2022, National Construction Code (NCC) Section J 2022 and NABERS Energy & Water.

- (a) The proposal seeks to minimise construction and operational waste through tracking and target setting. There is a target to divert more than 80% of demolition and construction waste generated from landfill. This will be achieved through the reuse, recycling and disposal of materials at the site.
- (b) The proposal has been designed to optimise daylight and utilise energy efficient appliances, lifts, fixtures, fittings and irrigation technologies on site to reduce demand for electricity. The draft Notice of Determination requires the provision and implementation of photovoltaic cell systems on the rooftop of the development.
- (c) Passive design strategies including a high-performance façade have been incorporated into the proposal to optimise daylight and natural solar access and minimise reliance on artificial lighting and mechanical heating and cooling.
- (d) Photovoltaic panels are proposed to be incorporated onto the roof of the development and electronic charging spaces will be provided to 5% of car parking spaces within the development.

- (e) The proposal has been designed to incorporate a building management system, which will ensure optimal tracking of energy and water consumption and provide regular reports to the operator.
  - (f) Water efficiency strategies are proposed, such include reuse of rainwater for landscape irrigation, water efficient appliances, fixtures and fittings.
- (2) *Development consent must not be granted to non-residential development unless the consent authority is satisfied the embodied emissions attributable to the development have been quantified.*

#### Comment

The Sustainability Report, prepared by NDY dated 20 September 2024 has quantified the embodied emissions attributable to the development and identified a sustainability strategy to minimise environmental impacts. i.e. recycling of materials etc.

#### 3.3 Other considerations for large commercial development

- (1) *In deciding whether to grant development consent to large commercial development, the consent authority must consider whether the development minimises the use of on-site fossil fuels, as part of the goal of achieving net zero emissions in New South Wales by 2050.*
- (2) *Development consent must not be granted to large commercial development unless the consent authority is satisfied the development is capable of achieving the standards for energy and water use specified in Schedule 3.*
- (3) *For the purposes of subsection (2), development is capable of achieving a standard specified in Schedule 3 if there is a NABERS commitment agreement in place to achieve the standard.*
- (4) *Subsection (2), to the extent it relates to energy use, does not apply to large commercial development on land to which the following local environmental plans apply—*
  - (a) *Sydney Local Environmental Plan 2012,*
  - (b) *Sydney Local Environmental Plan (Green Square Town Centre) 2013,*
  - (c) *Sydney Local Environmental Plan (Green Square Town Centre—Stage 2) 2013.*
- (5) *Despite subsection (4), subsection (2) applies to large commercial development to the extent that the development relates to prescribed serviced apartments.*

#### Comment

As per Schedule 4 Dictionary, 'large commercial development' is defined as:

*non-residential development that involves—*

- (a) *the erection of new prescribed office premises, prescribed hotel or motel accommodation or prescribed serviced apartments, or*
- (b) *alterations, enlargement or extension of prescribed office premises, prescribed hotel or motel accommodation or prescribed serviced apartments, if the development has an estimated development cost of \$10 million or more.*

'Prescribed hotel or motel accommodation' is defined as:

*hotel or motel accommodation with at least 100 rooms.*

As the proposal includes 84 rooms, it does not meet the definition of 'prescribed hotel or motel accommodation'. Accordingly, it does not meet the definition of 'large commercial development' and thus the considerations under Section 3.3 of the Sustainable Buildings SEPP do not apply.



### 3.4 Other considerations for certain State significant development

- (1) *This section applies to non-residential development that is declared to be State significant development by State Environmental Planning Policy (Planning Systems) 2021, section 2.6(1) and specified in that policy, Schedule 1, sections 13–15.*
- (2) *In deciding whether to grant development consent to development to which this section applies, the consent authority must consider whether the development will minimise the use of on-site fossil fuels, as part of the goal of achieving net zero emissions in New South Wales by 2050.*

#### Comment

The proposal does not trigger the above provisions of part 3.4.

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

#### **Chapter 4 – Remediation of Land / 4.6 - Contamination and remediation to be considered in determining development application**

The property is not identified in Council's records as being potentially contaminated. Notwithstanding, the subject site has a history of industrial land uses i.e. mechanical repairs and as such given the history of the site, it is prudent to ensure the site is suitable for the proposed use.

The application was accompanied by the following documents.

- *Preliminary (Stage 1) and Detailed (Stage 2) Site Investigation prepared by JK Environments Pty Ltd dated 15 December 2021*
- *Preliminary (Stage 1) and Detailed (Stage 2) Site Investigation prepared by JK Environments Pty Ltd dated 13 September 2024*
- *Correspondence from EIAustralia Pty Ltd, dated 20 September 2024*

The above documents conclude that the site contains fill material including but not limited to hydrocarbons and asbestos. Given the aforementioned, the site is required to be remediated.

A Remediation Action Plan (RAP), prepared by EI Australia and dated 28 October 2024 was submitted by the applicant. The RAP confirms the existence of contaminated fill on site, including but not limited to asbestos, copper, nickel and zinc. A groundwater investigation also identified exceedances of arsenic, copper and zinc.

The RAP provides protocols for the appropriate management of contamination on site during proposed works. The proposal has been conditioned, to ensure that required remediation works occur during construction and that the site is remediated accordingly. As conditioned it can be concluded that the site is suitable for the proposed use and the proposal adheres to the requirements of the SEPP.

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

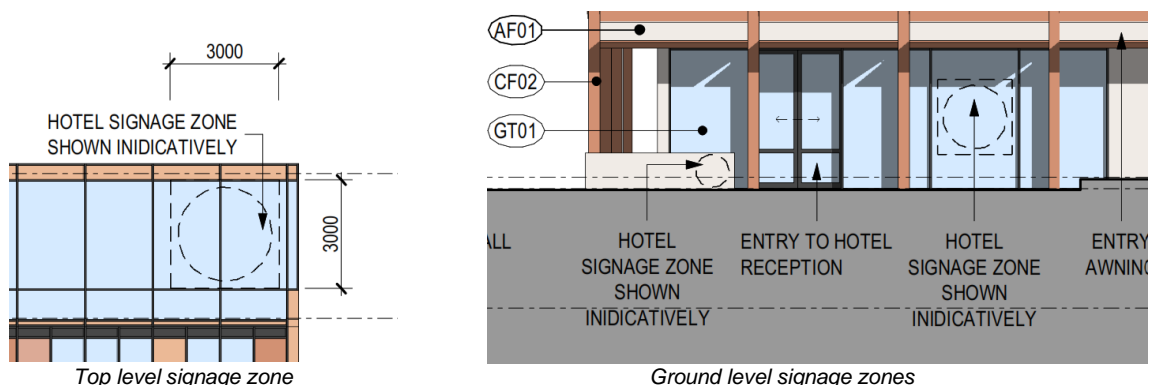
This policy applies to all signage that is visible from a public place except for a signage that is exempt development. All proposed signage is to be assessed against the relevant criteria within Schedule 5 of the SEPP. Additionally, consideration has been given to the following relevant sections of the SEPP.

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

An assessment of the aforementioned has been undertaken below.

The proposed development seeks consent for a signage zone upon the southern (Baxter Road) and eastern elevations of the development at the top most level. The signage zone is 3m in length and 3m in height and subject to future content details.

The following signage zones are proposed on site at ground level. Signage upon glazed windows to the hotel and adjoining the front property boundary to Baxter Road.



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

The proposal has been conditioned to ensure that future signage within such zones, including wording, content, colour etc is subject to a separate development consent.

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

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

### **Subdivision 2 Development adjacent to pipeline corridors**

#### **2.77 Determination of development applications**

The subject site is located approximately 790 metres north of the Australian Pipeline Authority's (APA) Moomba to Sydney Ethane pipeline at the closest point. As per the requirements of this section, the proposal was referred to the APA and Jemena, to ensure there is no direct impact upon the pipeline as a result of the proposal.

On 19/12/2023 Jemena responded raising no objection to the proposal. On 15/01/2024 APA responded raising no objection to the proposal. Given the aforementioned, the proposal is satisfactory with regards to the SEPP.

#### **2.98 - Development adjacent to Rail Corridors**

The subject site is positioned adjacent to the corridor protection zone for the Botany Goods Route Train Line. Accordingly, as required by the provisions of this part the application was referred to the Australian Rail Track Corporation (ARTC) for comment.

As at 31/01/2024 the ARTC responded raising nil objection, yet suggesting Council consider the proposal against the requirements of *Development Near Rail Corridors And Busy Roads – Interim Guideline* and whether noise sensitive uses are likely to be adversely affected by rail noise or vibration.

The aforementioned was noted to the applicant, specifically a request for a revised acoustic report was made given the submitted acoustic report was outdated and did not consider the duplication of the freight rail line which is within 40m of the front property boundary of the site.

Clarification was sought as to whether increased freight rail movements given the duplication of this freight rail line will result in adverse acoustic impacts upon the proposed development and whether recommended amelioration measures require updating.

The Botany Rail Duplication is expected to allow for increased freight rail movement on the Botany Line from the current average of about 20 trains per day (per direction) up to around 45 trains per day (per direction) by 2030, based on current and predicted operational requirements identified by ARTC.

A revised acoustic report prepared by Pulse White Noise Acoustics Pty Ltd dated 17 September 2024 was submitted following the above. The aforementioned report considered the potential acoustic and vibration implications of the duplication of the freight rail line.

The report recommended specific construction methods, materials and treatments in order to control noise and vibration impacts.

The proposal has been conditioned to ensure the recommendations made within the report are adhered to during construction. In this regard the proposal is satisfactory with respect of the SEPP.

### **Bayside Local Environmental Plan 2021**

The following table outlines the relevant sections of Bayside Local Environmental Plan 2021 ("the LEP") applicable to the proposal.

Section	Requirement	Proposal	Compliance
2.3 Zone and Objectives <i>E3 – Productivity Support</i>	<i>Prohibited in zone yet permissible via Schedule 1, provision 43,</i>	<i>"tourist &amp; visitor accommodation"</i> permissible with consent via Schedule 1 provision 43.	Yes
2.7 Demolition	Consent Required	Consent sought	Yes
4.3 Height of Buildings	44m	36.878m (42.878RL) to top of lift overrun	Yes
4.4 Floor Space Ratio	3:1 (3,306.6 sq/m max GFA)	3.73:1 (4,113.6sq/m GFA)	<b>No</b> – Refer to discussion below. <i>0.73:1 breach to FSR Standard. (807sq/m surplus GFA)</i>
4.6 Exceptions to development standards	To provide appropriate degree of flexibility in applying certain development standards to particular development. To achieve better outcomes for and from development by allowing flexibility in particular circumstances.	4.6 – Exception to Development Standards submitted.	Yes
6.1 Acid Sulfate	Class 4 - Works more	ASSMP prepared by EI	Yes – proposal



Section	Requirement	Proposal	Compliance
Soil Class 4	than 2m below natural ground surface. Acid Sulfate Soils Management Plan required.	Australia, dated 24 October 2024 submitted.	conditioned to adhere to recommendations of ASSMP.
6.2 Earthworks	Ensure earthworks will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of surrounding land.	The proposal involves excavation within the site to accommodate a single basement level.	Yes - Impact of works considered. Conditions imposed to ensure minimal adverse impact on amenity of surrounding properties, drainage patterns and soil stability.
6.3 Stormwater and Water Sensitive Urban Design	Minimise impacts of urban stormwater to adjoining properties, native bushland and receiving waters.	WSUD incorporated into development i.e. rainwater to be used for toilet flushing and landscape irrigation.	Yes – as conditioned.
6.7 Airspace Operations	The protect airspace around airports (15.24m AHD)	SACL authorize maximum height of 42.9AHD. Proposal is 42.878AHD to top of lift overrun.	Yes
6.8 Development in Areas subject to Aircraft Noise	Between 25 - 30 ANEF (2039) contours	Acoustic amelioration measures proposed in construction of development as per Acoustic Report prepared by Pulse White Noise Acoustics Pty Ltd dated 17 September 2024	Yes – as conditioned.
6.10 Design Excellence	Deliver the highest standard of sustainable architectural and urban design.	Design Excellence Panel certifies Design Excellence achieved	Yes
6.11 Essential Services	Essential services are or will be available	Existing sewer, water, electricity and gas connections are available.	Yes

### 2.3 - Zone

The subject site is zoned E3 – Productivity Support. The proposal is defined as "*tourist and visitor accommodation*" which whilst prohibited by the zoning table, is permissible given the additional use provisions of Schedule 1 section 43 of BLEP 2021 which states as follows.

#### *43 Use of certain land in Zones E1 and E3*

*(1) This clause applies to land in Zones E1 and E3, identified as "43" on the Additional Permitted Uses Map.*

*(2) Development for the purposes of tourist and visitor accommodation is permitted with development consent.*



Excerpt from additional permitted uses LEP map

The site is identified within the “*additional permitted uses map*”, circled in red in the excerpt above and thus the proposal is permissible with consent. The proposed development satisfies the objectives of the zone and is satisfactory in this regard.

#### 4.3 - Height of Buildings

A maximum height standard of 44m applies to the subject site. The proposal has a maximum height of 42.878m to top of lift overrun which complies with the provisions and objectives of this part.

#### 4.4 – Floor Space Ratio

An analysis of the permitted maximum FSR, compared to the proposed FSR is provided below.

Maximum Permitted	Proposed	Complies	Surplus
3:1 (3,306.6 sq/m max GFA)	3.73:1 (4,113.6sq/m GFA)	No	0.73:1 variation (807sq/m surplus GFA)

As can be seen above, the proposal does not comply with the provisions of the FSR standard. The applicant has submitted a 4.6 – Exception to Development Standards with respect to the proposed variation. The non-compliance is discussed in Clause 4.6 – Exceptions to Development Standards below.

#### 4.6 - Exceptions to Development Standards

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

- (3) *Development consent must not be granted to development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that;*
- (a) *compliance with the development standard is unreasonable or unnecessary in the circumstances, and*
  - (b) *there are sufficient environmental planning grounds to justify the contravention of the development standard.*

In considering the applicant’s submission, the consent authority must be satisfied that the applicants written request has satisfactorily addressed the aforementioned requirements.

Amendments to Clause 4.6 made on 1 November 2023, no longer require the applicant to demonstrate that the proposal is in the ‘*public interest*’, nor that the secretary’s concurrence is provided. (*i.e. consistent with the objectives of the standard and the zone*)

In this assessment, consideration has been given to *Wehbe v Pittwater Council [2007] NSWLEC 827 (Wehbe)* where the Court held that there are five (5) different ways, through which an applicant might establish that compliance with a development standard is

unreasonable or unnecessary. The five (5) ways of establishing that compliance is unreasonable or unnecessary are:

1. *The objectives of the development standard are achieved notwithstanding non-compliance with the standard; (First Test)*
2. *The underlying objectives or purpose is not relevant to the development with the consequence that compliance is unnecessary; (Second Test)*
3. *The objectives would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable; (Third Test)*
4. *The development standard has been virtually abandoned or destroyed by the Council's own actions in granted consents departing from the standard hence the standard is unreasonable and unnecessary; (Fourth Test) and*
5. *The zoning of the land is unreasonable or inappropriate. (Fifth Test)*

It is sufficient to demonstrate only one of these ways to satisfy Clause 4.6(3)(a).

Further to the above, consideration has been given to 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.*

In *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90*, Plain J observed that it is within the discretion of the consent authority to consider whether the environmental planning grounds relied on are particular to the circumstances of the proposed development on the particular site.

The applicant's Clause 4.6 contravention request argues that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and there are sufficient environmental planning grounds to support the non-compliant FSR.

The applicant's arguments 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 Arguments (summarised):**

- *Objectives of standard are achieved notwithstanding non compliance with the standard.*
- *The proposed built form with an FSR of 3.73:1 represents the result of an extensive design process involving consideration of the setback provisions and the potential visual and amenity impacts on the surrounding developments.*
- *The proposed FSR is adjusted to reflect the proposed built form and land use context of the immediate locality, which predominantly comprises hotel development of similar scale. The proposed FSR is a result of accommodating the floor space characteristics of the proposed hotel use.*
- *The proposal is consistent with the bulk and scale of the surrounding developments.*
- *The proposed FSR results from the establishment of a building envelope designed with*



- a direct response to the three adjacent hotel buildings to the north, west and east.
- The site forms part of a precinct that has been undergoing a transformation from low density mixed industrial uses to multilevel airport related tourist accommodation and commercial office development. The proposed development sits amongst three very similar development, adopting a built form and expression that has been designed in direct response to these developments. A reduction in FSR would not achieve any positive planning purpose. Specifically, a reduced height or increased setback would undermine, rather than reinforce the consistency with the emerging character and planning context.
- The proposal is 36.9m in height which complies with the maximum building height limit and provides a skyline consistent with that of existing and proposed tourist and visitor developments adjoining all sides. When viewed from the Airport collectively in the context of the existing and proposed adjacent buildings, the proposed building will provide a quality, contextual infill development to the urban edge of the Airport-Mascot District. It will not adversely affect the streetscape, skyline or landscape when viewed from the adjoining public roads.

#### Officer Comment

The assessing officer concurs with the arguments submitted by the Applicant which are summarized above. Given the existing nature of building forms in context of the site as referenced in the “Site and Locality” section of this report, the future desired character of the local area and the design of the proposal which is compatible with the aforementioned, it is deemed that the FSR standard in this instance is unreasonable and unnecessary.

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

#### Applicant Arguments (summarised):

- The proposed FSR results from the provision of an appropriate building envelope that is compliant with the 44m building height limit and sits below the Obstacle Limitation Surface (OLS) of 50-51m AHD.
- While not strictly adhering to all quantitative setback standards in the DCP, the proposed building envelope and the resulting FSR reflect the setback patterns of the character prescribed by surrounding development in the immediate context and therefore is generally consistent with the setback controls and objectives in the DCP.
- The proposed additional FSR will not have any adverse traffic impacts on the surrounding road network. Specifically, the Traffic Impact Assessment (**Appendix 4**) prepared by The Transport Planning Partnership indicates that the additional traffic generated by the proposal is expected to have a minimal impact on the road network in both morning and evening peak hours. The proposal also provides adequate carparking to service the proposed hotel and. Hence the proposal with the additional floor space is not anticipated to result in any adverse parking impacts.
- As demonstrated in the submitted Acoustic Report the proposal with additional floor space will not result in any unacceptable impacts on the acoustic amenity of the surrounding residential receivers. The increase in number of vehicles associated with the proposed floor space will also be barely perceptible to the surrounding residential receivers.
- The proposed additional floor space resulting from the building envelope will not create any overshadowing to surrounding residential receivers or public open space. There is no residential accommodation in the immediately vicinity of the site and the site is surrounded by hotel development of similar scale to the north, west and east and the Botany Goods Route Train Line to the south.
- The proposed FSR variation is consistent with the strategic directions for the locality as it

*optimises the quantum of employment floor space that can be delivered from the site whilst maintaining compliance with the building height standard and consistency with the key development controls under the DCP.*

- The proposed building envelope and resulting FSR is consistent with the emerging character and land use context of the surrounding area which is predominantly characterised by employment-generating developments such as tourist and visitor accommodation and commercial uses that support the operation of Sydney Airport. Restricting the FSR to 3:1 with a reduced height and increased setbacks would undermine the consistency of the proposal with the surrounding land use and planning context.*
- A strict compliance with the FSR standard would not result in any positive planning outcomes as the proposed building setbacks already provide an appropriate level of visual amenity to the surrounding hotel developments. Curtailing the floor space to strict compliance with the 3:1 FSR standard would therefore restrict the proposal from achieving the full development potential of the site and would undermine the optimal delivery of employment floor space, inhibiting the economic growth of the Mascot locality.*

Officer Comment:

The assessing officer concurs with the arguments submitted by the Applicant which are summarized above.

The bulk, scale and massing of the proposed development is consistent within the existing and future desired context of the locality. Reduction in the overall gross floor area would result in a built form which is incongruent with existing, approved and emerging building forms. Accordingly, there is considered to be sufficient environmental planning grounds in which to vary the FSR standard in this instance.

***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 adequately addressed the requisite matter in Clause 4.6(3), as required.

Given the justification provided above and the clause 4.6 as formally submitted by the Applicant, the consent authority can be satisfied that the applicant has appropriately addressed sections 3(a) and 3(b) of this provision.

It is reiterated that the development is appropriately designed, consistent with the existing and future desired built form context surrounding the site and on this basis and in context of arguments presented by the applicant, the FSR standard is deemed to be unreasonable and unnecessary in this instance. Accordingly, a variation to the FSR standard can be supported.

**6.1 – Acid Sulfate Soils**

Acid Sulfate Soils (ASS) – Class 4 affect the property by the LEP mapping. Development Consent is required as the proposal involves excavation works to facilitate a below ground rainwater tank, with a depth which exceeds 2m.

As excavation greater than 2m in depth is required for stormwater works on site, an Acid Sulfate Soils Management Plan (ASSMP) is required to be prepared and submitted to the consent authority as per the requirements of this part.

An ASSMP prepared by EI Australia, dated 24 October 2024 was submitted to Council. The

ASSMP recommends management measures on site in the instance where acid sulfate soils may be encountered.

The proposal has been conditioned to ensure the recommendations of the aforementioned report are implemented on site as required. As conditioned the proposal is consistent with the objectives and requirements of 6.1.

### 6.3 – Stormwater and WSUD

The development proposes an on-site detention system (OSD) on site and further seeks to connect the new stormwater system to an existing Council pit within Baxter Road. The proposal incorporates a rainwater tank, which has been conditioned to facilitate connection to all ground floor toilet flushing and for the purpose of external taps and landscape irrigation.

Stormwater plans were reviewed by Councils Development Engineer who had no objections to the proposal subject to conditions which have been included in the recommended conditions.

### 6.8 – Development in Areas subject to Aircraft Noise

The subject site is located within the 25-30 ANEF Contour, thus subject to potential adverse aircraft noise. The application was accompanied by an Acoustic Report prepared by Pulse White Noise Acoustics Pty Ltd dated 17 September 2024 which considers the potential impact of aircraft noise onto the proposed development.

The aforementioned report concludes that specific construction methods, materials and treatments are required to be incorporated, in order to mitigate against aircraft noise.

The proposal has been conditioned to ensure the recommendations made within the report are adhered to during construction. In this regard the proposal is satisfactory with the provisions of this part.

### 6.10 – Design Excellence

As per the provisions of this section, development consent must not be granted to development to which this section applies unless the consent authority considers that the development exhibits design excellence.

The Design Excellence section applies to the proposal and requires that the development deliver the highest standard of architectural, urban and landscape design. Pursuant to subsection 5(a), development consent must not be granted unless a design excellence panel reviews the development, and the consent authority takes into account the findings of the panel.

The proposed development was considered on two occasions by Councils Design Excellence Panel. At its final meeting on 31 October, the Design Excellence Panel made the following recommendation:

*“The Panel supports the application. The application achieves Design Excellence in accordance with Clause 6.10 of Bayside LEP 2021.”*

Amendments as noted by the panel were incorporated in the final rendition of plans where possible and the revised final scheme has been considered against the design excellence provisions below.

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

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

Comment

The design review panel was supportive of the proposed development on site, its massing, height, design, form, materiality and streetscape response. The design of the development is responsive to its orientation and locational context. The form and appearance of the development are consistent with the intended future desired character as per the relevant planning requirements for the site and context.

Whilst a variation to the FSR is sought, a built form of reduced height, bulk and scale would result in a development which is lower in overall height. i.e. 2 storeys, resulting in a 9 storey building. A lower building form in the subject context of buildings up to 14 storeys is incongruous with the future desired character of the area, given the maximum permissible building height which also applies to the site. i.e. 44m, with the proposal being 42.878m.

Landscape works along the periphery of the site and as conditioned within the adjoining public domain will improve the existing quality and amenity surrounding the site.

- c) *whether the development detrimentally impacts on view corridors,*

Comment

There are no significant identified views or vistas which are detrimentally impacted by the proposed development.

- d) *The requirements of any development control plan made by the Council and as in force at the commencement of this section*

Comment

An assessment of the proposal with the relevant requirements of Bayside DCP 2022 has been undertaken further in this report. The proposal is satisfactory in this regard.

- e) *How the development addresses the following matters:*

- i. *The suitability of the land for development,*
- ii. *Existing and proposed uses and use mix,*
- iii. *Heritage issues and streetscape constraints,*
- iv. *The relationship of the development with other development (existing or proposed) on the same site or on neighbouring sites in terms of separation, setbacks, amenity and urban form,*
- v. *Bulk, massing and modulation of buildings,*
- vi. *Street frontage heights,*
- vii. *Environmental impacts such as sustainable design, overshadowing, wind and reflectivity,*
- viii. *The achievement of the principles of ecologically sustainable development,*

- ix. *Pedestrian, cycle, vehicular and service access, circulation and requirements,*
- x. *The impact on and any proposed improvements to, the public domain,*
- xi. *The achieving appropriate interfaces at ground level between the building and the public domain,*
- xii. *Excellence and integration of landscape design.*

#### Comment

- i. The suitability of the site has been discussed and previously demonstrated within this assessment report.
- ii. The proposal seeks to remove an existing vehicle repair workshop from the site in order to accommodate the proposed development. The proposed development is permissible and satisfies the objectives of the zone as previously stated.
- iii. There are nil heritage issues associated with the proposal or site. The proposal appropriately responds to the existing and future desired streetscape character as envisaged by the relevant planning controls for the site.
- iv. The proposal was peer reviewed by Councils Design Review Panel. The development provides an appropriate and sympathetic response and building form to neighbouring buildings, proposing appropriate physical separation, a landscaped buffer to rear and common side boundaries and provides an appropriate relationship and interface with neighbouring sites.
- v. The revised bulk, massing and modulation of the proposal was supported by the Design Review Panel.
- vi. The proposal provides an appropriate street wall height of 11 storeys to Baxter Road, sufficient to provide human scale to the development and ensure consistency with building forms in context of the site.
- vii. Due consideration has been given to potential environmental impacts. The proposal does not generate adverse overshadowing impacts. Conditions have been imposed to minimize the reflectivity of materials and sustainability measures have been considered in 3.3 – Energy and Environmental Sustainability of this report.
- viii. Sustainability measures have been discussed within 3.3 – Energy and Environmental Sustainability of this report. The proposal is satisfactory with respect of the achievement of the principles of ecologically sustainable development.
- ix. Consideration has been given within the design of the development to pedestrian, bicycle and vehicular access points, circulation requirements and visibility to and from these areas. The proposal is satisfactory in this regard.
- x. The proposal has been conditioned to require public domain improvements along the frontage of the site to Baxter Road. A frontage works application is required post determination by conditions of consent as imposed. The aforementioned application is required to detail the undergrounding of overhead services, installation of lighting, landscaping and footpath works etc.
- xi. The proposal provides for an appropriate interface at ground level to Baxter Road



and the public domain.

- xii. Refer to discussion in 3.7 – Landscaping of this report.

The provisions of this section are deemed to be satisfied given the aforementioned and it has been demonstrated that design excellence has been achieved. The proposal is satisfactory in this regard.

### 6.11 – Essential Services

Services are generally available on site to facilitate to the proposed development. It is noted that as the Applicant is developing the adjoining western site at 131-137 Baxter Road, the coordination of electricity supply has been undertaken, in order to enable the proposed development to utilise the previously approved substation on this adjoining property. This has been confirmed in correspondence provided by the applicant, dated 7<sup>th</sup> August 2024.

Given the aforementioned, conditions of consent requiring the registration of easements on this adjoining lot to facilitate electricity supply to the development have been imposed.

Additionally, appropriate conditions have been recommended requiring approval or consultation with relevant utility providers with regard to any specific requirements for the provision of additional services on the site.

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

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

### **4.3 Section 4.15(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 following table outlines the relevant Clauses of the DCP applicable to the proposal.

<b>PART 3 – GENERAL DEVELOPMENT PROVISIONS</b>			
<b>Section</b>	<b>Requirement</b>	<b>Proposal</b>	<b>Complies</b>
3.1.3 - Crime Prevention through Environmental Design	Minimize potential risk and improve safety within and around the development and during the operation of the proposed use.	Appropriately safety and security measures proposed to be implemented on site. i.e. CCTV, lockable doors / windows, electronic keycards / fobs for internal access, signage, clear sightlines, external lighting, low level shrubs, ongoing maintenance etc.	Yes
3.3 - Energy and Environmental Sustainability – General	<u>Energy</u> 4.5 star NABARS rating <u>Water</u> 4 star NABARS rating	Required water and energy ratings achieved. - 4.5-star NABERS energy - 4-star NABERS water	Yes
3.5 - Transport, Parking and Access	1 x car space per 4 rooms <i>10% discount for non residential development in town centre</i> <i>(84 rooms = 19 spaces)</i>	21 spaces proposed, with 14 within 7 x dual level stackers.	Yes – 2 surplus spaces conditioned for removal. Proposal further conditioned to modify applicants selected stacker

			system to an automated shuffle system with void space to allow vehicles to be shuffled around using the void space. The conditioned stacker system facilitates improved accessibility to vehicles, avoids aisle widths being impeded by vehicles and in the event the valet system is removed in future, an automated system permits independent use for hotel patrons.
	1 x accessible space	1 x accessible car space at level 1	Yes
	1 x Shuttle bus service	A shuttle bus service is to be operated to transport guests and visitors to and from the airport and key destinations. The service will be operated on an as-needs basis, coordinated with guests, and would use a mini-van.	Yes - Conditioned
	1 x MRV space	1 x MRV space within loading dock at ground level on site with turn table to facilitate forward entry and exit.	Yes
	1 x Porte-cochere for taxi pick up and set-down  1 taxi pick-up and set-down space / 100 rooms (1 space required)	Nil taxi space or porte cochere on site. Pick up / drop off proposed to be provided upon adjoining western site which will also redeveloped for a hotel and is in the ownership of the applicant.	Yes – refer to discussion in 6.7.3 – Hotel and Motel Development (Porte Cochere)
3.6 - Accessibility	C1 - The siting, design, and construction of premises available to the public are to ensure an appropriate level of accessibility, so that all people can enter and use the premises.	Level and unimpeded access from public domain to hotel lobby, upper levels of hotel and communal spaces at ground level. Accessible car parking and hotel rooms also provided.	Yes
	C2. All development must comply with the following: - all Australian Standards relevant to accessibility. - the BCA access	Access Report prepared by Design Confidence dated November 2023 confirms compliance with relevant Australian Standards and BCA	Yes

	requirements; and Disability Discrimination Act 1992.	with respect of accessibility. Proposal has subsequently been conditioned accordingly.	
	C3 - Ensure all publicly accessible buildings provide a safe and continuous path of travel for people with impaired mobility.	Safe, level and continuous pathways provided from public domain and internally on site and within the development.	Yes
	C4 - A high standard of women's facilities, amenities for parents in both women's and men's toilets and amenities for people with disability (i.e. lift and change facilities) in buildings available to the public	Accessible facilities provided in hotel lobby at ground floor level.	Yes
	C7 - Access for pedestrians and vehicles are to be separated.	Separate pedestrian and vehicular access provided on site and to public domain.	Yes
3.7 - Landscaping	C2 - For all development the layout and design of driveways, pedestrian entries and services maximizes deep soil and retention of existing trees and planting of new trees.	Deep soil planting within the front setback and at the periphery of the site has been maximized.	Yes
	C7 - No less than 10% (110.2sq/m) of the development site shall be landscaped on all non-residential development sites.	198.5sq/m (18%) provided within front setback and at periphery of site	Yes
3.12 - Waste Minimization and Site Facilities	C1 - Consistent with Council's Waste Management DCP Technical Specification 2022 and all development applications are required to submit Waste Management Plan consistent with this Technical Specification	Waste Management Plan prepared by SALT, version F02 dated November 2023 is compliant with Council requirements.	Yes
	3.5.7(C1) – Waste collection on site via loading bay with appropriately sized waste collection areas.	MRV access provided on site to facilitate waste collection and disposal. MRV can enter and exit site in a forward direction given proposed turntable. Waste storage / collection areas are of appropriate size.	Yes
3.13 - Areas subject to Aircraft Noise and	C3 - Development on land within an ANEF	Acoustic report prepared by Pulse White Noise Acoustics	Yes

Airport airspace	affected area (ANEF 20+) is to be supported by a Noise Impact Assessment demonstrating indoor design sound levels in AS 2021—2000 can be achieved.	Pty Ltd dated 17 September 2024 was submitted which nominates required acoustic mitigation measures for the development.	
3.14 - Noise, Wind, Vibration and Air Quality	C2. Where development is in a location that is exposed to high levels of external noise, an acoustic report that demonstrates compliance with these objectives and controls, must be prepared by a suitably qualified and experienced professional and be submitted as part of a development application	Acoustic report prepared by Pulse White Noise Acoustics Pty Ltd dated 17 September 2024 was submitted which nominates required mitigation measures for the development with respect to freight rail, aircraft and traffic noise and vibration.	Yes
3.15 - Late Night Trading	C3 - Plan of Management to be submitted.	PoM submitted which confirms management measures to be implemented on site in order to minimize adverse potential operational impacts within locality. i.e. acoustic management, signage, hours of operation clarified, safety measures proposed etc.	Yes
3.18 - Utilities and Mechanical Plant	To ensure site facilities are incorporated as part of the overall development.	Services generally available. Substation to be shared with adjoining western neighbor as discussed in 6.11 – <i>Essential Services</i> of report.	Yes
<b>PART 6.7.3 – HOTEL AND MOTEL</b>			
6.7.3 – Hotel and Motel Development	C1 - The maximum stay permitted is 3 months.	Max 3 month stay specified in PoM	Yes
	C2 - A Plan of Management (POM) is required to be submitted.	PoM Submitted	Yes
	C3 - The main access point is to be located at the main street frontage of the property	Main access via Baxter Road	Yes
	C4 - Landscaping is to be used to soften & minimise noise impacts from courtyards, recreational areas and driveways on the	Front setback landscaping maximized. Landscaped buffer provided to side and rear boundaries of site.	Yes

	surrounding area		
	C5 - Include a Porte cochere at the front of the building to accommodate buses, taxis, and cars for drop off/pick up	No Porte cochere proposed.	<b>No</b> – refer to discussion below.
	C6 - Individual, secure, lockable storage facilities of a minimum capacity of 0.6 cubic m per person is to be provided to allow guests to individually store baggage and travel items within the sleeping room.	Sufficient internal storage within rooms.	Yes
	C7 - Where rooms include a small kitchenette, provide adequate cupboards and shelves.	Adequate kitchenette and associated cupboards provided	Yes
<b>PART 7.7 – MASCOT WEST EMPLOYMENT LANDS</b>			
7.7 - Mascot West Employment Land	C6 - Development over 3 storeys in height will be assessed by the Design Review Panel.	Proposal peer reviewed by Panel refer to discussion in 6.10 – Design Excellence	Yes
	C8 - Workplace Travel Plan is to be lodged with any DA	Traffic Report prepared by TTPP transport planning, dated 13 September 2024 incorporates a workplace travel plan which seeks to promote sustainable transport principles. i.e. public transport, cycling etc.	Yes
	C10 - Any new development proposals along the alignment of the Sydenham-Botany Goods railway line must be referred to Australian Rail Track Corporation	The proposal was referred to ARTC whom raised no objection.	Yes
	C12 - Submission of a Risk Management Plan to address potential risks related to coastal sea levels (projected to increase above Australian Height Datum by 40cm by 2050 and by 90cm by 2100	Risk Management Plan prepared by TekCivil dated 20 September 2024. <i>Note – site is not flood affected.</i>	Yes
	C13 - Development must comply with Sydney Airport's regulations with regard to safety, lighting and height of buildings	Proposal referred to Sydney Airport who supported a maximum height of 42.9m AHD.	Yes



### 6.7.3 – Hotel and Motel Development (Porte Cochere)

As previously stated, the Applicant is currently developing the adjoining site to the west at 133-137 Baxter Road. This property benefits from an existing development consent (DA-2021/450) approved in September 2022, for the demolition of existing structures and construction of a twelve (12) storey hotel.

[illegible]

The proposal was revised at the recommendation of the Design Excellence Panel to delete the Porte cochere at the front of the building, limit vehicular access to a 6m driveway at the eastern side of the site and rely upon / share previously approved coach parking and pick up / drop off areas within the adjoining western site.

The proposal, subject to conditions requiring the registration of relevant easements to facilitate access, is satisfactory with respect of the objectives of part 6.7.3 – Hotel and Motel, which seek to ensure development provide ‘adequate facilities to cater for safe, comfortable, and convenient all weather transfers between the accommodation and means of arrival.’

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

### **Part 3.1.3 – Crime Prevention through Environmental Design**

The provisions of this section seek to minimize potential risk and improve safety within and around the development and during the operation of the proposed use.

The proposal seeks to install CCTV cameras / signage, lockable doors and windows, electronic keycards / fobs for internal access, signage, clear sightlines, external lighting, low level shrubs, ongoing maintenance etc. Pedestrian access and egress is via secure electronic access to the primary site frontage to Baxter Road.

Landscaping as proposed has been selected to maximize passive surveillance within publicly accessible areas externally of the development. Pedestrian entry to the development is via a prominently identifiable and secure entry point, with clear lines of sight internally to the public domain.

A Plan of Management details operational measures with respect of the ongoing operation of the premises. Further detail with regards to the Plan of Management is discussed below.

Noting the above and via the imposition of conditions of consent, it is anticipated that safety and security in and around the development has been maximized. The proposal is satisfactory with respect of this section.

### **Part 3.3 - Energy and Environmental Sustainability**

Refer to discussion previously in this report within State Environmental Planning Policy (Sustainable Buildings) 2022. The proposal is satisfactory with respect of sustainability initiatives as proposed on site.

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

A review of car parking, traffic, maneuverability and access requirements of the proposed development was undertaken by Councils Development Engineer and found to be satisfactory.

Traffic generation likely to arise from the proposed development is minimal given the nature of the proposed use, is capable of being accommodated within the surrounding road network and the proposal is thus unlikely to result in adverse traffic issues. The proposal is satisfactory in this regard.

### **Part 3.6 – Accessibility and Adaptable Design**

The objectives of this section seek to ensure a development which is inclusive and accessible for everyone. Plans indicate that level, safe, unimpeded and equitable access is provided to, within and throughout the development from ground to the highest level of the development.

Equitable access for persons with a disability / mobility impairment is achieved to pedestrian and vehicular entry / exit points to the development, via the incorporation of graded walkways and lift access. Accessible car parking spaces in close proximity to lifts and accessible amenities are also provided within the development to accommodate future users.

The proposal has been conditioned to ensure compliance with the relevant requirements of the Access to Premises Standards and the Building Code of Australia, in order to ensure compliance with the Disability Discrimination Act. The proposal is satisfactory with respect of this part.

### **Part 3.7 – Landscaping**

Councils Landscape Architect reviewed the submitted landscaped plan for the site, in conjunction with the Design Review Panel. A minimum of 10% (110.2sq/m) of the site area be provided as deep soil landscaping in order to increase canopy cover, assist in drainage and respond the existing surrounding urban context.

Plans submitted with the application indicate that a total of 198.5sq/m (18%) is provided on site as deep soil landscaped area. Such areas are provided within the front setback of the site to Baxter Road, along both side boundaries of the development and along the rear common boundary.

The footprint of the development is designed to maximise landscaping opportunities on site. As designed, the proposal will facilitate the growth of proposed canopy trees, shrubs and ground covers to improve existing visual amenity and integrate the development with the public domain and streetscape and achieve a development which is consistent with the desired future character of the area, as envisaged by the DCP. The proposal is satisfactory with respect of landscape provision on site.

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

A Waste Management Plan submitted with the application, prepared by Salt, dated 09/11/2023 confirms the following bin quantities and collection frequencies for the proposed development.

- Garbage - 5 x 1,100L bins collected 3 x weekly.
- Co-mingled Recycling - 4 x 1,100L MGBs collected 1 x weekly.
- Organic - 3 x 240L bins collected daily
- 1sq/m hard waste area to be collected on an as required basis

A private waste collection contractor will be engaged to service bins per an agreed schedule. On the day of service the loading bay will be utilized to facilitate waste collection.

Proposed waste management measures were reviewed by Councils Waste Management Officer and considered satisfactory. The proposal has been conditioned accordingly.

### **Part 3.13 – Areas subject to Aircraft Noise and Airport Airspace**

The proposal does not intrude into the Sydney Airport OLS and PANS-OPS. The proposal was referred Sydney Airport Corporation, who raised no objections subject to a maximum height of maximum height of 42.9AHD. It is reiterated that the proposal has a maximum height of 42.878AHD to the top of the lift overrun.

The proposed use is sensitive to aircraft noise and is within the ANEF 20+ noise contour. This has been discussed in response to section 6.8 of the LEP previously.

### **Part 3.18 - Utilities and Mechanical Plant**

Appropriate site facilities are provided. Refer to discussion previously in 6.11 – Essential Services of this report.

### **Section 7.11 - Development Contributions**

The proposed development will increase demand for public amenities within the Mascot Precinct. In accordance with Council's contributions plan, the proposal has been conditioned to require the payment of relevant s7.11 contributions for a total of \$43,643.08.

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

There are no executed or draft planning agreements relevant to the site or proposal.

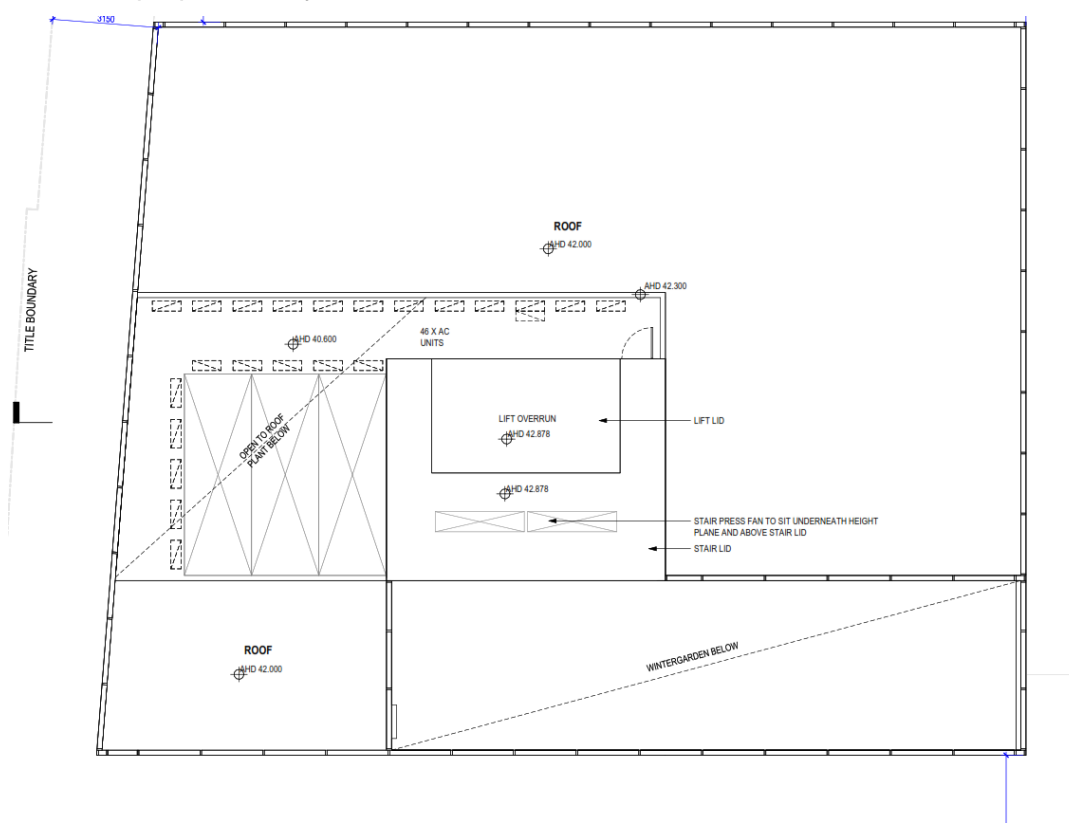
#### 4.5 Section 4.15(1)(a)(iv) - Provisions of Regulations

The proposal was accompanied by a BCA and Access Capability Statement prepared by Design Confidence, dated November 2023, which confirms the proposal is the proposed development is capable of complying with the relevant performance requirements of the BCA. All relevant provisions of the Regulations have been taken into account in the assessment of this proposal.

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

##### Plant / Equipment

Plans indicate the provision of 46 x air conditioning units at rooftop level, such units are recessed back from the Baxter Road façade and located centrally at rooftop level, thus will not be visible from the public domain. on site. Access to the rooftop level will be for maintenance purposes only.



*Roof Plan*

##### Plan of Management

A Plan of Management (PoM) is a document in progress which provides assurance to local residents that the general operation of the use of the site can and will be appropriately managed.

The application was submitted with a PoM dated 13/09/2024 and prepared by Boston Atlas Hotels. The PoM details the operation and management of the proposed development, including but not limited to, hours of operation, staffing, capacity, maximum period of stay, access, shuttle bus service, waste management, security etc.

On 1 November 2005, the Land & Environment Court in its approval of a commercial / residential development in 'NSWLEC 315, Renaldo Plus 3 Pty Ltd v Hurstville City Council' established eight Planning Principles for consideration as part of an assessment of the appropriateness and adequacy of a Plan of Management. The submitted Management Plan has been assessed against the eight planning principles as follows.

1. *Do the requirements in the Management Plan relate to the proposed use and complement any conditions of approval?*

Comment

The requirements stipulated in the management plan relate to the proposed use.

2. *Do the requirements in the Management Plan require people to act in a manner that would be unlikely or unreasonable in the circumstances of the case?*

Comment

The requirements of the management plan do not require staff, patrons or visitors to the proposed development to act in a manner which is unreasonable in order to facilitate an acceptable operational outcome.

3. *Can the source of any breaches of the Management Plan be readily identified to allow for any enforcement action?*

Comment

The Management Plan incorporates various sections dealing with a range of specific operational matters. Accordingly, the source of potential breaches of the management plan can be identified to allow for enforcement action should this be required.

4. *Do the requirements in the Management Plan require absolute compliance to achieve an acceptable outcome?*

Comment

The requirements of the management plan do not require absolute compliance to ensure an acceptable outcome. The development has been designed in a manner of which to mitigate potential adverse traffic, acoustic and other operational concerns.

5. *Can the people the subject of the Management Plan be reasonably expected to know of its requirements?*

Comment

The Management Plan does not clarify where the document will be publicly accessible nor how it can be obtained if sought by patrons, neighbors or other interested parties.

6. *Is the Management Plan to be enforced as a condition of consent?*

Comment

Conditions have been imposed which require that the proposed development operate in adherence with the Plan of Management.

7. *Does the Management Plan contain complaint management procedures?*

Comment

The submitted management plan incorporates a complaints recording and handling process in section 3.11 – Complaints Handling.

8. *Is there a procedure for updating and changing the Management Plan, including the advertising of any changes?*



### Comment

The Management Plan stipulates that it will be reviewed every 2 years, however does not detail a procedure for on going review, future updates, revisions and/or amendments, nor the advertisement of any changes.

Based on the assessment above, the Plan of Management in its current form is inconsistent with the principles adopted by the Land and Environment Court which are appropriate and relevant to apply to the subject application.

Given the above the proposal has been conditioned to require that the Plan of Management be amended and submitted to Council for approval prior to the issue of any Occupation Certificate. The revised Plan of Management shall specifically address the following matters.

- a. Clarification as to where the Plan of Management will be publicly accessible, how it can be obtained if sought by patrons, neighbors or other interested parties.
- b. Clarification of procedures with respect of the review, future update, revision and/or amendment of the Plan of Management and the advertisement of any changes to affected parties and Council.

### Construction Impacts

Temporary construction-related impacts do affect amenity and this is partially inevitable from demolition, excavation and constructing new works. However, these are not anticipated to unduly affect surrounding businesses or residents, with some localized impacts of relatively likely short duration. These construction-related impacts are able to be addressed by standard conditions of consent, as recommended, to reasonably manage and mitigate impacts, while allowing rational and orderly construction.

#### **4.7 Section 4.15(1)(c) - Suitability of the Site**

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. There are no known major physical constraints, environmental impacts, natural hazards or exceptional circumstances that would hinder the suitability of the site for the proposed development. Appropriate conditions of consent are proposed to further manage and mitigate impacts on neighbouring properties and the environment. Subject to the recommended conditions, the proposal is suitable for the site.

#### **4.8 Section 4.15(1)(d) - Public Submissions**

The development has been notified in accordance with the DCP, between 17 January to 16 February 2024. Nil submissions were received.

#### **4.9 Section 4.15(1)(e) - Public Interest**

The proposal has been assessed against the relevant planning instruments and controls applying to the site, also having regard to the applicable objectives of the controls. As demonstrated in this assessment of the development application, the proposal is suitable for the site and has acceptable environmental impacts, subject to recommended conditions. Impacts on adjoining properties have been considered and addressed. As such, granting approval to the proposed development will be in the public interest, subject to the recommended conditions which help manage and mitigate environmental or potential environmental impacts.

## 5. REFERRALS AND SUBMISSIONS

### 5.1 Agency Referrals and Concurrence

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

Agency	Concurrence / Referral Trigger	Comments	Resolved
<b>Referral/Consultation Agencies</b>			
Australian Rail Track Corporation	<ul style="list-style-type: none"> <li>State Environmental Planning Policy (Transport &amp; Infrastructure) 2021</li> <li>2.98 - Development adjacent to rail corridors</li> </ul>	Recommended that Council ensure development is acoustically ameliorated given duplication in freight rail line and increase in number of freight trains over time i.e. 20 to 40 by 2030	Yes
Sydney Airport Corporation Limited	Site located within obstacle limitation surface area.	Concurrence granted to maximum height of 42.9AHD. Proposal is 42.878AHD to top of lift overrun.	Yes
Ausgrid	Referral	Nil objections raised	Yes
Sydney Water	<ul style="list-style-type: none"> <li>Sydney Water Act 1994</li> <li>Section 78 - Consent authority to notify Corporation of development and building applications</li> </ul>	Nil objections raised	Yes
Jemena	<ul style="list-style-type: none"> <li>State Environmental Planning Policy (Transport &amp; Infrastructure) 2021</li> <li>Subdivision 2 Development adjacent to pipeline corridors</li> <li>2.77 Determination of development applications</li> </ul>	Nil objections raised	Yes
NSW Police	Referral	Standard crime prevention conditions to be imposed.	Yes
Australian Pipeline Authority	<ul style="list-style-type: none"> <li>State Environmental Planning Policy (Transport &amp; Infrastructure) 2021</li> <li>Subdivision 2 Development adjacent to pipeline corridors</li> <li>2.77 Determination of development applications</li> </ul>	Nil objections raised	Yes

## 5.2 Council Referrals

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

Officer	Comments	Resolved
Design Excellence Panel	Supported.	Yes
Development Engineer	Supported subject to standard conditions.	Yes
Landscape	Supported subject to standard conditions.	Yes
Health	Supported subject to standard conditions.	Yes
Waste	Supported subject to standard conditions.	Yes
Contributions	Supported subject to standard conditions.	Yes
Environmental Scientist	Supported subject to standard conditions.	Yes

## 6. CONCLUSION

The proposed development at 125-131 Baxter Road, MASCOT NSW 2020 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 is a permissible land use within the zone with development consent. In response to the public notification, nil submissions were received. The proposal was peer reviewed by the Design Excellence Panel and it was concurred that the intent of the design excellence provisions of Bayside LEP have been achieved. The proposal is supported for the following main reasons:

- The proposal is permissible within the zone with development consent and satisfies the zone objectives.
- The proposal achieves and demonstrates design excellence as required by requirements of Clause 6.10 of the BLEP 2021 and was supported by the Design Excellence Panel.
- The proposed development complies with the relevant planning instruments, with a variation to the FSR standard deemed acceptable, having regard to the justification provided within this report, specifically the existing and future desired built form context surrounding the site.
- The proposal is of an appropriate height, bulk, scale and form for the site and is consistent with the emerging desired future character of the area as envisaged by Bayside DCP 2022.
- The proposed development is a suitable use for the subject site and its approval is in the public interest.

## 7. RECCOMENDATION

- a) That the Sydney Eastern City Regional Planning Panel, exercising the functions of the Council as the consent authority is satisfied that the applicant's written request to contravene Section 4.4 – Floor Space Ratio of the Bayside Local Environmental Plan 2021 has adequately addressed the matters required to be demonstrated by Section 4.6 of that Plan and the proposed development is in the public interest as it is consistent with the objectives of the standard and zone.
- b) That the Sydney Eastern City Regional 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*, determine Development Application DA-2023/345 for the demolition of existing structures and construction of an eleven (11) storey building comprising tourist and visitor accommodation, single level of above ground car parking incorporating car stackers, associated landscaping and signage zones at 125-131 Baxter Road, MASCOT NSW 2020 by GRANTING CONSENT subject to the recommended conditions of consent attached to this report.

The following attachments are provided:

- Attachment A: Draft Conditions of consent
- Attachment B: Architectural Plans
- Attachment C: Landscape Plans
- Attachment D: Clause 4.6 Request