

COUNCIL ASSESSMENT REPORT

SYDNEY EASTERN CITY PLANNING PANEL

PANEL REFERENCE & DA NUMBER	PPSSEC-306 DA-2024/10 PAN-401918
PROPOSAL	Construction of a thirteen (13) storey co-living development, restricted to student accommodation, comprising 305 rooms and associated communal areas.
ADDRESS	13 A Church Avenue MASCOT NSW 2020 Lot 1 DP 547700
APPLICANT	The Trustee for Iglu Property Trust No. 216
OWNER	The Trustee for Iglu Property Trust No. 216
DA LODGEMENT DATE	23 January 2024
APPLICATION TYPE	Development Application
REGIONALLY SIGNIFICANT CRITERIA	Section 2.19(1) and Section 2 of Schedule 6 of State Environmental Planning Policy (Planning Systems) 2021 declares the proposal regionally significant development as general development with a capital investment value (CIV) over \$30 million.
CIV	\$ 64,064,474 (excluding GST)
CLAUSE 4.6 REQUESTS	FSR - Section 4.4 of the Bayside Local Environmental Plan 2021; and Parking – Section 68 of the State Environmental Planning Policy (Housing) 2021.
KEY SEPP/LEP	<ul style="list-style-type: none"> • State Environmental Planning Policy (Planning Systems) 2021 • State Environmental Planning Policy (Resilience and Hazards) 2021 • State Environmental Planning Policy (Biodiversity and Conservation) 2021 • State Environmental Planning Policy (Sustainable Buildings) 2022 • State Environmental Planning Policy (Transport and Infrastructure) 2021

	<ul style="list-style-type: none"> • State Environmental Planning Policy (Housing) 2021; and • Bayside Local Environmental Plan 2021
TOTAL & SUBMISSIONS ISSUES SUBMISSIONS	<p>Twelve (12) in total</p> <ul style="list-style-type: none"> • Eight (8) – first notification • Four (4)- second notification
DOCUMENTS SUBMITTED FOR CONSIDERATION	<ul style="list-style-type: none"> • Draft Conditions • Architectural Drawings • Shadow Studies • Landscape Plans • Stormwater Management Plan Report • Survey Plans • Updated Statement of Environmental Effects • RFI Response • FSR - Clause 4.6 Variation • FSR - Clause 4 Parking Variation • Copy of letter of Offer- VPA • Operational Plan of Management • Access Report • Acid Sulfate Soil Management Plan • Acoustic Report • Airspace Protection Form • Arborist Report • BCA Assessment Report • Construction, Traffic and Waste Management Plan • Cost Summary Report • Detailed Site Investigation • ESD Report • Fire Engineering Statement • Flood Advice Letter • Flood Emergency Management Plan • Geotechnical Assessment Report • Green Travel Plan • Letter of Support - Land contamination and remediation • Pedestrian Wind Study • Social Impact Statement • Stormwater Management Letter • Substation Correspondence • Sustainability Report

	<ul style="list-style-type: none"> • Transport Impact Assessment • Waste Management Plan • Ausgrid letter of consent • Sydney Airports - Notice to Proponent Controlled Activity Referred to • Sydney Airports - Referral to Secretary for Determination Sydney Water letter of consent
RECOMMENDATION	Approval
DRAFT CONDITIONS TO APPLICANT	Yes
SCHEDULED MEETING DATE	3 December 2024
PREPARED BY	Felicity Eberhart – Senior Development Assessment Planner
DATE OF REPORT	3 December 2024

1. EXECUTIVE SUMMARY

Council received Development Application No. DA-2024/10 on 23 January 2024 seeking consent for the construction of a thirteen (13) storey co-living development comprising 305 rooms and associated communal areas.

The Development Application is required to be referred to the Sydney Eastern City Planning Panel (SECPP) pursuant to Schedule 7 of the State Environmental Planning Policy (State and Regional Development) 2011 as the Capital Investment Value of the proposal is greater than \$30,000,000 and can be considered under the transitional arrangements in the relevant EPI.

The development application underwent two rounds of public notification. The first round was carried out between 1 February to 15 February 2024 and eight (8) submissions were received. The second round of notification occurred between 9 and 23 August 2023, four (4) submissions were received. All issues raised in the submissions, both in Round 1 and 2 have been assessed and considered in the report below.

The key issues associated with the proposal included:

1. Floor Space Ratio – Under the BLEP 2021 the site's permissible FSR is 3.2:1, however a 10% bonus can also be provided as the purposes of the entire building is for co-living under the Housing SEPP. Thus, a FSR of 3.52:1 (7064.64sqm) is permitted by virtue of Section 2(a) (ii) the Housing SEPP. The subject application proposes a maximum Floor Space Ratio of 4.06:1 or a total GFA of 8,154sqm. The applicant is seeking to contravene the Floor Space Ratio development standard by 1089.54 sqm which equates to a 15.44%. It is noted that there is an existing and active consent on site (DA-2013/10056/D) with an approved FSR of 4.18:1 (total GFA of 8,381.96sqm). The requested version statement will result in a reduction of 227.96sqm. Further assessment is carried out in the report below.

2. Car parking and motorbike parking - The development generates a total of 61 car spaces and 87 motorbike spaces. However, none have been provided. The applicant has submitted a Clause 4.6 variation to justify this non-compliance, along with a green travel plan and traffic report to support the lack of off-street parking. This development is user-specific and does not fall under any distinct controls within the Bayside Development Control Plan. It has been characterised as 'Co-Living' and assessed using the Housing SEPP 2021 parking rates. The operators have several similar developments across Sydney, including one directly to the rear, which also lacks parking for their student occupants. The site is located within 200 Metres of Mascot Train Station, which the applicant has indicated will be the primary mode of transportation for residents traveling to and from tertiary establishments. Further assessment is provided in the report below.
3. Setbacks – The development proposes variations to the side and rear setback controls that are applicable to the site. Setbacks for Co-living developments, higher than three stories, are derived from separation distances within the Apartment Design Guide. Further assessment is carried out in the report below.
4. Design Excellence - The development application is subject to design excellence. It was presented to the Design Review Panel (DRP) on 7 March 2024. The panel concluded that the design exhibits a high standard of architectural design, materials, and detailing. They also noted that the form, arrangement, and external appearance will enhance the quality and amenity of the public domain.
5. Road widening - The development application is subject to road widening requirements along Church Avenue, as specified in Section 7.8.5 of the Bayside Development Control Plan 2022. In this case, land must be dedicated to the Council by measuring 12 Metres from the centre line of the existing road.

In summary, the proposed development application has been assessed against the relevant controls and on balance, Council is generally supportive of the proposal subject to the conditions of consent in the attached Schedule.

2. RECOMMENDATION

In view of the below comments, it is RECOMMENDED that the Sydney Eastern City Planning Panel (SECPP), as the Consent Authority, resolve to:

- a) That the Sydney Eastern City Planning Panel, exercising the functions of the Council as the consent authority pursuant to s4.16 of the Environmental Planning and Assessment Act 1979 approves a variation to the car parking prescribed by Clause 68(2)(e) of State Environmental Planning Policy (Housing) 2021, as it is satisfied that the applicants' request has adequately addressed the matters required to be demonstrated by Clause 4.6 of that Plan.
- b) That the Sydney Eastern City Planning Panel, exercising the functions of the Council as the consent authority pursuant to s4.16 of the Environmental Planning and Assessment Act 1979 approves a variation to the Floor Space Ratio prescribed by Section 4.4 of the Bayside Local Environmental Plan 2021 as it is satisfied that the applicants' request has adequately addressed the matters required to be demonstrated by Clause 4.6 of that Plan.

- c) Grant approval of Development Application DA-2024/10 for the construction of a thirteen (13) storey co-living development comprising 305 rooms and associated communal areas at 13A Church Avenue Mascot, subject to the conditions of consent in the attached Schedule; and
- d) That objectors be advised of the Sydney Eastern City Planning Panel decision.

The reasons for the recommendation are as follows:

- The proposal is acceptable when considered against all relevant State Environmental Planning Policies, in particular the SEPP (Housing) 2021.
- The proposed variation to FSR has been assessed in accordance with Clause 4.6 of Bayside Local Environmental Plan 2021 and is considered acceptable subject to design changes and/or conditions of consent.
- The scale and design of the proposal is suitable for the location and is compatible with the desired future character of the locality. The development, subject to conditions, is consistent with the objectives of Bayside Development Control Plan 2022 and generally consistent with the relevant requirements of Bayside Development Control Plan 2022.
- The use is suitable to the site and area. The lack of parking for student accommodation has been adequately justified.

3. THE SITE AND LOCALITY

3.1 The Site

The subject site is legally identified as Lot 1 in DP 547700 and is commonly known as 13A Church Avenue, Mascot. Located on the southern side of Church Avenue, the site is rectangular in shape and currently vacant. It features a primary frontage of approximately 33 Metres, a western side boundary of 61 Metres along a service lane, and an eastern side boundary of 61 Metres adjacent to an eight-storey residential flat building. The total site area is 2007 square Metres.

Situated in the Mascot Town Centre, the site is approximately 300 Metres from the Mascot Station Transport Interchange. It is bounded by Church Avenue to the north, O’Riordan Street to the east, John Street to the south, and Bourke Street to the west.

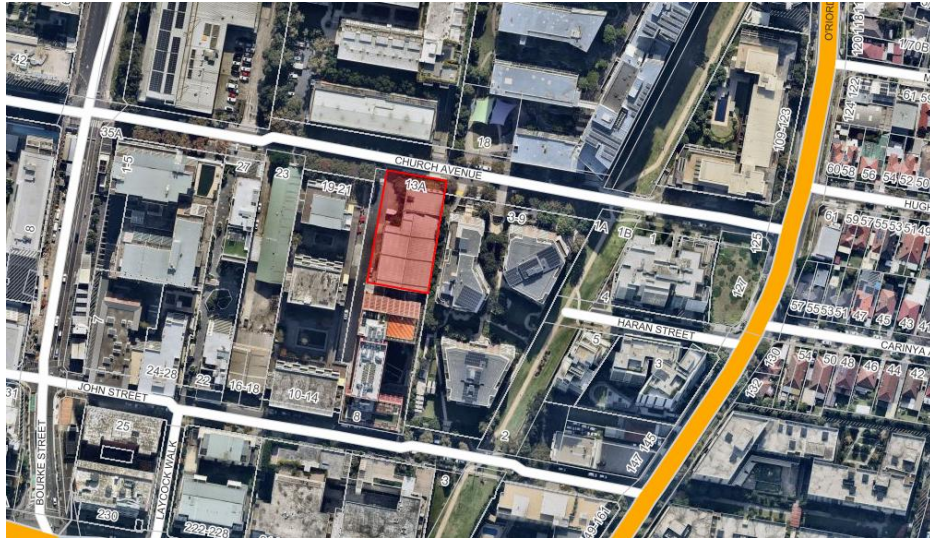


Figure 1: Aerial of subject site

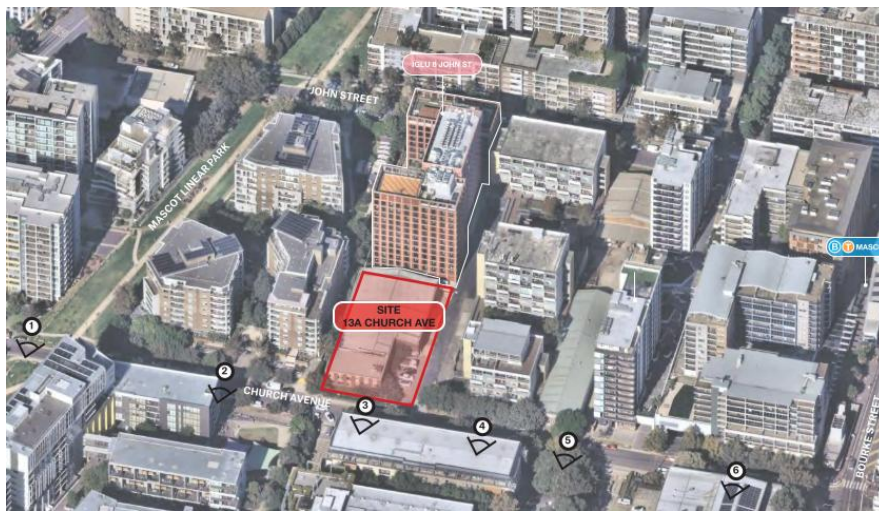


Figure 2: Context plan.

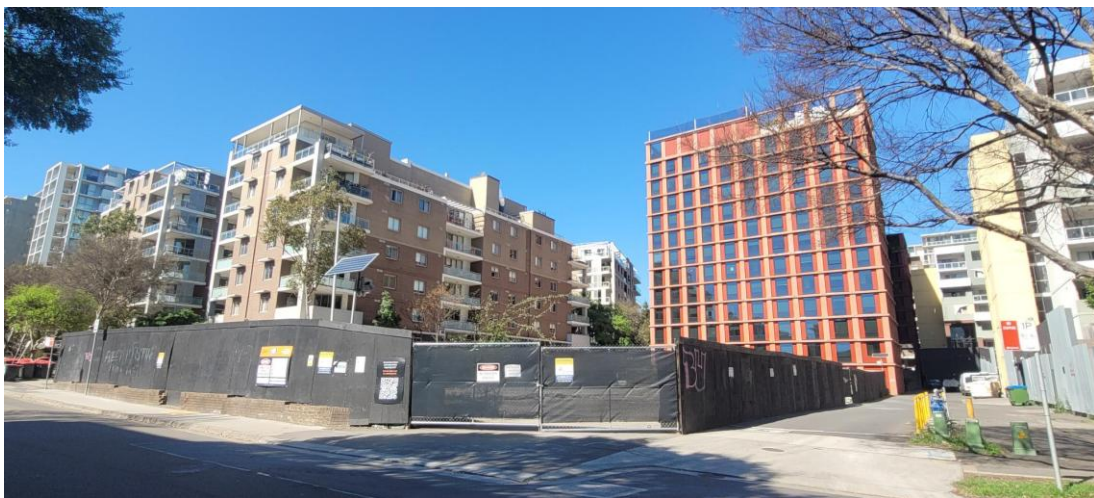


Figure 3: Subject site when viewed from Church Ave



Figure 4: Subject site looking to eastern the southern neighbours



Figure 5: Subject site looking to eastern the southern neighbours



Figure 6: Subject site when looking north from service lane

3.2 The Locality

Development surrounding the site within its immediate vicinity is characterised by a mix of uses including residential developments. Church Avenue exhibits a street wall height of 8 to 13 comprising of residential apartment and mixed-use development. Directly to the east is an eight-storey residential apartment complex, followed by a linear park extending up to Gardeners Road. To the west, there is a 10.2-Metre easement, adjacent to two separate apartment buildings—one with seven stories and the other with eight stories. The southern boundary is shared with an existing 12-storey student housing development owned and operated by Iglu (Iglu 1), the applicant for this application.



Figure 7: Streetscape illustrating mixed heights in the streetscape.



Figure 8: 27 and 23 Church Avenue

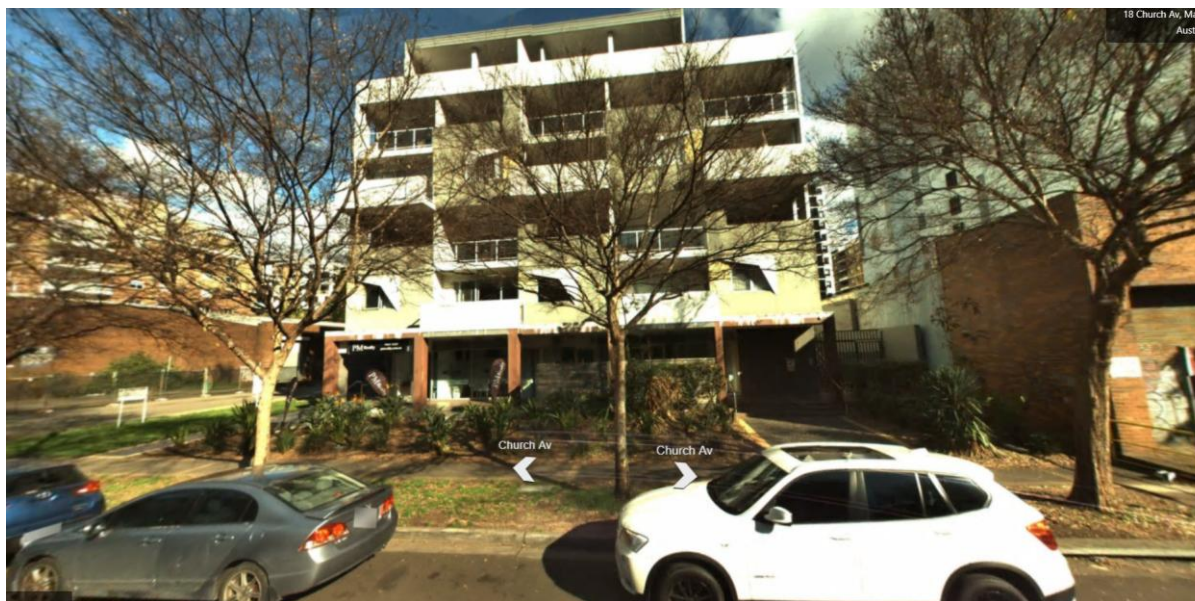


Figure 9: 19 Church Avenue



Figure 10: Existing Easement between 19- 21 Church Avenue



Figure 11: Vehicular Access to 19-21 Church Avenue via the existing easement

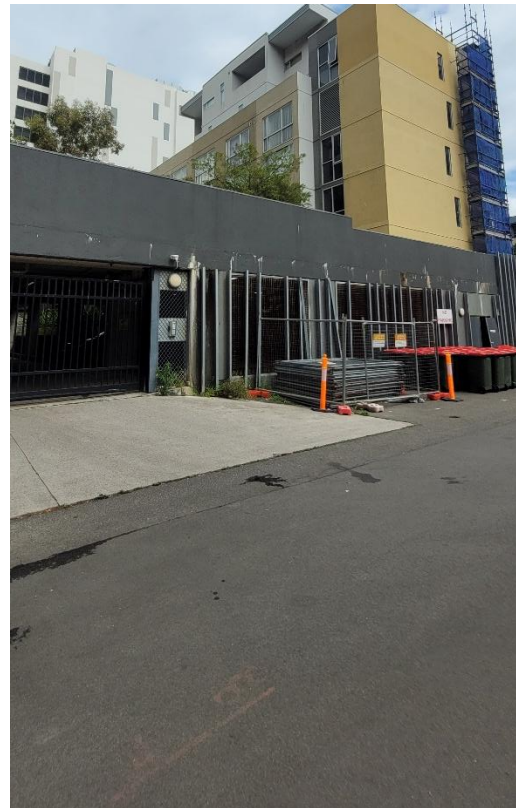


Figure 12 and 13 19- 21: Church Avenue from easement



Figure 14 and 15: 19- 21 Church Avenue from easement



Figure 16: 3-9 Church Avenue



Figure 17: 1 Church Avenue



Figure 18: 635 Gardeners Road (development located across from the subject site)

The site is located in close proximity to both Mascot Town Centre and 290m east of the Mascot Station Transport Interchange. It is also located approximately 2km north of the Sydney Airport Domestic Terminal and approximately 2km southwest of Green Square Town Centre. The site is within a short bus, train or cycle ride of leading educational institutions such as the Sydney University, University of Technology Sydney, and the Sydney CBD. Mascot is all also well serviced by Sydney buses which accommodate journeys to the eastern suburbs and beaches.

4. THE PROPOSAL AND BACKGROUND

4.1 The Proposal

The proposal seeks consent for Construction of a thirteen (13) storey co-living development comprising 305 rooms and associated communal areas. The development is essentially an extension of the Iglu 1 proposal, noting that there is a connection between the two buildings at the ground floor level.

Specifically, the proposal involves:

- Construction of a thirteen (13) storey co-living development.

Ground Floor

Pedestrian access to the site is from Church Avenue.

The ground floor will comprise of café, arrival lobby, admin offices, communal indoor facilities including games area, general lounges, gym, kitchen and bicycle storage area with capacity for twenty-nine (29) spaces for bike storage.

Back of house services including substation, fire tank, hydrant pump, waste storage.

The development will connect to the existing Iglu 1 proposal, located at 13B Church Avenue & 6-8 John Street, via sharing the loading bay/waste facilities as well as the "Wellness Centre".

Level 1

The first floor can be accessed via internal stairs or the internal lift system. The first floor includes communal indoor facilities inclusive of lounge spaces, three (3) meeting rooms, a work zone, commercial laundry, terrace outdoor space, waste facilities, fire escape stairs and eleven (11) self-contained rooms.

Level 2- 5

Level's two to five can be accessed via the internal lift system. These floors include thirty-one (31) self-contained rooms, waste facilities and fire escape stairs.

Level 6

The sixth floor can be accessed via the internal lift system. This floor includes a terrace facing Church Avenue, twenty (20) self-contained rooms, waste facilities, fire and escape stairs.

Level 7-12

Level's seven to twelve can be accessed via the internal lift system. These floors include twenty-five (25) self-contained rooms, waste facilities and fire escape stairs.

Roof Level

Access to the roof is via the fire escape stairs and will only contain plant equipment.

- Use of the building for the purpose of Co-Living, for Student Accommodation, to house 305 student occupants.

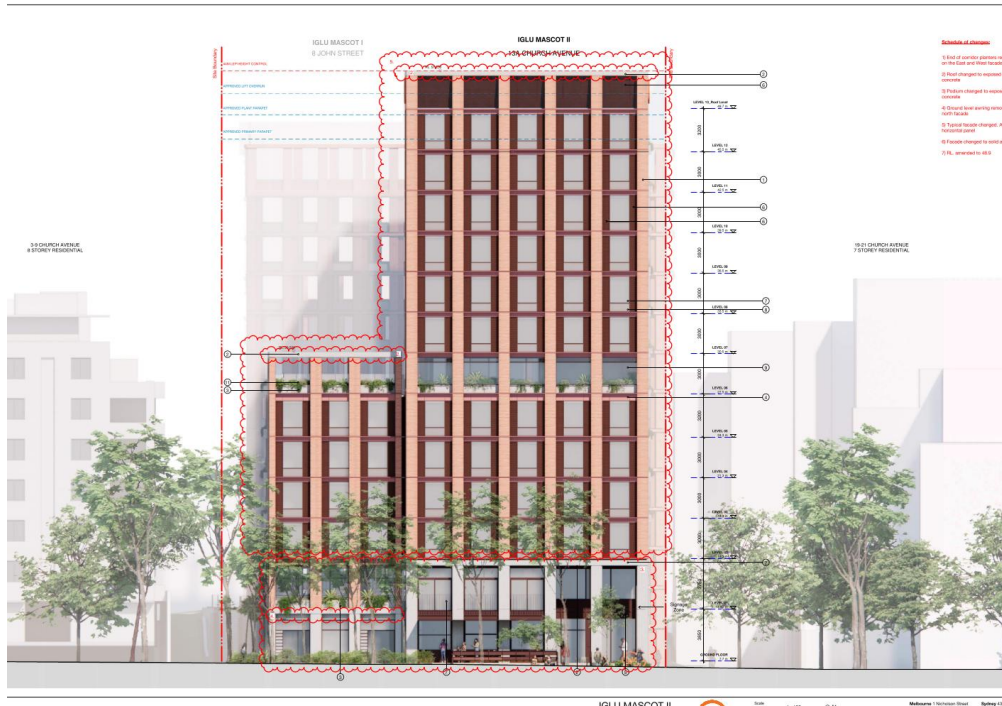


Figure 19: Proposed front elevation

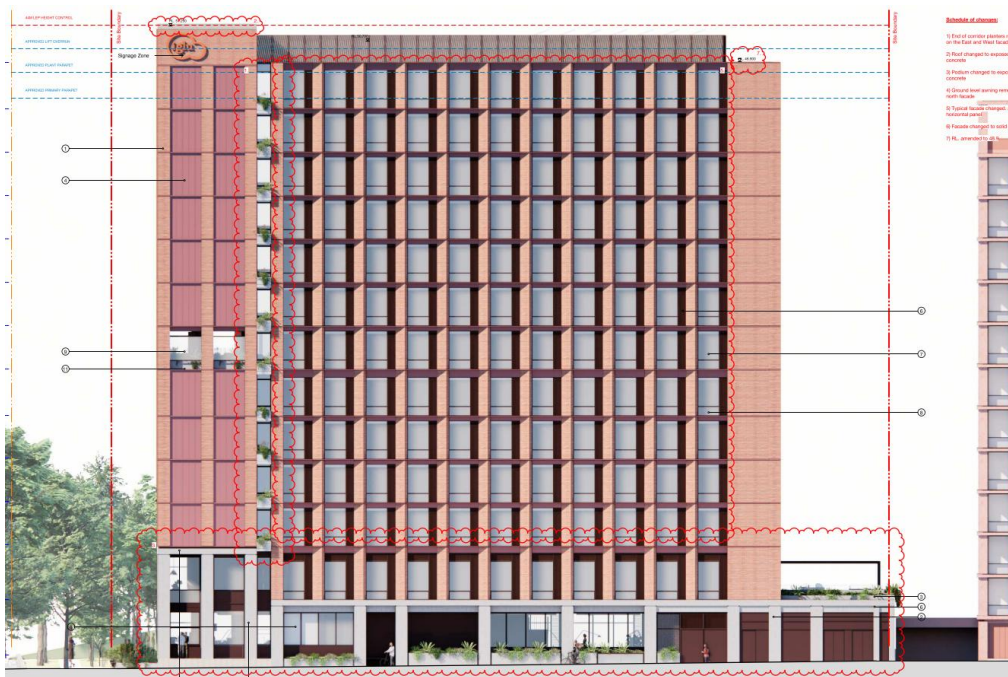


Figure 20: Proposed Western (side) elevation



Figure 21: Proposed Southern (rear) elevation



Figure 22: Proposed Eastern (side) elevation

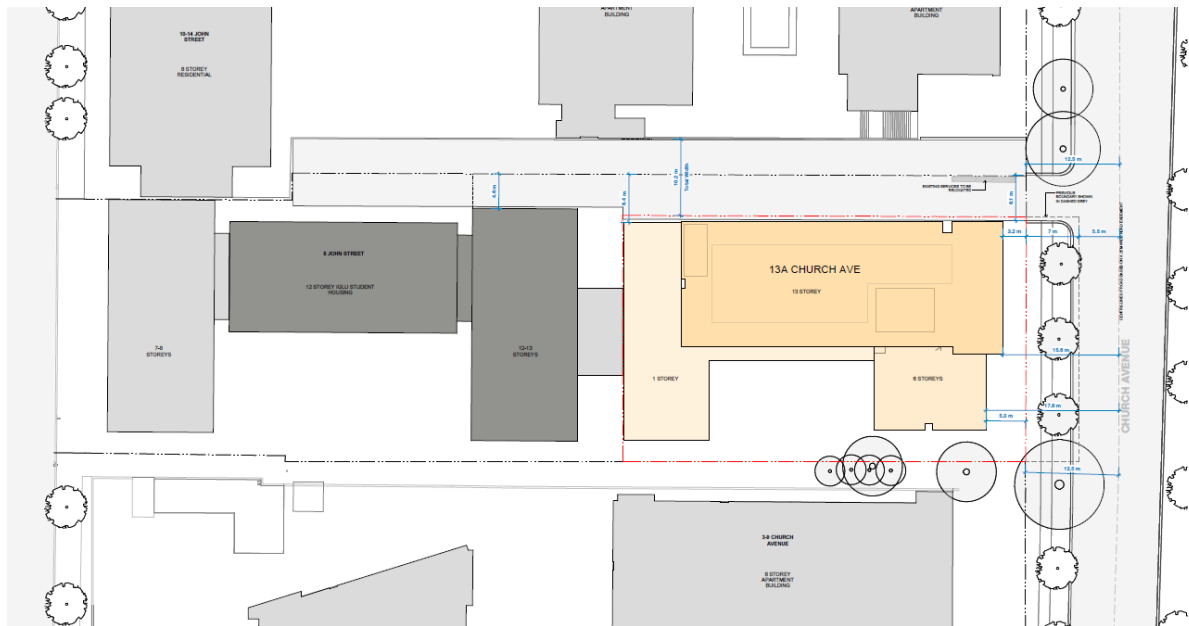


Figure 23: Proposed Site Plan



Figure 24: Photomontage

4.2 Background

The development application was lodged on 23 January 2024. A chronology of the development application since lodgement is outlined in **Table 1**.

Table 1: Chronology of the DA

Date	Event
23 January 2024	Application was submitted to Council

5 February 2024	The development application was referred to external agencies
1 - 15 February 2024	The development application was publicly notified
7 March 2024	The application was presented to a Design Review Panel as the site is located within Mascot Station Precinct which requires an assessment on Design Excellence. Minutes were issued to the applicant and are discussed in greater detail below.
9 April 2024	A briefing meeting was held with the Sydney Eastern City Planning Panel.
30 April 2024	Council sent the applicant an RFI relating to car parking, FSR, solar analysis, road widening minor planning matters, submissions, engineering, environmental health and landscaping matters.
5 June 2024	Additional information was received including amended plans, landscape plans, stormwater plans, revised clause 4.6 and additional shadow studies.
11 July 2024	A meeting was held between the applicant and Council Strategic team to discuss Planning Agreement Matters. The assessment officer did not attend this meeting.
9 and 23 August 2024	The development application was publicly notified for a 2nd time.
9 October 2024	Revised plans seeking external changes to materials was submitted.
22 October 2024	Missing clause 4.6 for parking provided.
15 November 2024	All internal comments received.
27 November 2024	VPA was sent to the Planning Committee for the endorsement of the Councillors

4.3 Site History

A review of Council records indicates that there are multiple applications on site.

- DA-2013/10056 was approved by the former City of Botany Bay Development Committee on 11 June 2014. Approval was granted for the demolition of the existing building and the construction of a twelve (12) storey residential flat building containing 80 apartments and the construction of a multi-level basement car park containing 135 car parking spaces.
- DA-2013/56/02 was approved by the BLPP on 8 May 2018 to correct issue number of the Architectural Plans and to amend the description to include the number of units approved.

- DA-2013/56/03 sought multiple modifications including changes to the building footprint, increase to the overall building height, reconfiguration of unit layouts, removal of a basement level, a review of applicable contributions and amendments to various conditions to reflect proposed modification. The application was originally recommended for refusal to the BLPP, however the panel decided to defer the matter subject to a number of amendments. The application was ultimately approved on 8 May 2018.
- DA-2013/10056/C was approved by the BLPP on 9 July 2019. This approval sought modifications surrounding BASIX.

It is noted that DA-2013/10056 has been activated.

5. 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*
 - (i) *any environmental planning instrument, and*
 - (ii) *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 (unless the Planning Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and*
 - (iii) *any development control plan, and*
 - (iiia) *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, and*
 - (iv) *the regulations (to the extent that they prescribe matters for the purposes of this paragraph),*
- (b) *that apply to the land to which the development application relates,*
- (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.*

The following Environmental Planning Instruments are relevant to this application

- *State Environmental Planning Policy (Planning Systems) 2021*
- *State Environmental Planning Policy (Resilience and Hazards) 2021*
- *State Environmental Planning Policy (Biodiversity and Conservation) 2021*
- *State Environmental Planning Policy (Sustainable Buildings) 2022*
- *State Environmental Planning Policy (Transport and Infrastructure) 2021; and*
- *State Environmental Planning Policy (Housing) 2021*
- *Bayside Local Environmental Plan 2021*

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

Table 1: Summary of Applicable Environmental Planning Instruments

EPI	Matters for Consideration	Comply (Y/N)
State Environmental Planning Policy (Planning Systems) 2021	The application is subject to an assessment under Section 2.19(1) and Schedule 6 as the capital investment value (CIV) of the proposal is greater than \$30,000,000. See below discussion.	Yes
State Environmental Planning Policy (Resilience and Hazards) 2021	The application is subject to an assessment under Chapter 4 Remediation of Land. The development is acceptable. See below discussion.	Yes
State Environmental Planning Policy (Biodiversity and Conservation) 2021	The application is subject to an assessment under Chapter 2 Vegetation in non-rural areas. The development is acceptable. See below discussion.	Yes
State Environmental Planning Policy (Sustainable Buildings) 2022	The application is subject to an assessment of the Sustainable Buildings SEPP. The development is acceptable. See below discussion.	Yes
State Environmental Planning Policy (Transport and Infrastructure) 2021	The application is subject to an assessment of Chapter 2, Division 5 / Subdivision 2 – Clause 2.48 – Development likely to affect an electricity transmission or distribution network. The development is acceptable. See below discussion.	Yes
State Environmental Planning Policy (Industry and Employment) 2021	The application does not require an assessment under Chapter 3 Advertising and Signage as signage is not required. However, the plans have nominated “signage zones”. See below discussion.	Yes
State Environmental Planning Policy (Housing) 2021	The application is subject to an assessment of Chapter 3 Diverse housing, in particular Co-Living developments. The development is seeking variations to the SEPP Housing controls. These variations are considered to be acceptable as addressed below.	No - See below discussion
Bayside Local Environmental Plan (BLEP) 2021	The application is subject to an assessment of the BLEP 2021. The development seeks to vary the FSR development standard. The variation is considered to be acceptable as addressed below.	No - See below discussion.

5.1 Environmental Planning Instruments, proposed instrument, development control plan, planning agreement and the regulations

The relevant environmental planning instruments, proposed instruments, development control plans, planning agreements and the matters for consideration under the Regulation are considered below.

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

Consideration of the relevant SEPPs is outlined below:

State Environmental Planning Policy (Planning Systems) 2021 ('Planning Systems SEPP')

Chapter 2: State and Regional Development

Pursuant to s2.19 of this SEPP, the proposal is a regionally significant development as it satisfies the criteria in Section 2 of Schedule 6 as the development has a capital investment value (CIV) over \$30 million. Accordingly, the Sydney Eastern City Planning Panel is the consent authority for the application. The proposal is consistent with this Policy.

State Environmental Planning Policy (Resilience and Hazards) 2021

Chapter 4: Remediation of Land

The provisions of Chapter 4 of State Environmental Planning Policy (Resilience and Hazards) 2021 ('the Resilience and Hazards SEPP') have been considered in the assessment of the development application. Section 4.6 of the SEPP requires consent authorities to consider whether the land is contaminated, and 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.

In order to consider this, a Detailed Site Investigation ('DSI') prepared by JBS&G and dated 18 December 2023 has been submitted and was referred to Council's Environmental Scientist for their review.

This report found that the site was predominantly sealed with asphalt and a densely vegetated landscaped area existed in the northern portion of the site. While the outside of the building was in good condition, internally it was rundown and filled with large amounts of assorted demolition material and general waste. The site appeared to be filled to raise and accommodate the building that was previous on site. Signs of a potential underground storage tank (UST) and associated above ground infrastructure was identified in the eastern portion.

Site borehole drilling found an Asbestos Containing Material (ACM) fragment in one of the fill samples. No visual indicators of contamination (odours, staining, or elevated PID readings) were observed within borehole locations during sampling.

A review of aerial photographs between 1943 and 2023 was undertaken to investigate historical site and surrounding land uses. In 1943, the site appears to consist predominately of cleared land utilised for agricultural purposes (market gardens). Surrounding land was also used for market gardening and residential purposes. By 1971 aerial shows the newly constructed warehouse building, consistent with the present day building on the site. Surrounding land appears to be in the process of being redeveloped for commercial and industrial use. No significant changes to the site occurred since 1971. Since 2005, surrounding properties were progressively demolished and redeveloped as apartment buildings.

A SafeWork NSW search for hazardous materials registered on site was also undertaken. This revealed the site had been licensed to store dangerous goods between 1970 and 2005. This included up to 100L of methyl ethyl ketone and diesel/flammable goods cabinet, and a 13,500L UST for petrol storage. It was not clear from search records whether the UST had been decommissioned or removed. This UST was located in the western portion of the site, which was in addition to a separate potential UST identified in the eastern portion from the site inspection.

Based on this information provided potential sources of contamination for the site were identified as:

- Fill materials of unknown origins from cutting/filling across the site potentially containing heavy metals;
- Soils impacted by historical market gardening from potential pesticide use;
- Use of asbestos containing materials and lead-based paints associated with historic and current site structures;
- Likely presence of two USTs and potential release of hydrocarbons; and
- Groundwater and soil vapour contamination from historical use of volatile chemicals for industrial/commercial purposes at the site.

Given the proposed use of the site to be for high density residential use, the site has been compared to land use criteria applicable to residential land use with minimal opportunities for soil access scenario (NEPC 2013).

Based on the findings of the investigation, the DSI concluded that the site can be made suitable for the proposed residential use with minimal opportunities for access to soil, subject to removal and remediation of identified contamination issues associated with potential USTs on site, the remediation/management of contaminants exceeding ecological criteria in proposed landscaped areas, the management of asbestos in soil, and PASS management that may be disturbed during redevelopment.

The PSI/DSI recommends a Remedial Action Plan (RAP) be prepared for the site which has not been lodged as part of the application. It is noted that an RAP was also required and prepared for the adjacent 13B Church Avenue property (with similar areas of environmental concern). The RAP for the proposed development should include:

- Appropriate investigation and remediation strategies to remove the (potential) USTs and associated fuel lines;
- Management and remediation of asbestos, heavy metals and TRH impacts to soil, especially in areas of proposed landscaping; and
- Additional sampling and analysis across the north-eastern portion (which was inaccessible at the time of investigation) to further define the extent of potential contamination of underlying fill materials.

Council' Environmental Scientist have raised no objection to the approval of the proposed works. Subject to the preparation of a Remedial Action Plan (RAP) inclusive of all recommendations made by the PSI and DSI, and compliance with the recommended conditions of consent.

Subject to compliance with the conditions of consent, the proposal is satisfactory in relation to SEPP (Resilience and Hazards) 2021.

State Environmental Planning Policy (Biodiversity & Conservation) 202

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.

The site contains eight trees, all of which are proposed for removal. Seven (7) of these are *Celtis occidentalis* (Common Hackberry), and one (1) is *Olea Africana var Cuspidata* (African

Olive). According to the Council's Tree Management Officer, these are weed species, and consent has been granted for their removal. Additionally, these species are exempt under the BLEP 2021 and do not require tree replacement.

There are eight significant trees on the neighbouring site at 3-9 Church Avenue and one within the public domain that must be retained. Appropriate conditions of consent, as imposed. Subject to compliance with the conditions of consent, the proposal is satisfactory in relation to SEPP (Biodiversity & Conservation) 2017.

State Environmental Planning Policy (Sustainable Buildings) 2022

The proposal was accompanied Environmentally Sustainable Development (ESD) report prepared by Atelier Ten and dated 12 December 2023. The report addresses Bayside Council's DA requirements for energy and water efficiency and Section J compliance. Within the document it is noted that the development will be required to comply with NCC via deemed to satisfy approach to demonstrate compliance, or where minimum performance standards cannot be met, using verification using a reference building. Subject to compliance with the conditions of consent, the proposal is satisfactory in relation to SEPP (Sustainable Buildings) 2022.

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 due to the proposed works being within the vicinity of electricity infrastructure. In accordance with Clause 2.48(2), the Council provided written notice to Ausgrid. Ausgrid raised no objections, provided that conditions of consent are imposed. Subject to compliance with the conditions of consent, the proposal is satisfactory in relation to SEPP (Transport and Infrastructure) 2021.

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 applicant has not applied for specific signage but has requested two “signage zones.” One zone is located along the eastern elevation near the top of the building, and the other is on the northern elevation above the building entrance. The application will include a condition that separate consent must be obtained for any signage, except for exempt and complying development.

State Environmental Planning Policy (Housing) 2021

Chapter 3 Diverse housing

Chapter 3 Part 3 Division 3 of the Housing SEPP identifies specific development standards that apply to Co-living. While this is not relatively the same type of the development, student accommodation is similar in nature to Co-living development.

The relevant controls are assessed against the development as demonstrated below in **Table 4** and considered in more detail below.

Table 4: Assessment against Housing SEPP

Section	Requirement	Proposal	Complies
67 - Co-living housing may be carried out on certain land with consent	Permitted on land in a zone which development for the purposes of co-living housing, residential flat buildings or shop top housing is permitted under another environmental planning instrument	Since 'Shop to Housing' and 'Residential Flat Buildings (RFB)' are permitted in the MU1 zone under BLEP 2021, co-living housing is also permitted by virtue of the SEPP.	Yes
68 - Non-Discretionary Development Standards	(2)(a) FSR – maximum permissible + 10% if the additional GFA is used only for co living.	<p>A maximum FSR standard of 3.2:1 (6422.4sqm) applies to the site. The SEPP allows for an additional 10%, therefore an FSR of 3.52:1 (7064.64sqm) is permitted.</p> <p>The application is seeking a GFA of 8,154sqm or a FSR of 4.06:1. This represents 1,089.54sqm or a 15.44% variation to the maximum FSR of 3.52:1.</p> <p>A clause 4.6 statement seeking to contravene the development standard has been submitted and is addressed in detail below.</p>	Acceptable – Refer to BLEP 2021 section below for further discussion.
	<p><u>(2)(c) Where more than 6 private rooms provided</u></p> <p>(i) Min. 30sq/m Communal living area with min dimensions 3m, <u>plus</u></p> <p>(ii) 2sq/m for each private room in excess of 6 private rooms.</p>	<p>A minimum of 630sqm of floor space is required to allocated to communal living areas.</p> <p>A total of 693.6sqm for communal living areas has been calculated over the ground and first floor which exceeds the minimum requirement.</p> <p>These spaces include the open media spaces, gym, wellness areas, lounge spaces, meeting rooms and work zone.</p> <p>Communal bathrooms, they laundry, reception area, corridors have been excluded from the calculations.</p>	Yes
	<p><u>(2)(d) Communal Open Space</u></p> <p>(i) Min 20% (401.4sqm) site area + 3m min dimensions</p>	The development is required to provided 410sqm, accounting for 20% of site area.	Yes

		<p>The application seeks for 789sqm which exceeds the minimum requirement.</p> <p>The proposal comprises of three key areas of communal open space, one located at the lower ground floor, one on the first floor and the other at the level 6.</p>	
	<p><u>(2)(e) Car Parking</u></p> <p>(i) 0.2 space per private room 0.2 X 305 (61)</p>	<p>A total of 61 car parking spaces are required on-site. However, no parking spaces are proposed.</p> <p>Given that the site is intended for student use only, a parking variation can be supported, as discussed below.</p> <p>The application is also supported by a Clause 4.6 variation, which seeks an exception to the Non-Discretionary Development Standards.</p>	<p>No, but in this instance acceptable - Refer to Note No. 1 and No. 2 for further discussion.</p>
69 - Standards for co-living housing	(1)(a) Room Size Private Room - Min 16sqm - Max 25sq.	The studio apartments have a minimum room size between 17-20sqm.	Yes
	(1)(b) Minimum Lot Size the minimum lot size for the co-living housing is not less than (ii) for development on other land—800m2, and	2,007sqm.	Yes
	(1)(d) - Workspace for manager in communal living area or separate space	A workspace, with an area of 27sqm, is located at the entrance to the building for the use of on-site management.	Yes
	(1)(e) – No part of the ground floor that fronts a street will be used for residential purposes unless permitted by another EPI	The ground floor does not contain any residential aspect.	Yes
	(1)(f) - Adequate bathroom, laundry and kitchen facilities will be available within the co-living housing for the use of each occupant,	<p>Independent and communal facilities proposed.</p> <p>Each unit contain their own bathroom and kitchen spaces.</p> <p>The proposal has also accommodated a communal kitchen and laundry spaces for the future occupants.</p>	Yes

(1)(g) - each private room will be used by no more than 2 occupants	<p>The Plan of Management indicates that each room will contain one occupant.</p> <p>A condition of consent has been included so that there are no more than 305 students living/sleeping in the premise at any one time.</p>	Yes												
(1) (h) - co-living housing will include "adequate" bicycle and motorcycle parking spaces	29 spaces in bicycle storage room.	Acceptable in this instance acceptable - Refer to Note No.3												
<p>(2)(b) if the co-living housing has at least 3 storeys the building will comply with the minimum building separation distances specified in the Apartment Design Guide</p> <table border="1"> <thead> <tr> <th>Building height</th><th>Habitable rooms and balconies</th><th>Non-habitable rooms</th></tr> </thead> <tbody> <tr> <td>up to 12m (4 storeys)</td><td>6m</td><td>3m</td></tr> <tr> <td>up to 25m (5-8 storeys)</td><td>9m</td><td>4.5m</td></tr> <tr> <td>over 25m (9+ storeys)</td><td>12m</td><td>6m</td></tr> </tbody> </table>	Building height	Habitable rooms and balconies	Non-habitable rooms	up to 12m (4 storeys)	6m	3m	up to 25m (5-8 storeys)	9m	4.5m	over 25m (9+ storeys)	12m	6m	<p><u>Northern (front)</u> Front setbacks are determined by the BDCP 2022. See further discussion below.</p> <p><u>Southern (rear)</u> The proposal provides:</p> <ul style="list-style-type: none"> • a nil setback to the ground floor. • a nil setback to the first-floor outdoor area • a 7.8m setback to the exterior building façade to the remainder of the building. <p><u>Western (side)</u> The proposal provides:</p> <ul style="list-style-type: none"> • a nil side setback to the boundary <p><u>Eastern (side)</u> The proposal provides:</p> <ul style="list-style-type: none"> • a 4.2m setback to the ground floor. • a 2.9m setback to the first floor • a 4.2m setback to the second to level 6 • a 14.2m setback to the second to level 7 to level 12 	No, but in this instance acceptable - Refer to Note No.4
Building height	Habitable rooms and balconies	Non-habitable rooms												
up to 12m (4 storeys)	6m	3m												
up to 25m (5-8 storeys)	9m	4.5m												
over 25m (9+ storeys)	12m	6m												
(2)(c) at least 3 hours of direct solar access will be provided between 9am and 3pm at mid-winter in at least 1 communal living area,	The terrace along the northern elevation will achieve the required solar access to communal living and open space.	Yes												
(f) the design of the building will be compatible with;	The proposed development is consistent with the built form along Church Avenue. The development has been designed	Yes												

	(i) the desirable elements of the character of the local area, or (ii) for precincts undergoing transition, the desired future character of the precinct.	appropriately taking into consideration developments within the locality.	
70 – No Subdivision	Subdivision not permitted.	Subdivision not proposed	Yes

Note No. 1 – Car Parking

Clause 68(2)(e) of the SEPP (Housing) 2021 requires developments to have a car parking rate of 0.2 spaces per room. With 305 rooms, the development would require a total of 61 car spaces. However, the car parking requirements outlined in the SEPP (Housing) and the BDCP 2022 do not account for the specific parking needs of purpose-built student accommodation. The applicant has submitted a Green Travel Plan and a Traffic and Parking Assessment Report, prepared by the Transport Planning Partnership and dated 19 December 2023, to justify the absence of car parking on the site. It particularly noted that the occupants of the proposed development will be students, a group known for low car ownership. There is also a precedent set by the adjacent completed student accommodation at 8 John Street which was approved by the SECPP with a similar car and motorcycle parking variation in 2019.

The submitted Green Travel Plan and Traffic and Parking Assessment has researched and examined car ownership among occupants of similar developments in Sydney and assessed factors influencing travel modes for future occupants. These factors include the availability and cost of parking, the frequency of public transport services, and the likely destinations of commuters. The assessment of these factors concludes that the primary attraction of the proposed development for future occupants is the ease of access to public transport with a high frequency of services to desirable destinations, such as tertiary institutions.

Similar to Iglu 1, the Green Travel Plan accompanying this application provides detailed information on alternative transportation methods. The primary options include the train station and bus services, while secondary options encompass cycling, taxi/Uber, car share facilities, and walking. Unlike Iglu 1, Council did not receive a significant volume of submissions concerning the capacity of Mascot Station or the lack of parking; however, this issue has been raised. While Mascot Station is very busy during peak hours, it is important to note that not all students will be starting classes in the morning or finishing around 5pm. Class schedules vary, which will be reflected in the usage of the public transport network. The capacity of Mascot Station falls under the jurisdiction of the State Government, not the Council. Therefore, the Council cannot govern or impose additional services onto the network.

To support the applicant's justification, the Green Travel Plan includes an analysis of other developments across Sydney operated by the developer. This analysis shows that none of the six known student accommodation developments run by Iglu have onsite parking. While the assessment includes premises at Redfern and Broadway, which are closer to tertiary institutions, it also considers developments similar to the subject application, such as Iglu 1 at the rear of the subject site and Chatswood. Additionally, the Plan references tenancy agreements in which an agreement between the student and the operator is entered into on the understanding that there is no car parking on the site and that the student does not have car ownership. Breaching this agreement could result in termination of the tenancy. This measure helps prevent additional cars from parking on the street or contributing to traffic generation.

As with Iglu 1, a reason for not providing parking on the site is also influenced by the nature of the area and the site itself. The area is of a high-density nature and currently experiences issues with traffic generation. The high-density area already experiences significant traffic generation issues. Street parking is limited, with most spaces subject to time restrictions. The lack of available on-street parking will encourage residents to use public transportation or bicycles. Additionally, complying with the car space requirements under the Housing SEPP would necessitate extensive excavation, between two to three levels of basement parking. Such excavation could lead to groundwater dewatering and potentially destabilise neighbouring sites. The absence of cars generated by the development will help reduce additional traffic and congestion within Mascot Station Town Centre.

While concerns from objectors about students using on-street parking are noted. Due to the nature of the student accommodation use and low car ownership/travel mode by car adopted by the operators' students along with the procedures implemented by the operator, car parking usage is not expected to place additional strain on the road network.

While concerns from objectors about students using on-street parking are valid, Council cannot guarantee this will not happen. However, due to the conditions imposed and the nature of the use, along with the procedures implemented by the operator, car parking usage is not expected to place additional strain on the road network. A survey conducted among 206 residents of Iglu 1 revealed that all but one resident travelled via public transport, with only one resident owning a motor vehicle. This indicates that less than 1% of the students own or use a car for their mode of transport. Consequently, it is determined that providing no parking will have negligible impacts on the surrounding locality. Furthermore, as advised by Council Development Engineers, no operational issues regarding parking have arisen with Iglu 1. Both John Street and Church Avenue have 2-hour time restrictions during the day, which helps manage parking effectively.

The application and the accompanying documentation has been assessed by Council development engineers, who have raised no objections to the proposal subject to conditions. The assessing officer recommends a condition of consent, which restricts the occupants of the proposed development to tertiary students, the number of students or people staying at the development is 305 and a further condition which outlines that students/staff of the development will not be entitled to a residential on-street parking permit.

Note No. 2 – Car Parking Clause 4.6 Variation

In addition to the above justification as Car Parking is a Non-Discretionary Development Standard, as such a Clause 4.6 variation statement seeking to contravene Non-Discretionary Development Standard was required to be provided. The Clause 4.6 variation prepared by The Planning Studio provides the following justification:

Clause 4.6(3)(a) - Is Compliance with the development standard unreasonable or unnecessary in the circumstances of the case

Applicants Justification

Compliance with the minimum parking requirement standard is considered unreasonable and unnecessary in the circumstances. The proposal has been accompanied by a traffic impact assessment which considers the extent of parking proposed and concludes that the traffic and parking implications associated with the proposed development is not expected to result in any noticeable impacts on the surrounding road network, with management measures in place to ensure minimal traffic and parking impact. Compliance with the standard is unreasonable or unnecessary in the circumstances as:

- Iglu has agreed to include a restriction on the site's use as only for student accommodation. This is consistent with its existing development at 6-8 John Street*

(Iglu 1), which is currently operational with 0 parking spaces, and has not been subject to any complaints related to parking or congestion from either residents or Council.

- The housing type provided by Iglu 1 is similar in size and configuration to that envisaged for Iglu II (subject site). The expected tenants of Iglu II would be those members of the community for whom car ownership and licensing is reducing. Licensing rates for people under 25 have dropped from 77% to 66% since 2000-01.*
- Additionally, due to the nature of the housing typology offered by Iglu II, residents are unlikely to have young children or dependants that would normally drive greater demand for car parking spaces.*
- Irrespective, co-living residents are a similar demographic to student accommodation residents, and do not have significant demand for a car, as demonstrated by current practice. Co-living/student accommodation housing, by nature of the housing offering, does not target those who have vehicles.*
- The site is well serviced by high frequency public transport services, local amenities, services and recreational facilities. This generates limited demand or need for a car.*
- As part of Cardno's traffic assessment of the approved student accommodation site (development with similar resident travel behaviour to co-living sites) at 157-163 Cleveland Street, Redfern, a questionnaire survey was conducted to understand the travel patterns of existing students living at Urbanest Quay Street, Haymarket. This site is located approximately 300m from UTS and 1km from University of Sydney. Survey data from Cardno's traffic report suggest that students generally do not drive.*
- Existing on-street car parking near the site is limited and restricted to short-term car parking and so, residents would not be able to park on-street for significant periods of time. Residents would be advised of the limited car parking conditions and thus, be discouraged from owning a car or having visitors drive to the site.*
- Residents will be encouraged to choose public transport as their primary mode of travel, as the site is surrounded by well-established pedestrian and cycle infrastructure, high frequency public transport services and tertiary educational campuses. This is detailed in the Green Travel Plan which has accompanied the development application and is consistent with the current operational arrangements in 'Iglu 1'.*
- For those who require the one-off car usage, residents will be able to utilise the car sharing facilities surrounding the site.*
- Iglu currently operates a number of sites across NSW, Victoria and QLD (over 3,000 beds), many of which do not provide any parking on site, and have not been subject to complaints by either residents or the relevant Councils. These sites demonstrate that the student accommodation/co-living typology does not require on-site parking to be successfully delivered in accessible locations.*

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

- As confirmed by supporting consultant reports and addressed throughout this variation request, the non-compliance with the development standard does not result in any adverse environmental planning impacts to surrounding development's amenity despite the numerical departure from the identified parking rates.*
- The development will not create unacceptable traffic impacts and is located on a site well serviced by public and active transport. The proposed 0 parking spaces will also ensure the development is consistent with the MU1 zone objective "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 approach of 0 parking spaces is consistent with Iglu's approach to parking across many of its sites in NSW, Victoria and QLD, including 'Iglu 1' located directly adjacent to the subject site at 6-8 John Street. 6-8 John Street (Iglu 1) has been operational for*

over a year with no complaints from either residents or Council regarding the provision of 0 parking spaces. Iglu has also agreed to restrict use of the site for student accommodation only, which is are particular environmental planning grounds justifying the contravention of the standard.

- The non-discretionary development standard introduced under the Housing SEPP 2021 does not have any objectives. Despite this, the application can demonstrate that it does not represent an overdevelopment of the site when considered against other planning controls, and is consistent with the zone objectives.*

Officers' Comments:

The Clause 4.6 variation to the Car Parking has been assessed in accordance with the SEPP Housing 2021.

The applicant makes worthwhile points regarding to the non-compliance and it is considered that the non-compliance has achieved the objectives of the standard therefore compliance is unnecessary. The applicant has also demonstrated that there are sufficient environmental grounds to support varying the standard.

It is supported that the proposal will successfully achieve the objectives of the clause and zone and the departure in car parking is not a significant issue for Council as it is not a popular form of transport that is found within the area and is usually underutilised by students due to its costs.

The proposal is consistent with the objectives of the standard and the applicant has satisfactorily established that the proposed variation is appropriate in maintaining and enforcing the development standard in these cases would be unreasonable and unnecessary and would not allow the orderly and economic development of this site. It is considered that the Clause 4.6 variation provides sufficient justification in supporting the non-compliant car parking and has addressed the matters that are stated within Clause 4.6(3) and should be supported.

Note No. 3 – Adequate motorcycle and bike parking spaces

The Housing SEPP does not specify a bicycle or motorcycle parking rate, resulting in ambiguity and a lack of guidance on what constitutes “adequate” parking. Consequently, Council’s Development Engineers have referred to the Bayside DCP 2022, which prescribes a motorcycle parking rate of 1 space per 5 rooms and a bicycle parking rate of 1 space per room.

The application is supported by a green travel plan and a traffic report prepared by the Transport Planning Partnership, dated 19 December 2023. This report has been reviewed and assessed by Council’s Development Engineers. The variation to motorcycle parking for this application is justified on the same grounds as the variation to car parking. Students residing in the student accommodation development are not anticipated to use or require motorcycles for their travel needs. This is corroborated by ABS data, indicating a 2% mode share for motorcycles/scooters, and a survey by the applicant’s traffic engineer, which shows that most Iglu sites, do not have motorcycle spaces.

Council’s Development Engineers have reviewed the application and are happy to support the application based on the following:

- The proposed development places the new residents within easy walking distance of local shops and services, reducing the need for vehicle ownership and storage,
- The proposal aligns with the objectives of the BLEP 2021 and promotes the use of public transport, walking, and cycling. The site is highly accessible, with Mascot train

station and multiple bus services (along Coward Street, Bourke Street, and Gardeners Road) nearby, providing easy access to tertiary institutions such as universities, which are also within walking distance of train stations and bus stops,

- It is considered that future tenants will not rely on motorcycles for transport due to cost and ownership constraints. Instead, they are expected to use more affordable forms of transport (public transport, cycling, and walking), consistent with the proponent's experiences at other facilities in Sydney, Melbourne, and Brisbane,
- The development will result in a better planning outcome by promoting sustainable transport options, including public transport, cycling, and walking. This approach aligns with Council's strategy to reduce private vehicle trips within the LGA; and
- The proposal will not generate additional traffic on the surrounding road network, as no car or motorcycle parking spaces are provided.

Regarding bike parking, Council's Development Engineers are not convinced by the applicant's request for 1 bike parking space per 10 rooms. Although the applicant's transport impact assessment notes low usage, reducing this rate to 1 per 10 rooms would set a precedent across Australia. Therefore, the development will need to be amended to include a bike storeroom with the capacity to accommodate 102 bicycle spaces.

Note No. 4 – Setbacks

Co-Living developments must adhere to the separation distances outlined in the Apartment Design Guidelines (ADG). According to the ADG, where habitable rooms are proposed, a side setback of 6m, 9m, or 12m is required at various levels of the development, depending on the building's height. The current proposal does not meet these separation distances at the rear or either side boundaries.

Northern (front) Setback

The proposal along the northern (front) boundary is generally consistent with the setback existing at the neighbouring property and generally meets the requirements of the of the BDCP 2022. This is discussed later in the report. No concerns are raised regarding building separation or visual privacy as Church Ave forms the separation between the site and the properties directly opposite.

Western (side) Setback

The site benefits from an existing easement located directly to the west of the subject site and the neighbouring development at 19-21 Church Avenue. This existing easement, which is 10.2 Metres wide, is relied upon for separation.

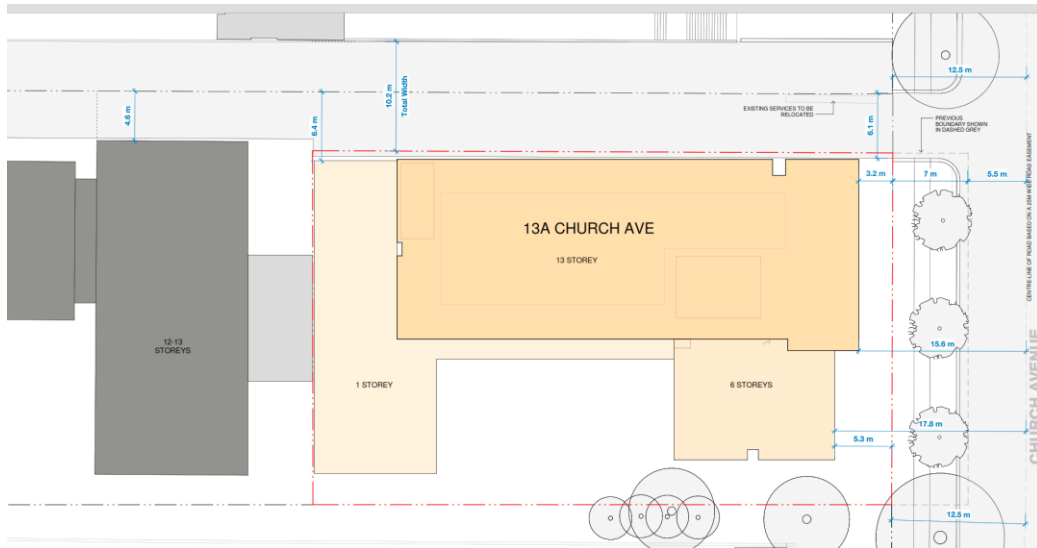


Figure 25: Proposed Setback to 19-21 Church Avenue



Figure 26: Existing easement

The proposal seeks to construct to the nil boundary setback along the entire length of the western elevation. This results in a variation of 6 Metres to a height of 12 Metres, 9 Metres to a height of 25 Metres, and 12 Metres for the remainder of the building façade.

It is identified that the existing eastern building at 19-21 Church Avenue has also been constructed along a nil setback to the easement for various portions of the building. The existing façade is quite defensive to the easement and contains minimal opening.

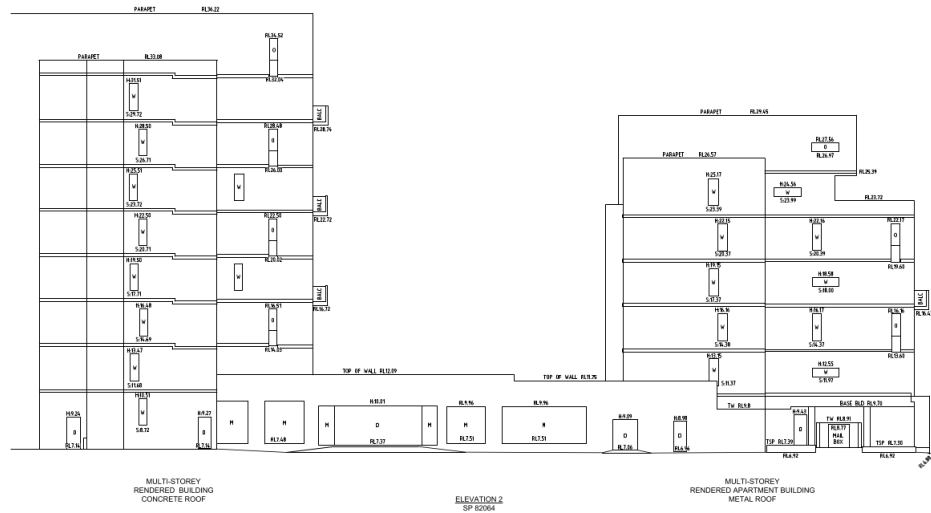


Figure 25: Façade along 19-21 Church Avenue



Figure 26 and 27: Façade along 19-21 Church Avenue

The proposed development has been sited to consider overshadowing impacts on both neighbouring developments. By positioning the development towards the eastern boundary, both side neighbouring developments will receive the required solar access. Detailed shadow diagrams support the development, demonstrating that positioning the building on the nil setback will not unreasonably overshadow the living areas or private open spaces of neighbouring developments, particularly the development to the east.

It is acknowledged that the central building of the subject development contains the majority of the windows. However, it is considered that the nil setback will have minimal visual and acoustic impacts on the neighbouring development due to the existing defensive façade (see Figures No. 25, No. 26 and No. 27). Proposed windows located along the ground floor elevation, which are the only windows along this elevation from a communal area where students will gather, will face towards the easement and the vehicular entrance of the building. No overlooking is expected. For the remainder of the building, proposed windows are not considered to provide direct overlooking into neighbouring private living areas or private open spaces. If any overlooking were to occur, it would be into the common space between the two buildings. These windows are from students' rooms and not communal facilities where students would congregate. The proposal does not include any balconies within the development and contains small windows within each room to comply with the BCA. It is not considered that there will be significant visual privacy concerns from the development.

Eastern (side) Setback

The eastern elevation is significantly articulation compared to the other setbacks. The proposal seeks for:

- a 4.2m setback from the boundary to the ground floor communal space inclusive of a wellness centre and kitchens, seeking a variation of 1.8m.
- a 2.9m setback to the first-floor communal outdoor area, seeking a variation of 3.1m
- a 4.2m setback to the second to level 6 students' rooms and circulation area seeking a variation of 3.1m; and
- a 14.2m setback to the second to level 7 to level 12 which will comply with the requirements as outlined in the ADG.



Figure 28: Façade along 3-9 Church Avenue

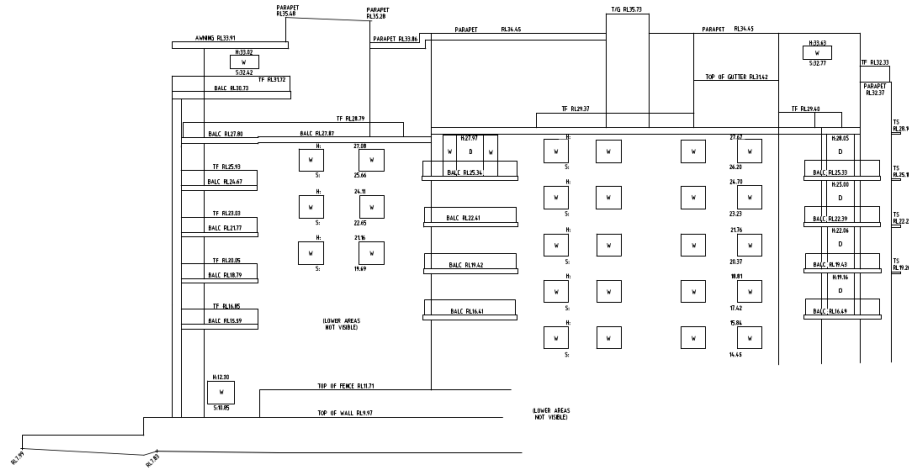


Figure 29: Façade along 3-9 Church Avenue

Communal space, both internal and open spaces are provided at the ground floor. Significant overlooking from the ground floor is not anticipated due to the level difference, see Figure No. 28 and No. 29, between the buildings and the existing privacy fencing, which is located 2.2 Metres within the boundary.



Figure 30: Level difference



Figure 31: Level difference

Notwithstanding the above, concerns have been raised by the Assessing Officer regarding the location of the communal open space on the first floor at the rear of the development, situated 2.9 Metres from the eastern boundary see Figure No. 30 and No. 31. Reference is also made to the BDCP 2022 which outlined that communal open spaces are required to be located away from habitable rooms of dwellings on adjoining properties.

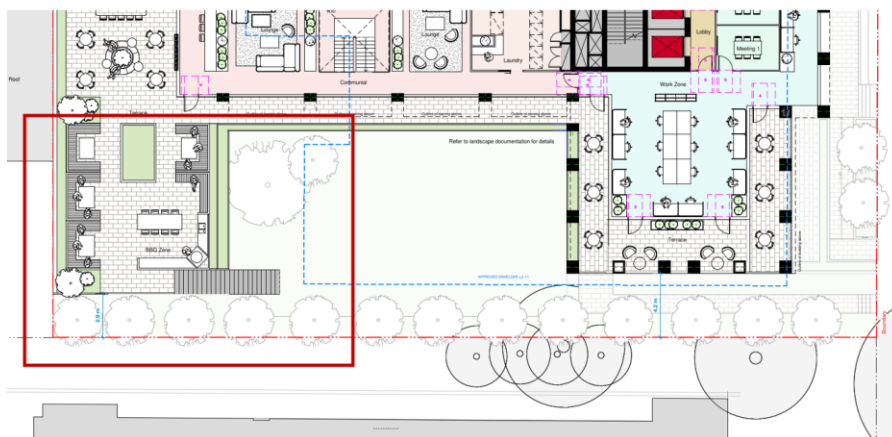


Figure 32: Level 1 Floor plan

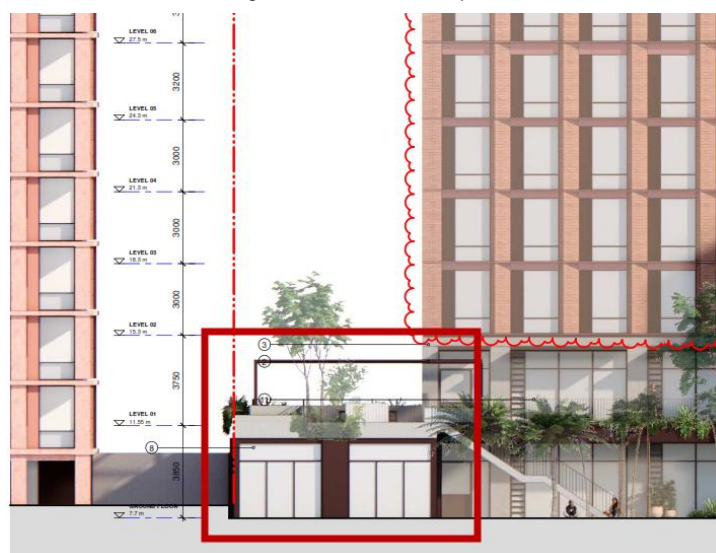


Figure 33: Eastern Elevation rear terrace

While it is acknowledged that this area can only be used from 9am to 6pm, to ensure the development does not result in an unacceptable level of visual and acoustic privacy, this portion of the building will be required to be set back further into the site. The development must be set back 4.4 Metres to be consistent with the ground floor of the building below it. Additionally, it is suggested to include a planter box with a depth of 1 Metre to provide additional separation distances. Therefore, the steps access the ground floor open spaces will be setback at 5.5m from the boundary property allowing for an addition separation to the neighbouring building.

Where the six-storey massing is proposed, towards the front of the site, the setbacks are approximately 4.2 Metres from the boundary for the first two floors and 8.7 Metres from the second floor and up. The development features a blank wall treatment with only one window to allow light into the circulation space. As this window serves a

narrow circulation space rather than communal facilities, it is not anticipated that students will congregate in this area. Furthermore, like the Western Elevation, the proposal does not include any balconies within the development. It is not considered that there will be significant visual privacy concerns from the development and the variation is acceptable.

Southern (rear) setback

The site benefits from an existing student housing development, owned and operated by the applicant, directly to the rear of the subject site at 8 John Street. The proposal seeks to construct to a nil boundary at the ground floor and the first-floor outdoor area. The development then proposes a 7.8-Metre setback to the exterior building façade, resulting in a separation of 14 Metres from the rear adjoining building. This results in a variation of 6 Metres to a height of 12 Metres, 9 Metres to a height of 25 Metres, and 12 Metres for the remainder of the building façade. The variation is acceptable in this case, as the development has been designed to include minimal windows, which are only associated with circulation spaces. Additionally, the subject building is considered an extension of the Iglu 1 development, and the separation of buildings within the same complex is not as critical as the separation from adjacent buildings which the applicant has focused on.

Overall, the proposal while non-compliant in setbacks, is justified above and the departures are accepted.

Bayside Local Environmental Plan 2021

The relevant local environmental plan applying to the site is the Bayside Local Environmental Plan 2021 ('the LEP'). The LEP also contains controls relating to development standards, miscellaneous provisions and local provisions. The relevant sections are assessed against the proposed development as demonstrated below in **Table 5** and considered in more detail below.

Table 5: Assessment against BLEP 2021

Relevant Section	Compliance with Objectives	Compliance with Standard / Provision
1.2 Aims of the Plan	Yes	Yes - see discussion
2.3 Zone and Zone Objectives	Yes	Yes - see discussion
4.3 Height of buildings	Yes	Yes - see discussion
4.4 Floor space ratio ("FSR")	Yes	No - see discussion
4.6 Exceptions to development standards	Yes	No - see discussion
6.1 Acid Sulfate Soil Class 2	Yes	Yes - see discussion
6.2 Earthworks	Yes	Yes - see discussion
6.3 Stormwater and water sensitive urban design	Yes	Yes - see discussion
6.7 Airspace operations	Yes	Yes - see discussion
6.8 Development in areas subject to aircraft noise	Yes	Yes - see discussion
6.9 Active street frontages	Yes	Yes - see discussion

6.10 Design Excellence	Yes	Yes - see discussion
6.11 Essential services	Yes	Yes - see discussion

Section 1.2 - Aims of the Plan

Clause 1.2 of the LEP illustrate 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 these general aims, in particular (e), (f) and (g).

Section 2.3 Zone - B2 Local Centre

The subject site is zoned MU1 - Mixed Used under the provisions of the BLEP 2021. The proposal is prohibited in the zone, however as both Residential Flat Buildings and Shop top housing are permitted, Co-living housing is permitted by virtue of Section 67 of the Housing SEPP.

The objectives of the zone are:

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

- *To ensure built form and land uses are commensurate with the level of accessibility, to and from the zone, by public transport, walking and cycling.*

The proposed development satisfies the objectives of the zone.

Section 4.3 - Height of Buildings

A maximum height standard of 44 Metres applies to the subject site. The application seeks for a height of 43.95m which complies with the Development standard.

Section 4.3 – Floor Space Ratio

The subject site has a maximum Floor Space Ratio (FSR) of 3.2:1, which is extended by the Housing SEPP to permit an increase to 3.52:1. In this instance, the applicant is seeking to exceed the FSR development standard by 1,089.54 sqm, equating to a 15.44% increase. A contravention request, in accordance with Section 4.6 of the LEP, has been prepared by The Planning Studio and is addressed below.

Section 4.6 - Exceptions to Development Standards

Section 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)- compliance with the standard is unreasonable or unnecessary in the circumstances of the case, and

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

Section 4.6(3) requires the consent authority to be satisfied the applicant has demonstrated the above.

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.

The subject site has a maximum Floor Space Ratio (FSR) of 3.2:1, which is extended by the Housing SEPP to permit an increase to 3.52:1. In this instance, the applicant is seeking to exceed the FSR development standard by 1,089.54 sqm, equating to a 15.44% increase. A contravention request, in accordance with Clause 4.6 of the LEP, has been prepared by The Planning Studio to justify this proposed variation. It is important to note that there is an existing and active consent on site (DA-2013/10056/D) with an approved FSR of 4.18:1, resulting in a total Gross Floor Area (GFA) of 8,381.96 sqm. The requested variation will result in a reduction of 227.96 sqm.

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

The applicant's Clause 4.6 statement to contravention the development standard argues that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case by arguing that the objectives of the FSR development standard are achieved notwithstanding non-compliance with the numerical standard (Wehbe 1# test). These components are summarised below:

Applicant Comments/Arguments (summarised):

<p><i>(a) to establish standards for the maximum development density and intensity of land use, The proposed development has been designed and sited to achieve the maximum density and intensity of the proposed co-living land use without compromising the internal occupant amenity of the site.</i></p>	<ul style="list-style-type: none"> • <i>The Bayside Planning Panel approved a development with greater density amounting to an FSR of 4.18:1 (total GFA of 8,381.96m²) for the site on 26 November 2019. This previously approved FSR and GFA is in excess of the proposed 4.06:1 (8,154m²), and the consent has been activated meaning that it could be built should an owner seek to do so.</i> • <i>Despite the FSR non-compliance of the current proposal, the development complies with the 44m height of building development standard and achieves a significantly better highquality design outcome then that is already approved on the site under DA-2013/10056/D.</i> • <i>The development has been sited in a 'L-shaped' 6 to 13-storey building organised around a landscaped courtyard. This design approach, the development is able to exceed the minimum requirements for communal open space, communal living areas, rooms sizes and generally achieves compliance with the minimum building separations requirements of the ADG.</i> 												
<p><i>(b) to ensure buildings are compatible with the bulk and scale of the existing and desired future character of the locality,</i></p>	<ul style="list-style-type: none"> • <i>The scale and size of the proposed development is considered to be consistent with the existing bulk and scale and desired future character of the locality as the building form has been designed to acknowledge the scale and alignment of adjoining buildings.</i> • <i>The proposed development has been designed to complement the 7 to 12 storey student accommodation (boarding house) development with 435 bedrooms recently approved at 13B Church Street (Mascot 1 project) to the rear of the site.</i> • <i>There are a range of existing DAs approved by Council in the broader surrounds that exceeded FSR similarly to the current proposal. Notably 141 O'Riordan St (DA-2018/1013) permitted FSR 3.2:1, approved FSR 3.866:1.</i> • <i>Council's report under DA-2018/013, specifically identified other instances of non-compliance with the 3.2:1 FSR as detailed in the below:</i> <table border="1" data-bbox="643 1783 1386 1998"> <thead> <tr> <th>Site</th><th>FSR</th></tr> </thead> <tbody> <tr> <td>39 Kent Road, Mascot</td><td>4.26:1</td></tr> <tr> <td>214 Coward Street, Mascot</td><td>4.24:1</td></tr> <tr> <td>208-210 Coward Street, Mascot</td><td>4.00:1</td></tr> <tr> <td>246 Coward Street, Mascot</td><td>3.88:1</td></tr> <tr> <td>8 Bourke Road and 37 Church Avenue</td><td>3.82:1</td></tr> </tbody> </table>	Site	FSR	39 Kent Road, Mascot	4.26:1	214 Coward Street, Mascot	4.24:1	208-210 Coward Street, Mascot	4.00:1	246 Coward Street, Mascot	3.88:1	8 Bourke Road and 37 Church Avenue	3.82:1
Site	FSR												
39 Kent Road, Mascot	4.26:1												
214 Coward Street, Mascot	4.24:1												
208-210 Coward Street, Mascot	4.00:1												
246 Coward Street, Mascot	3.88:1												
8 Bourke Road and 37 Church Avenue	3.82:1												

	2-4 Haran Street, Mascot	3.79:1
	7-9 Kent Road, Mascot	3.78:1
	7 Bourke Street and 30 -32 John Street	3.75:1
	19-33 Kent Road, Mascot	3.72:1
	230 Coward Street, Mascot	3.60:1
	671-638 Gardeners Road	3.43:1
	<ul style="list-style-type: none"> Given the extent of breach to an existing active consent on site, and that FSR breaches great than Iglu's proposal have been supported on multiple surrounding sites, there is sufficient evidence to demonstrate that compliance with the standard is unreasonable or unnecessary in the circumstances of the case, subject to satisfaction of Clause 4.6(3)(b). 	
(c) to minimise adverse environmental effects on the use or enjoyment of adjoining properties and the public domain,	<ul style="list-style-type: none"> The proposed development has been designed to minimise adverse environmental impacts and improve the amenity of the internal occupants, the adjoining properties and the public domain. The development complies with the 44m height of building development standard and achieves a high-quality design outcome then that is already approved on the site under DA-2013/10056/D. The development has been sited in a 'Lshaped' 6 to 13-storey building organised around a landscaped courtyard which ensures the development minimises visual bulk and acoustic/visual privacy impacts on the adjoining properties. The site has a north-south orientation, as such the provision and maintenance of solar access to the site and adjoining properties is difficult even if the proposal had a compliant FSR. However, the 'L-shaped' building design and the implementation of passive solar design principles allows for the site to provide sufficient internal solar access to enhance occupant amenity. the proposed building maximises solar access to the adjoining properties with the large setbacks from the southern rear and eastern side boundaries without comprising the development opportunities of the site. The development has been designed to cast majority of the shadowing on to the laneway to the west of the site. The development improves the public domain amenity with the proposed ground and first floor having a two-storey scale that will activate the streetscape with retail, communal uses and outdoor terraces. Also, along the laneway the location of communal uses and glazing will provide visual connectivity through the building. 	
(d) to maintain an appropriate visual relationship between new development and the existing character of areas or	<ul style="list-style-type: none"> The surrounding area has undergone a substantial amount of change. There are a range of existing DAs approved by Council in the surrounding area that exceed the FSR standards 	

<p><i>locations that are not undergoing or likely to undergo substantial transformation.</i></p>	<p><i>similarly to the current proposal. As such, it is considered that the building form has been designed to acknowledge the scale and alignment of adjoining buildings.</i></p> <ul style="list-style-type: none"> <i>• The development proposes a contemporary form which responds to the surrounding context positively. The proposed 13 storey tower is orientated north south and located along the western side of the site to minimise overshadowing to the eastern and southern neighbours. A high quality facade of masonry piers with glass and metal infill defines the upper levels while at ground level, tinted concrete columns define a two story base, the materiality of which is consistent with the Iglu Student Accommodation facility immediately to the south (Mascot 1 project).</i> <i>• The design is intended to reflect the adjacent Iglu Mascot 1 project, utilising masonry materials, concrete walling and a combination of native and introduced plant species.</i> <i>• Functionally, the built form has driven the external space outcomes, with broad paved areas at the building threshold extending into the garden. The expressed vertical piers are subtly differentiated across facades, with a rectilinear geometry to the north and south façade, and a triangular geometry on the east and west. It is considered the contemporary design and treatment of the proposed development achieves an appropriate visual relationship with the existing character of the area, particularly with the Iglu - Mascot 1 project</i>
<p><i>(e) to ensure buildings do not adversely affect the streetscape, skyline or landscape when viewed from adjoining roads and other public places such as parks and community facilities.</i></p>	<ul style="list-style-type: none"> <i>• The development incorporates a contemporary treatment that respects the surrounding transitioning streetscape and skyline. The northern street façade is defined by a primary 13- storey western volume with five bays and a recessed and lower 6-storey eastern volume with three bays. Both have a strong vertical expression with a double height portico at the base defined by tinted concrete columns.</i> <i>• The western side elevation fronting the laneway has a similar regular and rational room rhythm. The masonry piers are triangular in shape and create a vertical shading device for the glazing. Reflecting the internal planning, a single storey base, with a set back facade line to the communal facilities, strikes a balance between visual activation and concealment of services. The two forms are broken by the vertically staked planters and glazing of the internal accommodation floor corridor</i> <i>• The development improves the public domain amenity with the proposed ground and first floor having a two-storey scale and that will activate the streetscape with retail, communal uses and outdoor terraces. Also along the laneway the location of communal uses and</i>

	<p><i>glazing will provide visual connectivity through the building.</i></p> <ul style="list-style-type: none"> <i>• In light of the above, the proposed development does not adversely affect the streetscape, skyline or landscape when viewed from the adjoining roads and public places notwithstanding the FSR non-compliance.</i>
--	--

Section 4.6(3)(b) – there are sufficient environmental planning grounds to justify contravening the development standard

The applicant's Clause 4.6 contravention is also supported by sufficient environmental planning grounds to support the non-compliant Floor Space. These components are summarised below, with the assessing officer's response provided:

Applicant Comments/Arguments (summarised):

The environmental planning grounds relied on in the written request under Clause must be sufficient to justify contravening the development standard. The focus is on the aspect of the development that contravenes the development standard, not the development as a whole. Therefore, the environmental planning grounds advanced in the written request must justify the contravention of the development standard and not simply promote the benefits of carrying out the development as a whole (Turland v Wingecarribee Shire Council [2018] NSWLEC 1511 and Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118), also 'Rebel MH' and 'Baron' (2019)

- The environmental planning grounds relied upon to justify the exceedance of the development standard in the circumstances of the proposal are considered sufficient and specific to the site and the proposed contravention.*
- The size and scale of the development is compatible, and represents an improvement on the existing surrounding development, whilst also better reflecting the desired future character of the locality*
- The existing consent under DA/2013/10056 is activated and could theoretically be built at any point in time. A simple massing comparison study (Figures below) demonstrates the significantly poorer amenity and design outcomes should this development be constructed compared to Iglu's proposal.*
- A comparison of the two massing strategies shows that the Bates Smart Iglu scheme presents significant benefits to the adjoining properties, including:*
 - Significant building setbacks to the eastern neighbour, with a lower 6 storey built form that enables compliant solar access to these dwellings, which could not be achieved under the approved 2013 consent;*
 - Significant setbacks for the remainder of the eastern site boundary will give greater light and space relief to the eastern neighbour;*
 - Front building setback is in line with 19-21 Church Avenue, with ADG setbacks retained for the western neighbour, and activation at the ground-floor communal area to operate as an effective CPTED approach for the shared way.*
 - Building separation to the south is 14m, but the interface is a fire stair and treated wall with no openings to ensure appropriate visual and acoustic privacy.*

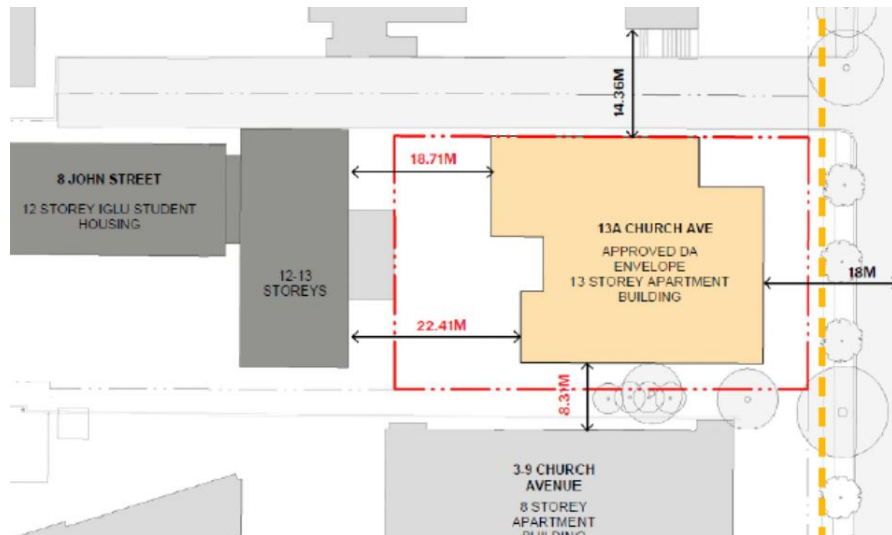


Figure 34: Existing Approval and existing massing

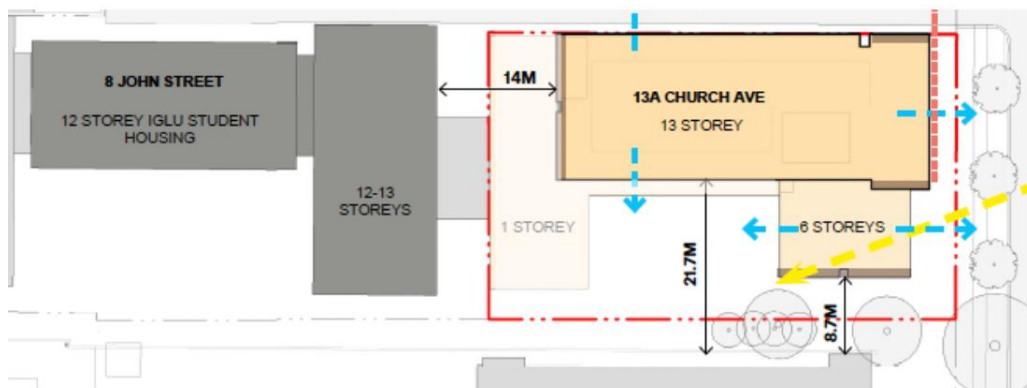


Figure 35: Proposed Massing Strategy

- The aspects of the development that are non-compliant with the FSR control do not create any additional environmental impacts such as overshadowing, visual or acoustic privacy beyond what a compliant development would create.
- In contrast the proposed development, including the FSR variation, will deliver significant additional amenity to surrounding properties including:
 - increased and compliant solar access to private open space and living rooms of dwellings to the east of the site and north of the site (refer to Figures below);
 - Increased building separation to the development to the east, and a lower street wall to reduce bulk and massing;
 - improved privacy interfaces where building separation is lower through architecturally treated walls with no openings to both the eastern and southern neighbours; and
 - Significant sized courtyard will provide amenity through landscaping, open sky and cooling to surrounding properties.
 - High-quality integrated development across the two Iglu sites enabling connection, flexibility and improved amenity for the wider Mascot Town Centre

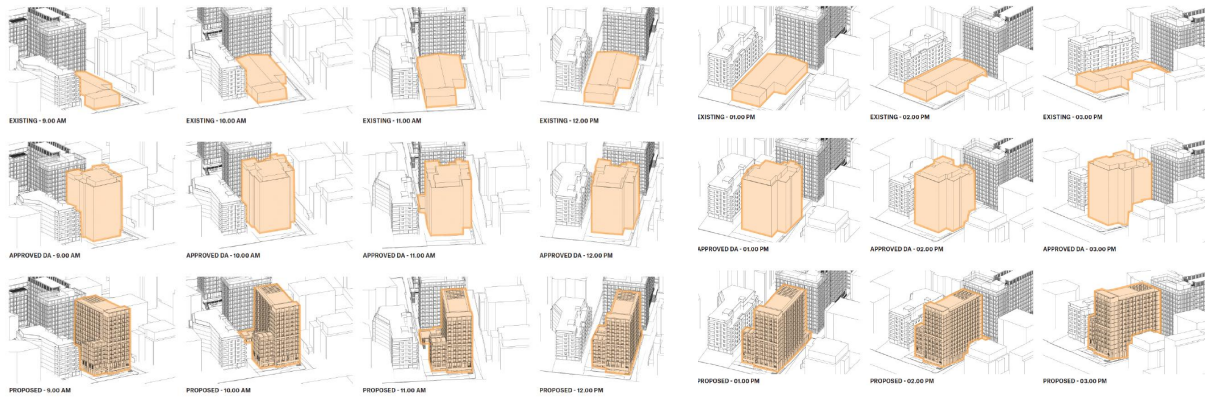


Figure 36 : Winter Solstice Sun Eye – 9am-12pm

Figure 37: Winter Solstice Sun Eye – 1-3pm

- *For the reasons discussed above, it is contended that there are sufficient environmental planning grounds to justify the contravention to the development standard in the circumstances of this case, particularly given that the design provides a tailored and well considered response to the site's constraints and articulation.*

Officer Comment:

The applicant makes worthwhile points regarding to the non-compliance. The applicant has satisfied one of the tests outlined within *Wehbe v Pittwater Council* in that that the proposal is found to be consistent with the objectives of the development standard, so therefore compliance is considered unnecessary and unreasonable. The applicant has also demonstrated that there are sufficient environmental grounds to support varying the standard.

Furthermore, it is supported that the proposal will successfully achieve the objectives of the clause and zone objectives. The assessment officer raises no objection to supporting the departure of the development standard, which is significantly reduced compared to the active consent on site (DA-2013/10056/D).

Section 5.21 Flood Planning

The site is affected by the 1% Annual Exceedance Probability (AEP) and is located in a flood fringe area, necessitating the application of flood controls. The minimum habitable floor level for residential development on this land is the 1% AEP flood level plus a 0.5m freeboard. The 1% AEP is 7.2m AHD, and with the freeboard, the minimum floor level is RL7.7m AHD, which the proposal meets and is considered to comply.

Given the site's susceptibility to flooding, the safety of the occupants must be considered. Due to the risk of stormwater inundation on the boundary streets, a safe assembly point is required. The recreation area on the ground floor is designated as the emergency assembly point and refuge area. This area is located inside the building, above the Probable Maximum Flood (PMF) level of RL7.23m AHD, ensuring safety from severe weather or flood flows. This space is adjacent to the recommended exit to the courtyard, facilitating evacuation or egress if necessary. With finished floor levels above the PMF level, site users can shelter in place, avoiding the risk of residents and staff entering the floodway on Church Avenue. Any evacuation heading west on Church Avenue must be conducted well in advance of the peak flood. It is recommended that site users exit the building via the courtyard entry, with egress possible via a pathway and steps to the northeast of the lot. Unlike the main entrance to the northeast of the site, this route remains flood-free in all scenarios.

Council's Development Engineers have reviewed the application and have raised no objections to the proposal, subject to conditions.

Section 6.1 Acid sulfate soils

The site is situated in a Class 2 Acid Sulfate Soils (ASS) area in which these soils are likely to be found below the natural ground surface. Any works below the natural ground surface, or works which are likely to lower water table, will trigger the requirement for ASS assessment and may require management.

While the proposal does not include excavation for basement levels, earthworks are still required as such disturbance of soils will occur. The PSI/DSI identified the occurrence of potential ASS (PASS) underlying the site. Hence, an ASSMP was produced for this application as disturbance of PASS materials is likely.

To comply with section 6.1(3) of the BLEP 2021, 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. An Acid Sulphate Soils Plan (ASSMP) has been provided, prepared by JBS&G, dated 15 December 2023.

A total of fourteen (14) soil samples were taken from ten (10) boreholes (BH) across the majority of the site (with the exception of the office area in the north-east corner) over two testing periods. Sampling and analysis was conducted between depths of 2.0-4.6m bgl. Laboratory analysis revealed:

- Four sulfur trail results were in excess of the adopted action criteria, and the total sulfidic acidity (TSA) of two of these samples were also above the adopted criterion;
- Concentrations of peroxide oxidisable sulfur (SPOS) was above the criteria in six samples of natural sand soil;
- Sulfur concentrations from all natural sand samples were greater than the laboratory limit of reporting (LOR), but below the adopted criterion, indicating the presence of sulfidic ores and soils; and
- Fill materials at the site were reported not to be characteristic of ASS/PASS.

On this basis, it was concluded that materials characteristic of ASS/PASS were observed at depths between 2.6-4.5m bgl, in six samples at two locations (BH07 and BH09). While natural sands at all other locations were not characteristic of ASS/PASS, the majority of underlying natural materials contained detectable concentrations of inorganic sulfur. As such, it was concluded that the south-west portion of the site contained PASS material and the remainder of soils did not meet the definition of Virgin Excavated Material (VENM) as defined in the Protection of the Environment Operations Act 1997.

Evaluation of potential management strategies identified the use of neutralisation techniques where disturbance cannot be avoided as the most appropriate for this site. Appropriate management measures for identified ASS material are provided in the ASSMP, including:

Pre-disturbance preparation works;

- Application of neutralisation chemicals to excavated ASS material (including piling spoil);
- Neutralisation of exposed base excavation faces (if any) during staged treatment works;
- Neutralisation of groundwater seepage and drainage leachate produced during the excavation and treatment works;
- Validation to confirm the acid generation potential of the material has been appropriately neutralised;

- Off-site disposal or re-use as engineered fill material within the development site where safe to do so (as per EPA 2014 requirements); and
- Contingency procedures and mitigation strategies.

Taking into consideration of the above, Council' Environmental Scientist raised no objection to the approval of the proposed works, subject to the actioning of procedures in the Acid Sulfate Soils Management Plan (ASSMP) and compliance with the recommended conditions of consent.

Section 6.2 Earthworks

The proposed work may necessitate to some minor earthworks on site. Conditions of consent have been imposed to ensure minimal impacts on the amenity of the surrounding properties, drainage patterns and soil stability. Subject to conditions the proposal satisfies the provisions of this Section of the BLEP.

Section 6.3 Stormwater Management and Water Sensitive Urban Design

Taking into consideration that site falls to the street as per the survey, groundwater was encountered as per the Geotech report and the site is in an absorption area, the applicants have proposed an absorption system.

The applicant was required to provide revised stormwater plans and a stormwater Management Report which was prepared by Taylor Thomson Whitting (TTW) Pty. Ltd and dated 4 June 2024. The application was reviewed by Councils Development Engineer who had no objections to the proposal subject to conditions which have been included in the recommended conditions.

Section 6.7 - Airspace operations

The inner horizontal surface of the Obstacle Limitation Surface (OLS) above the site is at a height of 51 Metres above the Australian Height Datum (AHD). With a maximum height of 51.25 Metres AHD, the building will penetrate the OLS by 0.25 Metres. Consequently, the application was referred to Sydney Airports and the Civil Aviation Safety Authority (CASA) for comment.

As recommended by the Sydney Airport Corporation, if the application is approved, a certified surveyor must notify the airfield design manager in writing of the building's finished height upon completion of construction. These recommended conditions have been included in the draft notice of consent.

The application was also referred to CASA, which determined that the building would not constitute a significant hazard to aviation safety. Therefore, CASA is not recommending obstacle marking or lighting in this instance. However, any future increase in the building's height will require a separate assessment. This assessment did not include any cranes required for construction, which will need to be assessed separately.

Section 6.8 – Development in areas subject to aircraft noise

The subject site is located within the 20 to 25 ANEF Contour and thus subject to potential adverse aircraft noise. Given this, appropriate noise attenuation measures are required for the proposed development.

The proposal was accompanied by an Acoustic Report prepared by Acoustic Logic and dated 21 November 2023. This report outlines a number of considerations to ensure that the development will comply with AS 2021:2015. These requirements include:

- 10.38mm laminate glazing to all windows as well as a minimum Rw rating of 35.

- Glass doors and windows to be fitted with Q-Ion acoustic seal,
- External roof and wall to be constructed out of concrete or masonry; and
- All areas are to be provided with alternative outside air supply system or air conditioning be installed, in accordance with AS 1668.2.

The proposal is satisfactory with respect of the requirements and objectives of this clause, subject to the inclusive recommendations made by the Acoustic Report and any other recommended conditions of consent.

Section 6.9 - Active Street Frontage

The site is identified as an Active Street Frontage, requiring the proposal to provide an active street frontage at ground floor level along the Church Avenue frontage. The proposal features a café, lobby, and communal area with a glass frontage facing the street. This design has satisfied both the Design Review Panel and the Assessment Officer that the intent of section 6.9 of the LEP has been met. The Design Review Panel supports the submitted design, which includes a ramp along the northern boundary, separated from the more direct stair access. Although this is not the ideal equitable access solution, it is an appropriate response to the site constraints.

Section 6.10 - Design Excellence

The application was presented to the DRP at the meeting of 7 March 2024. The minutes below are from the Panel meeting as part of the DA. The Panel were satisfied that the design exhibits a high standard of architectural design, materials and detailing and that the form, arrangement and external appearance will improve the quality and amenity of the public domain

Clause:	DRP Comments:
(a) whether a high standard of architectural design, materials and detailing appropriate to the building type and location will be achieved,	<p><i>Acceptable.</i></p> <p><i>The materials and detailing of the scheme presented – a prefabricated curtain wall assembly with large awning windows, thin GRC edging and thin brick cladding, above a similarly clad concrete base – are supported by the Panel.</i></p> <p><i>The Panel also supports the design decision to differentiate the current project through a change in the primary façade material to the adjoining student housing development (which is otherwise very similar).</i></p>
(b) whether the form, arrangement and external appearance of the development will improve the quality and amenity of the public domain,	<p><i>Acceptable.</i></p> <p><i>The northern frontage facing Church Avenue includes a land dedication to expand the public road reserve (in alignment with the DCP) and a small street-facing public café (in alignment with the LEP active frontage requirement).</i></p> <p><i>The lobby and communal area present as a glass line to the street on either side of the café, which in the Panel's opinion satisfy the intent of the LEP active frontage requirement.</i></p> <p><i>A number of working schemes were previously presented to the Panel exploring where the accessible ramp could be located to access the building from Church Avenue. The Panel supports the submitted design showing a ramp along the eastern boundary, separated from the more direct stair access. Although this does not represent the ideal equitable access solution, it is supported by the Panel as an appropriate response to a site constraint.</i></p>

	<p><i>The applicant has positioned some communal area frontage to the laneway, with most service/back-of-house consolidated around the rear boundary and part of the laneway. The Panel supports the provision of views from the laneway into the building's communal areas to activate the lane.</i></p> <p><i>A ground level or building setback to the laneway to provide additional pedestrian space would be supported. Upgrades to the laneway itself would also be supported, such as re-surfacing and nominating it as a shared zone.</i></p>
(c) whether the development detrimentally impacts on view corridors,	<p><i>Acceptable.</i></p> <p><i>No specific view corridors were identified to the Panel for review.</i></p>
(d) the requirements of any development control plan made by the Council and as in force at the commencement of this clause,	<p><i>Acceptable.</i></p> <p><i>The Panel was advised about DCP non-compliances with parking, solar access and overshadowing.</i></p> <p><i>Parking: The Panel has no concerns with the absence of vehicular parking given the typology, the level of public transport accessibility and the absence of existing street parking to conflict with. The Panel expects that bicycle parking should be provided at DCP rates, unless the spaces in the adjoining student housing development can be proven to be under-utilised and are able to be shared with this development.</i></p> <p><i>Solar access & overshadowing: Solar access to and overshadowing of adjoining developments has been considered by the applicant/designer and the outcome appears to be improved from an existing development consent for the site. The Panel notes the main impacted building has its primary habitable frontage oriented towards and positioned at a short distance from its side property boundary, an existing noncompliance that means any development of the adjoining site will have a significant effect on its solar amenity.</i></p>
(e) how the development addresses the following matters:	
(i) the suitability of the land for development,	<p><i>Acceptable.</i></p> <p><i>The site is part of a maturing residential precinct that has largely replaced the former industrial character. The site is suitable for development of the scale and nature proposed.</i></p>
(ii) existing and proposed uses and use mix,	<p><i>Acceptable.</i></p> <p><i>The applicant advised that the co-living development was essentially identical to student housing in typology but open to all applicants (rather than limited to students, as the adjoining tower is). This is considered by the Panel to be appropriate and beneficial for housing choice, diversity and affordability</i></p>
(iii) heritage issues and streetscape constraints,	<p><i>Acceptable.</i></p> <p><i>Council's proposal for a road widening is delivered by the Applicant in an appropriate manner.</i></p> <p><i>No heritage issues were identified to the Panel for review</i></p>
(iv) the relationship of the development with other	<p><i>Acceptable.</i></p>

development (existing or proposed) on the same site or on neighbouring sites in terms of separation, setbacks, amenity and urban form,	<p><i>Separation: Co-Living developments are subject to ADG separation guidance, however the site dimensions and existing noncompliant development on adjoining sites means that full ADG building separations are not able to be sensibly achieved.</i></p> <p><i>The current design shows a zero setback to the western boundary, where it fronts onto largely blank walls of the adjoining residential development (except for what appears to be a hallway window). This maximises the setback of the tower element to the eastern boundary, facing habitable windows of another adjoining residential development.</i></p> <p><i>While acknowledging that the building separation does not meet the full habitable<>habitable guidance of the ADG, the Panel supports the pre-DA scheme's design approach and outcome. A further reduction in separation could be supported if that site area was then reallocated to pedestrian improvements to the laneway.</i></p> <p><i>There is minimal building separation from the existing student housing to the south, which is considered acceptable given there are no south facing windows within the subject development and screening measures have been provided to the southern communal roof deck to limit direct views into the student rooms opposite.</i></p> <p><i>Setbacks: The Panel encourages a small increase to the western setback to provide room for improved pedestrian amenity to the service laneway.</i></p> <p><i>Amenity: A high degree of on-site amenity is proposed. The Panel supports the amenity outcomes in each of the design options proposed in the Pre-DA session.</i></p> <p><i>Urban Form: The site is within a maturing high density residential precinct with varied street wall and tower heights. This variability supports significant flexibility in the current development site. The Panel supports the design approach taken by the applicant.</i></p>
bulk, massing and modulation of buildings	<i>Acceptable.</i>
(vi) street frontage heights,	<i>Acceptable.</i>
(vii) environmental impacts such as sustainable design, overshadowing, wind and reflectivity	<i>Acceptable.</i>
(viii) the achievement of the principles of ecologically sustainable development	<i>Acceptable.</i>
(ix) pedestrian, cycle, vehicular and service access, circulation and requirements	<i>Acceptable.</i>
(x) the impact on, and any proposed improvements to,	<i>Acceptable.</i>

the public domain,	<p><i>The proposed design for the expanded road reserve for Church Avenue is understood to align with Council requirements on which the Panel makes no comment.</i></p> <p><i>No improvements are proposed to the laneway, which the Panel understands is not within the applicant's control.</i></p> <p><i>As identified, the building itself is considered to be a positive contributor to the public domain along the two boundaries (street and laneway).</i></p>
(xi) achieving appropriate interfaces at ground level between the building and the public domain	<p><i>Acceptable</i></p> <p><i>As per notes above, the design of the ground level is well considered and contributes to the streetscape.</i></p>
(xii) excellence and integration of landscape design.	<p><i>Acceptable.</i></p> <p><i>The proposed landscape provides an appropriate amenity to the streetscape and to the ground level and level 3 open space areas. Urban tree canopy is realised on both deep soil areas and on built form.</i></p>

The above comments form part of an attached document to this DA. The DRP are of the opinion that the design achieves Design Excellence in accordance with Section 6.10 of Bayside LEP 2021.

Section 6.11 – Essential Services

Services are generally available on site to facilitate to the proposed development. Appropriate conditions have been recommended requiring approval or consultation with relevant utility providers with regard to any specific requirements for the provision of services on the site.

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

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

(c) 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 DCP”)

Section 3.1 – Site Analysis and Locality

3.1.1 Interface with the Public Domain

The proposal has been designed to ensure that all ground level elements of buildings visible from the streets and parks make a positive contribution to the public domain. The development has been designed so that the principal entry point within the building is through Church Street. The development has been designed so that services and infrastructure, where possible, are integrated into the built form design at development assessment stage and have also been located so that they face the adjacent laneway and do not impact on the public domain along Church Avenue.

3.1.3 Crime Prevention through Environmental Design (CPTED)

The proposal has been designed so that the principal entry point within the building is through Church Street and will be carried out through swipe cards so that the general public cannot

enter as they choose. The ground floor provides large glass windows so that passive surveillance is carried out to the street and the lower ground courtyard. The proposal will also provide opportunities for active and passive surveillance to Church Ave either from individual rooms or the upper floor outdoor terrace.

The developer has issued a plan of management which outlines the operations of the development and this and additional security conditions have been imposed in the attached consent. Further, it is noted that there is a CPTED assessment within the submitted SEE and has addressed the key topics of Surveillance, Access Control, Territorial reinforcement and Space management and maintenance.

Similar to the existing Iglu 1, a condition requiring an on-site manager/resident or student leader/security has been included in the instance where there are any complaints or issues. The application was referred to NSW Police twice, however, comments were never received despite Council chasing up. As such the conditioned that were imposed at the first Iglu site, at the rear, have been included in the conditions of consent. These conditions relate to security, CCTV and hidden areas. The proposal is considered to satisfy the provisions of the DCP subject to conditions.

3.1.4 Active Street Frontages

Is addressed above, under section 6.9 of the BLEP 2021.

3.1.5 Views

The siting of the proposed building will cause some view loss to the adjoining rear neighbour, which it is identified is as being the same developer. Nonetheless, the design is marginally under the permitted building height control and has been designed by pulling the bulk towards to the western boundary to reduce impact on the surrounding views presently enjoyed by adjacent rear residents.

No objections regarding view loss have been raised by neighbouring properties. However, a neighbour at 3-9 Church Avenue has expressed concerns about the loss of outlook. Since this pertains to the loss of outlook rather than an iconic view, an assessment under *Tenacity Consulting v Warringah Council* [2004] NSWLEC 401 is not required. It is important to note that even a fully compliant building would obstruct the outlook, given the site's maximum height standard of 44 Metres. The proposal is considered to satisfy the provisions of the DCP.

Part 3.2 – Design excellence

Addressed above under Section 6.10 in the BLEP 2021.

Part 3.3 – Energy and Environmental Sustainability

3.2.2 Natural daylight and ventilation

The BDCP 202 requires a minimum ceiling height of 2.7 Metres for habitable rooms and 2.4 Metres for non-habitable rooms. The proposed ceiling heights for the development are as follows: Ground floor 3.85m, Level 01 3.75m, Levels 02 to 11 3m, and Level 12 3.2m. The development has been designed to provide an adequate number of openings at each level to allow natural light. Each room has access to a window, and there are windows on either side of the corridor to provide light and minimize reliance on artificial lighting in the residential development. Therefore, the proposal complies with the requirements of this control.

3.3.3 Reflectivity

The subject site is not located in the vicinity of Sydney Airport, nor is it considered that proposed materials are unlikely to create solar glare and light reflectivity. As such the proposal satisfies this control.

3.3.5 Energy Assessment

The proposal is accompanied by a Sustainability Report Atelier Ten dated 12/12/2023 and is addressed earlier under the SEPP Sustainability 2021.

Part 3.5 – Traffic, Parking and Access

An assessment against car parking, motorcycle and bicycle parking has been provided in the Housing SEPP section of the report above.

Waste collection

The development will utilise the same loading dock currently used by Iglu's Mascot I site, for the loading/unloading of goods and waste. The loading dock is currently serviced by a private MRV waste facility, as Council garbage trucks cannot access the site which is accessed via Church Avenue through a shared driveway easement. Council's Waste Officer and Council's Development Engineer has reviewed the application and raised no issues, subject to conditions including hours of use of the loading bay, waste collection management, grading and ensuing that requiring vehicles to enter and exit in a forward direction.

Access

The site has multiple historical easements, resulting in a complex layering of right of carriageway easements across three properties: 13A Church Avenue (Lot 1 DP 547700), 8 John Street (Lot 100 DP 1278578), and 19-21 Church Avenue (SP 82064). The total extent of these easements is shown in figure 36.



Figure 36 : Existing easements

To ensure access to each lot, the applicant must demonstrate that the appropriate legal instruments are in place and registered with the NSW Land Registry Services (NSWLRS) to provide legal vehicular access to all mentioned properties. A right of carriageway must be established for the first 13 Metres into the property, aligned with the 6.1-Metre-wide driveway crossing.

The above has yet to be resolved, however to avoid delays and facilitate a favourable determination, Council's Development Engineer has issued a deferred commencement condition to address this matter.

Part 3.6 - Social Amenity, Accessible and Adaptable

The development will be able to comply with respect to Access and BCA. This is addressed in Compliance Statement of the Access Report, prepared by Architecture and Access dated 19 December 2023 and in the conclusions of the BCA report prepared by Steve Watson and

Partners dated 20 December 2023. The development proposes a total of 13 accessible sole occupancy rooms which have been divided into three types of rooms 4 rooms for mobility impairments, 6 rooms for hearing and speech impairments, and 3 rooms for vision impairments. These units are distributed throughout the building and the building operator is required to allocate these based on user requirements.

The proposal has provided a ramp at the principal entrance along Church Avenue as well as contains two lifts. All communal areas are accessible by lift therefore there is no disadvantages presented. The development does not provide accessible parking however the argument presented in the car parking discussion above applies in this instance as well. Mascot Station is an accessible station with lifts going down to the platforms. The proposal satisfies the provisions of the DCP.

Furthermore, a Social Impact Assessment study has been provided, prepared by the Planning Studio. The documentation identifies potential social impacts arising from the proposed development, including impacts during the construction phase, effects on surrounding neighbours and local businesses, public safety and security for future occupants, and potential impacts on the natural and built environment. The applicant has proposed several solutions to address these issues, which the Council considers appropriate. The development application demonstrates that the proposal and design have taken into account the social value, benefits, and potential impacts of the development. These can be adequately assessed and managed throughout the life of the development, from construction to operation.

The proposal is satisfactory and complies with the objectives of this Part of the DCP, subject to the actioning of procedures of all recommendations made in both aforementioned reports and compliance with the recommended conditions of consent.

Part 3.7 – Landscaping, Private Open Space and Biodiversity

The BDCP 2022 does not specifically address the landscaping needs for purpose-built student accommodation. However, given the nature of the use, the development is considered to align with the requirements for a residential flat building, which requires that 15% of the site be designated as landscaped area. This development provides a total of 704.2 sqm of landscaped area, accounting for 35% of the site. Landscaping is primarily provided at the lower ground level, which includes a communal grassed area, the ground level at the front of the site, the terrace at Level 2 at the rear of the site, and the terrace at Level 6 facing Church Avenue. The proposal also includes 357 sqm, or 17% of the site, as deep soil area.

The application was initially reviewed by Council's Landscape Architect, who did not support the proposal and requested an amended landscape plan with greater detail regarding planters, tree species, and other landscaping elements. The applicant subsequently provided an amended landscape plan that addressed some of Council's original comments. Appropriate conditions have been imposed in the attachment.

Like Iglu1, a key advantage of this development is the absence of basement car parking, allowing for a significant amount of deep soil area. One of the main concerns raised in submissions was visual privacy. The planting of trees will help green the site and provide a landscape screen for the building from the communal areas of 3-9 Church Avenue and from Church Street. The additional trees will also help soften the built form in this high-density area.

Part 3.9 - Stormwater Management and Water Sensitive Urban Design

Addressed above under section 6.3 of the BLEP 2021.

Part 3.11 – Contamination

Addressed under the Resilience and Hazard SEPP

Part 3.12 – Waste Management

3.12.2 On-going management

The development plans to share existing waste infrastructure, specifically the loading dock, with the already constructed Uglu1 development at the rear. The proposal includes its own bulk waste room connected to the loading dock. Council's Waste Officer has reviewed the application and provided conditions to increase the storage area for bulky waste according to Council's specifications, ensure compliance with bin movement requirements, and maintain the required cleaning standards for this space. Subject to these conditions, the development is deemed acceptable.

Part 3.13 – Development in areas subjected to noise

Refer to BLEP 2021 above in the report for discussion.

Part 3.14 – Noise, Wind, Vibration and Air Quality

3.14.2 Acoustic Privacy – Residential

Acoustic impacts on other residents have been mitigated due to the location of windows, openings, communal living. The location of the loading dock, which already exists on site, is not anticipated to result in any additional noise. Noise from communal area can be managed by the use noting that outdoor communal areas cannot be used after 6pm or before 9am and that no amplified music is to be used in these areas. Furthermore, as addressed above the assessment officer is seeking for an additional setback to be provided to the outdoor communal open space to alleviate potential acoustic matters. Subject to conditions the development is acceptable.

3.14.4 Wind Effects

A Wind Report prepared by RWDI Australia Pty Ltd, dated 12 December 2023 has been submitted. This document concludes that wind conditions around the existing site and with the inclusion of the proposed development are found to be calm with no areas exceeding the stipulated safety criterion. No strong winds are anticipated within and around the site that could compromise an individual's balance. The report has included a number of recommendations. No issues are raised with the proposal subject to wind impacts, subject to the inclusions of recommendations included in the RWDI report. Subject to conditions the development is acceptable.

Part 3.18 - Utilities and Mechanical Plant

There are existing services constructed at the end of the battle axe handle for Iglu 1 along the frontage to Church Avenue subject to an easement. As part of this development the easement is being modified to include the subject site. The existing services, see Figure No. 37, need to be relocated because as part of the easement changes, the vehicular access width is considerably shrinking down from 12m to 6m and these services will be obstructing the carriageway.



Figure 37: Existing Services.

These services are proposed to be relocated within the building along the western elevation at the ground floor, see Figure No. 38, with a suitable easement covering them and they will be screened from view. Subject to conditions the development is acceptable.



Figure 38: Proposed Service Location

Part – 5.2.7 Boarding houses and co-living (including student accommodation)

The relevant controls are assessed against the proposed development as demonstrated below in **Table 6** and considered in more detail below.

Table 6: Assessment against relative Boarding houses and co-living controls in the BDCP 2022.

Control	Comments	Complies (Y/N)
Control - 5.2.7 - General		

C2.	A minimum lot width of 24 metres to any street frontage is required for Class 3 boarding house developments and co-living developments.	The site benefits from a frontage of 37.765m	Yes
C4.	Strata subdivision or community title subdivision is not permitted.	Development is not seeking subdivision.	N/A
C5.	Development must ensure that the proposed FSR, height, setbacks, detailed design and other elements are compatible with predominant scale of development in the local area.	The development is compatible with mixed scale of existing developments in the locality as addressed in the body text of this report.	Yes
C6.	Communal open space is located away from habitable rooms of dwellings on adjoining properties.	Communal open space is located away from habitable rooms subject to conditions.	Acceptable- subject to conditions. See above discussion at Note No. 4
C7.	Private open space and balconies incorporate screening devices to avoid direct overlooking into habitable rooms of dwellings on adjoining properties.	Private balconies have not been proposed.	N/A
C8.	Communal areas and bedroom windows are to be located away from the main living area or bedroom windows of any adjacent buildings.	The development has been designed to ensure that communal areas are located away from the main living area or bedroom windows of any adjacent buildings.	Acceptable- subject to conditions. See above discussion at Note No. 4
C9.	Screen fencing, plantings, and acoustic barriers are to be incorporated in appropriate locations.	N/A on this site	N/A
C10.	The main entry point of the boarding house is located at the front of the site away from side boundary areas near adjoining properties.	The main entry point for the development is located at the front of the site.	Acceptable
C11.	Sources of noise, such as kitchens, communal rooms and parking areas must be sited and designed to minimise the noise impact on adjoining properties.	Kitchens and communal rooms are located away from adjoining properties.	Yes
C12.	Where required Development Applications for boarding houses and co-living are to be accompanied by a noise assessment prepared by a qualified	An acoustic report was submitted which was prepared by Acoustic Logic, dated 21 November 2023. Development will be able to comply	Yes

	acoustic consultant, addressing the requirements of the SEPP (Transport and Infrastructure) 2021 and Section Error! Reference source not found. – Noise and Vibration.	subject to conclusions within the report.	
C13.	Bedrooms are to be located so that they are separate from significant noise sources. Bedrooms are to incorporate adequate sound insulation to provide reasonable amenity between bedrooms and external noise sources.	Bedrooms are located so that they are separate from significant noise sources.	Yes
C14.	Double glazed windows are to be incorporated where noise transmission affects neighbouring buildings.	It is considered that adequate separation distances are provided to internal communal areas; therefore, double-glazed windows are not warranted in this instance.	Yes
C16.	The minimum ceiling height of all habitable rooms is 2.7m.	3.1m proposed	Yes
C19.	A Development Application for a boarding house or co-living is to be supported by a written Plan of Management (POM) that describes how the ongoing operation of the boarding house/co-living development will be managed to reduce its impact upon the amenity of surrounding properties.	Plan of Management (POM) has been submitted. See below discussion.	Yes See below discussion at Note No. 5
C20.	A Development Application for a boarding house, which has a capacity of greater than 19 residents is to be supported by a Social Impact Statement (SIS). A SIS must be undertaken by an appropriately trained and qualified person using rigorous social science methodologies with a high degree of public involvement.	One has been provided and was sent to NSW Police for their review. Comments were never received despite Council chasing up. As such the conditioned that were imposed at the first Iglu site, at the rear, have been included in the conditions of consent. These conditions relate to security, CCTV and hidden areas. The proposal is considered to satisfy the provisions of the DCP subject to conditions.	Acceptable – subject to conditions.
Control - 5.2.7.2 - Solar Access and Overshadowing			
C1.	Development is to be designed and sited to provide a minimum of 3 hours sunlight between the hours of 9.00am and 3.00pm on 21 June to:	The proposed development has been sited and designed, to protect the adjoining neighbouring buildings solar access to living space and	Yes

	<ul style="list-style-type: none"> 70% of habitable rooms within the development all habitable rooms in adjoining residential developments; and private open space within the development private open space of adjoining dwellings. 	private open spaces. See below discussion	See below discussion at Note No. 6
C3.	Developments are to be designed to enhance solar access. a.		
5.2.7.3 - Management			
C1	Development shall provide boarding rooms or on-site dwellings, to accommodate boarding house managers, based on the following rates of provision: a. 20 – 39 lodgers require 1 boarding room or on-site dwelling b. 40 – 79 lodgers require 2 boarding room or on-site dwelling 80 lodgers require 3 boarding rooms or on-site dwellings	<p>As the application is seeking for 305 occupants, 3 boarding rooms or on-site dwelling would be required.</p> <p>The applicant has not provided any onsite accommodation for house managers.</p> <p>The following justification was provided.</p> <p><i>Iglu operates a 24 hour a day, 7 day a week service for residents – meaning that there will always be a member of staff onsite and available to assist.</i></p> <p><i>General office hours of the reception will run Monday to Friday, 9am to 8pm and Saturday to Sunday, 9.30am to 5.30pm.</i></p> <p><i>The Assistant General Manager will be dedicated to the site and will be contactable 24 hours per day, 7 days per week and will work with a team of professional staff members.</i></p> <p>As this request exceeds the minimum requirements of the Housing SPPP, and given that there will always be a member of staff onsite and available to assist, the need for one to reside on site is considered onerous</p>	Acceptable
C2.	Boarding rooms or on-site dwellings, provided for management, shall achieve a minimum area of 16m².		
C3	Boarding rooms or on-site dwellings, provided for management, shall include private open space which achieves a		
5.2.7.4 - Function, efficiency, and safety			
C1.	Communal spaces, including laundry, bathroom, kitchen and living areas are to be located in safe and accessible locations.	Communal spaces, including laundry, bathroom, kitchen and living areas are located in safe and accessible locations	Yes

C2.	Habitable living areas (such as lounge room, kitchen, dining and bedroom) are to be located to allow general observation of the street and communal open space.	Development will allow for allow general observation of the street from communal space.	Yes
C3.	Building entry points and internal entries to living areas are to be clearly visible from common spaces.	All building entry points are clearly visible.	Yes
C4.	The communal indoor living area has a transparent internal door to enable natural surveillance for resident circulation.	The development has been designed to ensure that the communal indoor area and transparent internal door to enable natural surveillance for resident circulation.	Yes
C5.	A boarding/co-living room is encouraged to have the following facilities; however, is not required to by State Environmental Planning Policy (Housing) 2021: a. ensuite (which may comprise a hand basin, toilet and shower) b. laundry (which may comprise a wash tub and washing machine) kitchenette (which may comprise a small fridge, cupboards and shelves and microwave)	The development has been designed to ensure that the each of the rooms have an ensuite provided and a kitchenet. The uses will have access to a communal laundry as well as communal kitchen	Yes
C7	The following communal facilities are to be provided: a. living area b. kitchen c. dining d. outdoor open space e. bathrooms f. laundry (where clothes washing facilities not provided in individual rooms) g. outdoor clothes drying are.	The development has been designed to incorporate living areas, kitchen, dining, outdoor open space, bathrooms and laundry. It is noted that outdoor clothes drying are not provided however is not critical can be replaced using dryers in the proposed laundry.	Adequate communal facilities are to be provided
C8.	The communal indoor living area can include a dining area but cannot include bedrooms, bathrooms, laundries, reception area, storage, kitchens, car parking, loading docks, driveways, clothes drying areas, corridors and the like.	Communal indoor living area have been calculated in accordance with the controls and exceed the requirement as stipulated in the SEPP	Yes
C9.	The communal indoor living area shall have: whichever is greater - a minimum area of 20m ² or 1.25m ² per resident; and a minimum width of 3m	Communal indoor living area have been calculated in accordance with the SEPP housing	N/A
C10.	The communal indoor living area shall be located:	Communal indoor living areas have been designed in accordance with	Yes

	<ul style="list-style-type: none"> a. near commonly used spaces, such as kitchen, laundry, lobby entry area or manager's office b. adjacent to communal open space c. to receive a minimum 3 hours solar access to at least 50% of the windows during 9am and 3pm in June d. on each level of a multi-storey boarding house, where appropriate e. where they will have minimal impact on bedrooms and adjoining properties 	<p>the controls and deemed to be acceptable.</p> <p>While communal indoor areas are not provided on each level of the multi-storey boarding house, the additional space provided compensates for this requirement. Furthermore, the DRP raised no issue to the lack of a room on each floor.</p> <p>The development has been designed to ensure minimal impact on bedrooms and adjoining properties.</p>	
C11.	<p>Communal outdoor open space shall be located and designed to:</p> <ul style="list-style-type: none"> a. receive a minimum 2 hours of solar access to at least 50% of the area during 9am and 3pm on 21 June b. be provided at ground level in a courtyard or terrace area c. provide weather protection d. incorporate 50% soft landscaping of the area e. be connected to communal indoor spaces, such as kitchen or living areas f. contain communal facilities such as a toilet, outdoor drying, barbecues, seating, and pergolas where appropriate <p>be screened from adjoining properties and the public domain</p>	<p>Communal outdoor open spaces have been designed in accordance with the relevant controls and are deemed acceptable.</p> <p>One of these spaces, located on the 4th floor facing Church Avenue, shall receive a minimum of two hours of solar access to at least 50% of the area between 9am and 3pm on June 21st.</p> <p>The ground-level space is connected to communal indoor areas, such as kitchens and living spaces</p>	Yes
C13.	<p>Communal laundry facilities are provided and are to have:</p> <ul style="list-style-type: none"> a. a minimum of 1 x 5kg capacity automatic washing machine and one domestic dryer for every 12 residents or part thereof b. a minimum of 1 large laundry tub with hot and cold running water <p>Note: These facilities are not required if individual washers and driers are provided.</p>	<p>Communal laundry facilities are proposed. The application can be condition to ensure that the minimum facilities are provided. The application can be conditioned accordingly</p>	Yes – subject to conditions.
C14.	<p>Communal outdoor clothes drying facilities are provided and are located to:</p> <ul style="list-style-type: none"> a. not be visible from the public domain 	<p>Communal outdoor clothes drying facilities are not provided. In this instance having the washing of 305 students is not ideal being presented to the public domain. The</p>	Yes – subject to conditions.

	b. have appropriate levels of solar access not comprise the usability of space for its intended function	development application will be conditioned to ensure that drying facilities are provided within the proposed laundry.	
--	--	--	--

Note No.5 – Plan of Management

The application is accompanied by a Plan of Management (POM). This document outlines how the ongoing operation of the student housing development will be managed to minimise its impact on the amenity of surrounding properties. The POM includes details on operations, access and security, utilities requirements, maintenance and repairs, hours of operation, staffing, and accommodation terms. However, this document was not amended to reflect that the occupants were to be students only nor have they addressed how complaints will be handled.

In light of the above, the application will be conditioned such that, prior to the issue of a Construction Certificate, a revised POM must be submitted to the Council for approval. The revised statement must outlined that the occupants of the site are for student accommodation only. Furthermore, the document should detail procedures for handling complaints related to the operation of the premises, from neighbouring developments. At a minimum the revised documents should require that the following detailed are taken; Complaint date and time, Name, contact, and address details of the complainant, Nature of the complaint, Name of staff on duty and Actions taken by the premises to resolve the complaint.

Note No. 6 – Overshadowing

The proposed development has been sited and designed, as addressed above, to protect the adjoining neighbouring buildings solar access to living space and private open spaces. The application is supported by overshadowing diagrams at winter solstice, the spring equinox as well as view from the sun from 9 – 3pm for the winter solstice, spring equinox and summer solstice which is enough information to enable for a detailed assessment.

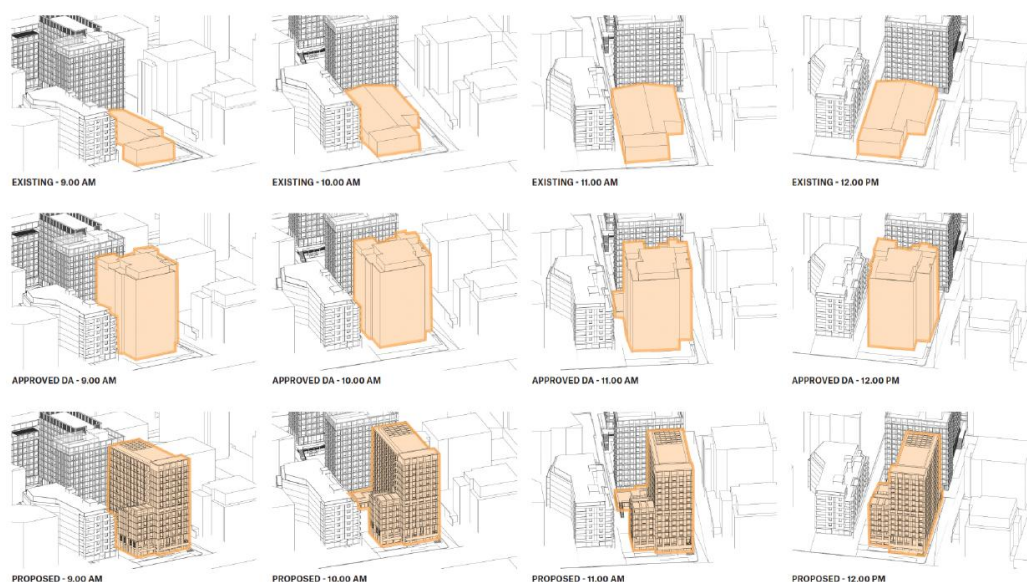


Figure 39 : Winter Solstice Sun Eye – 9am-12pm

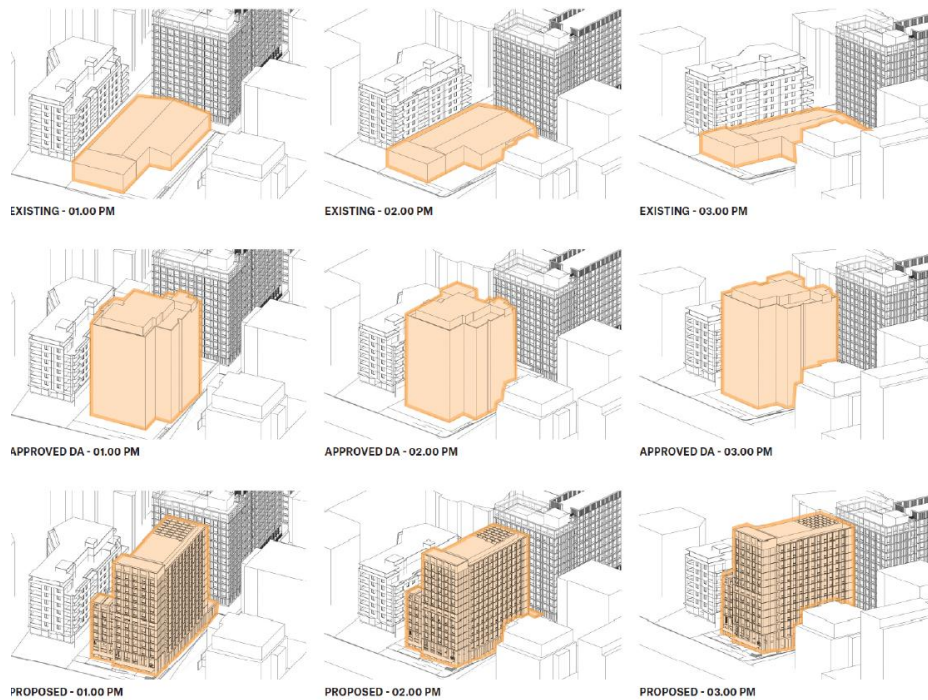


Figure 40: Winter Solstice Sun Eye – 1-3pm

Due to the north-south orientation of the site, the units at 3-9 Church Ave will not be impacted by the development from 9am to midday. Similarly, the units at 19-21 Church Ave and their associated private open spaces will remain unaffected by the development from midday to 3pm. It is essential to clarify that overshadowing of one's own property is not considered when assessing the impact of overshadowing. With regards to the eastern and western neighbouring properties the developments meet the requirements of the BDCP 2022.

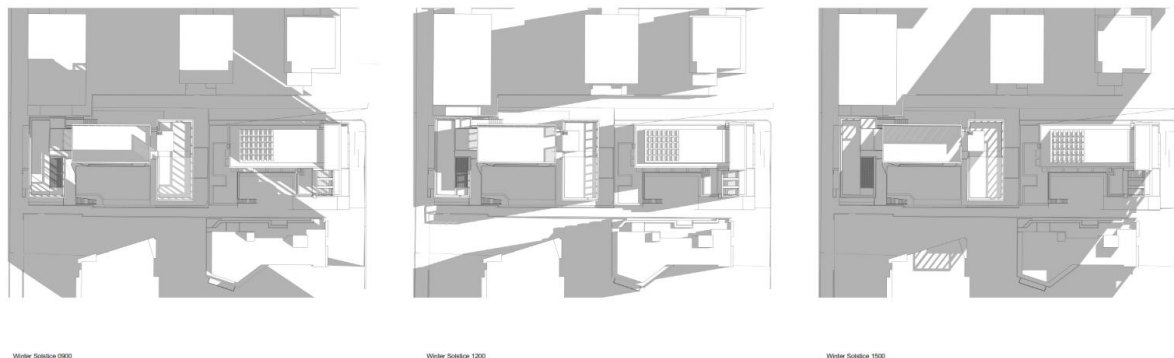


Figure 41: Winter Solstice Sun Eye – 9am-12pm (Bates Smart)

Notwithstanding the above, the existing twelve-storey student housing development situated on the southern rear boundary will be overshadowed by the proposed development. This is a direct response to the orientation of the site, the resulting subdivision and the development standards including Height of Building that are applicable to the site. Given the nature of its use, it is reasonable to anticipate less than two hours of solar access during midwinter. Sun view shadow diagrams indicate some of the existing student housing rooms and associated communal open space will retain varying levels of solar access at different times throughout the day in midwinter. It is imperative to note that the owner and operator of the southern rear site is the same entity as the applicant for the subject application. This likely explains why no objections based on overshadowing to the proposal was raised from their neighbour.

Part – 7.8 Mascot Town Center

Part 7.8.2 – Vision Statement

The vision statement within the DCP outlines Councils' vision for the area surrounding Mascot Train Station. This section of the DCP states that Mascot Station Town Centres' role is as a mixed-use centre where commercial uses, including retail shopping and community uses provide diversity in what has been previously an industrial and commercial development focus.

The proposed development is consistent with the vision Council has for the area and provides a diversity in use and built form.

7.8.3 Controls – General

This section of the DCP does not go into detail on the subject site with regard to height and floor space. Therefore, the BLEP 2021 controls apply in this instance. The development is compliant with respect to height and the requested to contravenes the FSR development standard is adequate. The relevant controls are assessed against the proposed development as demonstrated below in **Table 7**.

Table 7: Assessment against relative Mascot Town Center controls in the BDCP 2022

Control		Comments	Complies (Y/N)
Control - 5.2.7 - General			
C1.	Development is in accordance with the Urban Block 1 and Urban Block 2 Public Domain Maps.	The application was referred to Council's Landscape Architect and Council's Development Engineer who have reviewed the application form a public domain perspective. No issues were raised subject to conditions.	Yes – subject to conditions
C6.	All existing above ground service cables, including power lines, telecommunications cables and other similar services ("overhead service cables") in the streets adjacent to and within the confines of the development site will be placed underground at no cost to the Council	The application has been conditioned to include necessary conditions regarding ground service cables, including power lines	Yes – subject to conditions
C7.	All work is to be in accordance with Council specifications, plans, details or the Urban Design Strategy.	The application was referred to Council's Landscape Architect and Council's Development Engineer who have reviewed the application form a public domain perspective. No issues were raised subject to conditions	Yes – subject to conditions
Built Form and Design			
C8.	Development is in accordance with the Urban Block 1 and Urban Block 2 height maps and the height controls of the Bayside LEP 2021.	The Urban Block 2 height map does not apply to the subject site.	N/A in this instance

C9.	<p>Council may require a reduction in height shown for the land on the Height of Buildings Map where the proposed building height would have unacceptable adverse impacts with regard to:</p> <ol style="list-style-type: none"> the overshadowing of a dwelling, private open space or public open space an inappropriate transition in built form and land use intensity the design excellence of a building view loss <p>the Obstacle Limitation Surface</p>	<p>The development complies with the height development standard, Section 4.3, with the BLEP 2021.</p> <p>It is considered that the development has been designed and sited to ensure minimal adverse impacts, including overshadowing, appropriate transition, and no view loss, while achieving design excellence.</p> <p>The application was referred to Sydney Airport due to the site's impact by the Obstacle Limitation Surface. No issues were raised, subject to conditions.</p>	
C10.	<p>Shadow diagrams must be provided for all development proposals for the summer and winter solstices. Shadow diagrams must illustrate the shadow impacts at 9.00AM, 12.00 noon and 3.00PM for both solstices. Additional building setbacks may be required where impacts within the site and/or upon adjoining properties are considered to be unreasonable</p>	<p>Shadow diagrams have been provided to enable an assessment of the impacts to neighbouring properties.</p> <p>As detailed above it is considered that the development has been appropriately designed to enable the required solar access to the neighbouring sites, expect the site at the rear.</p>	Yes
C11.	<p>Council may require a reduction in FSR shown for the land on the Floor Space Ratio Map where a building built to the Floor Space Ratio Map would have unacceptable adverse impacts with regard to:</p> <ol style="list-style-type: none"> the overshadowing of a dwelling, private open space or public open space an inappropriate transition in built form and land use intensity the design excellence of a building view loss <p>the Obstacle Limitation Surface</p>	<p>The development does not comply with the FSR development standard, Section 4.4 of the BLEP 2021, as addressed above.</p> <p>The application is supported by a sufficient clause 4.6 statement which has requested to contravene the development standard. Furthermore, this proposal will result in a reduction of 227.96sqm to the existing and activated approval on site.</p> <p>It is considered that the development has been designed and sited to ensure minimal adverse impacts, including overshadowing, appropriate transition, and no view loss,</p>	N/A in this instance

		while achieving design excellence.	
C12.	Development must conform to the Urban Block 1 and Urban Block 2 Site Amalgamation Maps.	The Urban Block 2 height map does not apply to the subject site.	N/A in this instance
C13.	Development must conform to the Urban Block 1 and Urban Block 2 Lot Alignment Maps.	The proposal will deliver the required road widening along Church Avenue. As such it is considered that the proposal will confirm with Urban Block 2 Lot Alignment Maps.	Yes
C15	Development must identify through a SEPP 65 Design Statement and/or annotated drawings how design excellence will be achieved in the proposed development	Development is not for a RFB building as such a Design Statement is not required in this instance.	N/A
C17	Buildings and open space areas will be designed to: a. enable casual surveillance of streets, open space and entrances to buildings b. minimise access between roofs, balconies and windows of adjoining developments c. ensure adequate lighting to access routes, car park areas and open space. External lighting must be provided to mixed use developments, commercial developments and industrial areas where pedestrian ways, main building entries, driveways, communal areas and car parks require public access at night or after normal trading hours	Casual surveillance of streets and building entrances has been achieved on site. The proposed café will facilitate surveillance of both the street and the building entrance.	Yes – subject to conditions.
C18		The proposed use of material including the glass windows from communal spaces and the bike storage area at the ground will allow for casual casual surveillance to the easement. To enhance security and passive surveillance for the safety of pedestrians and property, additional lighting has been conditioned along the eastern elevation adjacent to the easement.	
C19	External lighting is to comply with the requirements of Section 9.21: Lighting in the Vicinity of Aerodromes, Manual of Standards, Part 139 – Aerodromes Version 1.1, February 2003. All lighting, regardless of location, which may affect the safe operation of aircraft operating at Sydney Airport are required to be compatible with the above requirements.	The application has been conditioned to include necessary conditions.	Yes – subject to conditions.

C20	Communal walls and floors connecting buildings are to be designed in accordance with the noise transmission and insulation requirements of the Building Code of Australia (BCA).	The application has been conditioned to include necessary conditions.	Yes – subject to conditions.
C23	Taller buildings must consider the shape, location and height of buildings to satisfy wind measurements for public safety and comfort at ground level. In addition, open terraces and balconies must not be detrimentally affected by wind.	<p>The development shape, location and height has been considered.</p> <p>The development is supported by Wind Report prepared by RWDI Australia Pty Ltd, dated 12 December 2023 has been submitted. As addressed early in this report.</p> <p>This document concludes that wind conditions around the existing site and with the inclusion of the proposed development are found to be calm with no areas exceeding the stipulated safety criterion. No strong winds are anticipated within and around the site that could compromise an individual's balance.</p>	Yes
Street Character and Development Setbacks			
C28	Development must conform to the Urban Block 1 and Urban Block 2 Setback Maps	<p>Council's DCP has identified that sites west of the Sydney Water SWSOOS (Liner Park) relevant to these controls does not specify any street setback requirements for new street alignments for the subject site.</p> <p>The development front setback has been staggered with a front setback ranging from 3m metres to 5.4m from the new front boundary alignment along Church Avenue.</p> <p>The subject site proposes a front setback boundary that is consist with that of 19-21 Church Avenue. It is noted that the development does not align with 3 – 9 Church Street, however is</p>	N/A
C29	Development must be conform with the section plans for Urban Blocks 1 and 2.		

		not anticipated that this alignment will impact the interpretation of the spatial streets alignment when viewed from the public domain.	
C31	Development does not result in blank external walls of greater than 100m ²	The development has been appropriately designed to ensure that the development does not result in blank external walls greater than 100sqm.	Yes
C32	All property boundary front setbacks must be deep soil and landscaped and must not have any underground intrusions such as underground car parking or on-site detention	Some deep soil has been provided within the front setback. However, the entirety of this area cannot be achieved as equitable access must be provided to the development. Consequently, ramping has been included in the setback.	Acceptable
C33	Setbacks are to maximise the retention of existing trees and their root systems (including those on adjoining properties) and may need to be variable to achieve this.	While trees do exist on site, they are not considered worthy of retention.	N/A
C34	Setbacks are to include the planting of canopy trees, both small and large varieties. Developments are not to rely solely on street trees to ameliorate buildings	The western setback includes the planting of canopy trees.	Yes
C35	Buildings must have a consistent street wall height (in terms of the number of storeys) and provide a continuous street frontage along all significant street	The Church Avenue elevation demonstrates a thirteen-storey street wall, which exceeds the height of the immediate adjacent buildings. However, it is noted that there are other taller developments on the street, including 1 Church Avenue, which is thirteen storeys high, and 27 Church Avenue, which is twelve storeys high.	Yes
C36	Diversity and activity is to be ensured via providing a variety of frontage widths for retail shops along the street.	The floorplate of development has been successfully designed thought the use of the café providing a variety along Church Ave.	Yes
C38	The primary area of outdoor private open space must not be located on the street frontage	Outdoor private open space is not located on the street frontage	Yes

C40	The landscaped street setback area shall be on one level or at a slight slope, not terraced or stepped or containing narrow planter boxes, to allow adequate lateral root space and soil volume for medium to large canopy trees	<p>The landscaped area is terraced, within the front setback, in response to providing a ramp within the front setback to achieve equitable access.</p> <p>Unlike other developments within Church Avenue, the site is able to achieve lateral root space and soil volume for medium to large canopy trees within the site as it benefits from not having a basement.</p> <p>The development, despite the terraced planning, is still considered to provide active street frontages from the ground floor retail in line with the objective of the clause. The development is also considered to create a suitable interface between private and public spaces that ensures the safety, amenity and protection of privacy for residents.</p>	No – but acceptable.
C41	Side or rear boundary fencing is not permitted fronting the public domain except where appropriate landscaping is provided in front of the fence	Fencing is not proposed within the public domain.	N/A
C42	The visual connection between the building frontage and the public domain must be considered carefully in all development. This may require the floorplate of development to step with the topography to ensure that the floor level of the building frontage is generally at footpath level	The floorplate of development has been successfully designed through the use of the café, and windows from the communal rooms and bike storage to the easement to enable the visual connection between the building frontage and the public domain.	Yes

Part 7.8.5 – Controls Urban Block 2 - Road Network and Vehicular Access

The proposal is required to deliver road widening along Church Avenue. The proposal has met these requirements as identified in Figure No. 42.

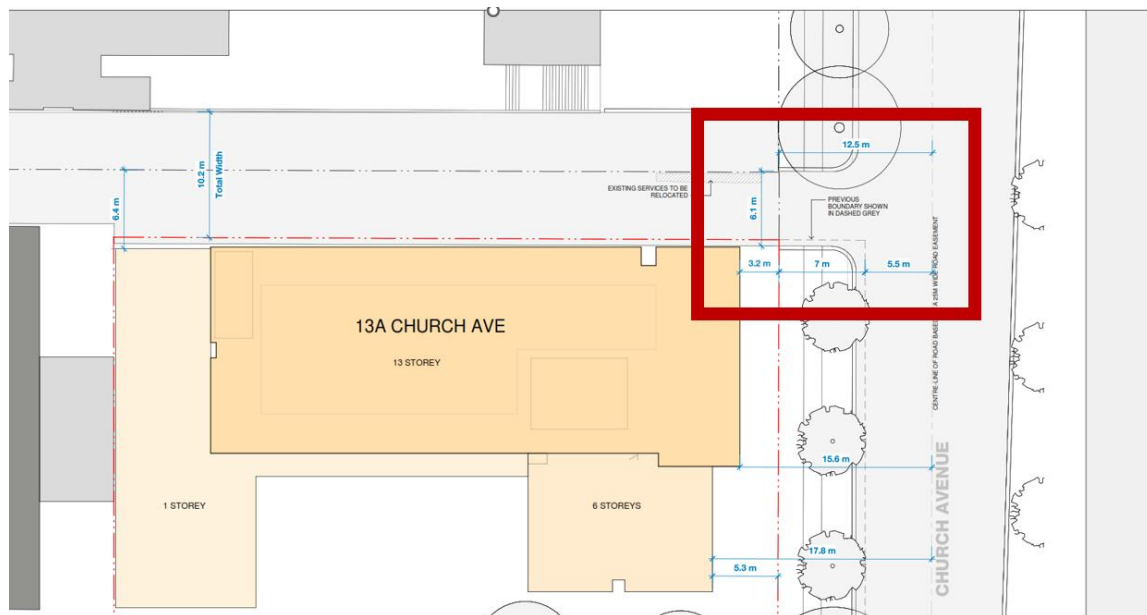


Figure 42: Road widening

The applicant has successfully achieved this requirement, and the land will be dedicated to Council. The application has been appropriately conditioned to ensure the dedication of the land to Council.

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

The applicant has requested to enter into a Planning Agreement under Section 7.4 of the EP&A Act. The matter will be heard at a Council's meeting to be held on 27 November 2024.

The attachments for that meetings are required to be withheld from the press and public as they are confidential in accordance with Section 10(A) (2) (g), of the Local Government Act 1993 as the attachment relates to advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege. It is considered that if the matter were discussed in an open meeting it would, on balance, be contrary to the public interest due to the issue it deals with.

Should the Planning Agreement not be endorsed at the meeting of 27 November 2024 by the elected members; a condition of consent requiring a payment under section S7.11 will be imposed.

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

In terms of provisions of the Regulation:

- The DA submission has included sufficient information to enable environmental assessment of the application (Clause 24);
- Concurrences and other approvals are addressed in the "Proposal" section of this Statement or in response to relevant SEPPs.
- No approval under the Local Government Act 1993 is sought as part of this DA (Clause 31(3)).

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

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

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 businesses or surrounding residents, with some localised 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.

Social Impacts

The social impacts of the proposal are expected to be positive or neutral, with a development of high-quality design and amenity to meet the needs of future residents, within a form compatible with the character of the area and with impacts which are not significantly adverse, and commensurate with impacts to be expected from development of the site, given the planning controls.

Accordingly, it is considered that the proposal will not result in any significant adverse impacts in the locality as outlined above.

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

The site is affected by aircraft noise being situated within a 20-25 ANEF Contour. The proposal was accompanied by acoustic report which has been reviewed and is acceptable subject to conditions imposed in the consent for the development to comply.

Adequate information has been submitted to demonstrate that the site can be made suitable for the proposed development. Further discussion relating to this issue has been carried out within Chapter 4 of Resilience and Hazards SEPP 2021. Appropriate conditions have been recommended in the attached Schedule regarding remediation and acid sulfate soil management.

The site is affected by flooding. The proposal has been designed so that the majority of the development is located above the flood level with appropriate freeboard. Council's Engineers has included conditions regarding the lower ground level to comply and be raised to achieve freeboard.

The plans do surpass the overall OLS height limit of 51m AHD, however no objections have been raised by SACL or CASA, subject to conditions.

The proposed use as "Co-Living" is permissible under the Housing SEPP 2021 and aligns with the objectives and controls of both the BLEP 2021 and BDCP 2022. The development will be conditioned to ensure its exclusive use by tertiary students in perpetuity. It is considered that the development is suitable for the site.

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

These submissions are considered in Section 5 of this report.

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

It is considered that granting approval to the proposed development will not have significant adverse impact on the public interest.

5 Contributions

5.1 Section 7.11- Development Contributions

The application was referred to Council's Development Contributions Planner who indicated the following:

A Section 7.11 contribution of \$6,106,903.85 shall be paid to Council. The contribution is calculated according to the provisions contained within Council's adopted Former City of Botany Bay s7.11 Development Contributions Plan 2016 (Amendment 1) and having regard to the Ministerial Directive of 21 August 2012 (the \$20,000 cap). The amount to be paid is to be adjusted at the time of payment, in accordance with the review process contained Contributions Plan. The contribution is to be paid prior to the issue of any compliance certificate; subdivision certificate or construction certificate The contributions are only used towards the provision or improvement of the amenities and services identified below. Copies of the Contribution Plan can be inspected at the Council's Customer Services Centre, Administration Building, 444-449 Princes Highway, Rockdale.

Community Facilities	\$ 561,602.42
Recreation and Open Space	\$ 4,481,829.42
Transport Facilities	\$ 1,019,065.74
Administration	\$ 44,406.27
Total in 2023/24	\$ 6,106,903.85

However, as outlined above, the applicant has agreed to enter into a Planning agreements under Section 7.4 of the EP&A Act in lieu of payment of Section 7.11 contributions.

5.2 Housing and Productivity Contribution (HPC)

As the development is seeking for Commercial GFA the development will trigger the need to impose the Housing and Productivity Contribution. under the Environmental Planning and Assessment (Housing and Productivity Contribution) Order 2023.

A contribution of \$256,682.48 shall be paid to the NSW Department of Planning & Environment via the NSW Planning Portal prior to issuing of the Construction Certificate.

6 REFERRALS AND SUBMISSIONS

6.1 Agency Referrals and Concurrence

The development application has been referred to various agencies for comment/concurrence/referral as required by the EP&A Act and outlined below in **Table 8**.

Table 8: Concurrence and Referrals to agencies

Agency	Concurrence/ referral trigger	Comments (Issue, resolution, conditions)	Resolved
Referral/Consultation Agencies			
Sydney Airport Corporation	EP&A Regulation 2021, s38 (Amendment of development application)	<p>As addressed above, the application was referred to Sydney Airport Corporation. At a maximum height of 51.25m AHD, the proposed development will penetrate the OLS by approx. 0.25 metres.</p> <p>As recommended by Sydney Airport Corporation, should the application be supported, at the completion of the construction of the building, a certified surveyor is to notify (in writing) the airfield design manager of the finished height of the building.</p> <p>The recommended conditions have been included in the draft notice of consent.</p> <p>Furthermore, the application was also referred to CASA who has determined that the building would not constitute a significant hazard to aviation safety. Accordingly, CASA is not recommending obstacle marking or lighting in this instance.</p>	Yes
Sydney Water Corporation	Sydney Water Act 1994 Section 78	<p>In their letter dated 6 March 2024, Sydney Water provided consents to the development subject to conditions.</p> <p>These conditions included the needs to apply for a section 73 Compliance Certificate, installing water efficiency measures and the installation of a testable Backflow Prevention Containment Device.</p>	Yes

		The conditions have been included in the draft notice of consent.	
Ausgrid	SEPP (Transport and Infrastructure) 2021, s2.48	<p>In their letter dated 15 August 2024, Ausgrid provided consents to the development subject to conditions.</p> <p>Conditions included the needs to maintain 1.5m from the nearest telegraph pole as well as the requirements for the substation to ensure that ventilation openings are provided.</p> <p>The conditions have been included in the draft notice of consent.</p>	Yes
Design Review Panel	CI 28(2)(a) – SEPP 65 Advice of the Design Review Panel ('DRP')	The advice of the DRP has been considered in the proposal and is addressed above.	Yes
NSW Police		<p>As outlined above the application was referred to NSW Police twice, however, comments were never received despite Council chasing up.</p> <p>As such the conditioned that were imposed at the first Iglu site, at the rear, have been included in the conditions of consent.</p>	Yes

5.1 Council Officer Referrals

The development application has been referred to various Council officers for technical review as outlined **Table 9**.

Table 9: Consideration of Council Referrals

Officer	Comments	Resolved
Engineering	Council's Engineering Officer reviewed the submitted stormwater concept plan and traffic report. No objections are raised subject to conditions.	Yes, subject to conditions

Building Surveyor	The proposed development has been reviewed by Council's Building Surveyor due to the request to connect with a recently constructed development at the rear of the site. No objections are raised subject to conditions.	Yes, subject to conditions
Development Contributions	Council's Development Contributions officer has reviewed the application and has proposed a condition requiring the payment of \$ 6,106,903.85 in accordance with the adopted Rockdale Section 94 Contributions Plan 2004. However, the application has requested for a payment via a VPA process as addressed above	Yes
Environmental Health	Council's Environmental Health officer has reviewed the application. No objections are raised subject to conditions.	Yes, subject to conditions
Environmental Scientist	Council's Environmental Scientist, as addressed above, has reviewed the application with regards to ASS and contamination. No objections subject to conditions.	Yes, subject to conditions
Tree Management Officer	Council's Tree Management Officer has reviewed the application and supported the removal of eight (8) trees subject to conditions as addressed above within the relevant section of the SEPP.	Yes- subject to conditions.
Waste	Adequate information with regard to waste management has yet to be provided to the satisfaction of Council Waste Officer. However, if the application can be conditions.	Yes- subject to conditions

The outstanding issues raised by Council officers are considered in the Key Issues section of this report.

5.2 Community Consultation

In accordance with the Bayside Development Control Plan 2022, the application underwent two rounds of public notification. The development application underwent two rounds of public notification. The first round was carried out between 1 February to 15 February 2024 and eight (8) submissions were received. The second round of notification occurred between 9 and 23 August 2023, four (4) submissions were received

An assessment of all the issues is summarised below:

Issue: The application is for "co living" and not students

Council's Comments: The application has been amended that the occupants will be students only.

Issue: Lack of Parking

Council's Comments: Discussion relating to car parking is provided above in the report under SEPP Housing 2021 heading.

Issue: Increased pressure on public services

Council's Comments: Appropriate conditions regarding water, and electricity have been provided by external agencies to accommodate the additional people within the area.

Issue: Mascot Train Station at capacity

Council Comment: Unfortunately, Mascot Train Station does not fall under Council jurisdiction and is that of the state government. An assessment is carried out in the report under car parking which identified that all students generally do not utilise the train or bus network. Discussions with the state government in providing more trains and buses on the network is ongoing.

Issue: Traffic / Church Ave / Cannot accommodate the increasing population and vehicles on Church Ave /Congested Streets

Council Comment: Scope for better road network and services is being undertaken by Council, particularly relating to two way roads, road widening, cycle lanes and less traffic generation. As discussed in the report above, the large proportion of students do not own vehicles and are more likely to use public transport. Parking along Church Avenue is restricted therefore students with a car cannot park all day within these spaces. The development will not be allowed to have car parking permits for on street parking. The developer and operator has provided background research and surveys which demonstrate the percentage of students that use vehicles in their other developments across Sydney, which is very low.

Issue: Height /Height will dwarf surrounding buildings

Council Comment: The development complies with the height development standards as stipulated in Section 4.3 of the BLEP 2021.

Issue: Floor Space Ratio

Council Comment: The development does not comply with the FSR development standards as addressed in Section 4.4 of the BLEP 2021 above. The development has been accompanied by a clause 4.6 statement requesting to contravene the development standards. As addressed above, upon review of the applicant's Clause 4.6 it is agreed that the proposal is found to be consistent with the objectives of the development standard, so therefore compliance can be considered unnecessary and unreasonable. Furthermore, the applicant has also demonstrated that there are sufficient environmental grounds to support varying the standard.

Issue: Overshadowing

Council Comment: An assessment of solar diagrams, sun loss and solar analysis has been carried out in the report above. The development has been appropriately designed and sited to ensure that the neighbouring developments at 3-9 Church Avenue and 19-21 Church Avenue will receive adequately amount of solar access.

Issue: Built form and scale not consistent or characteristic of the neighbouring properties.

Council Comment: As noted above the proposal does not go above the maximum LEP height and the variation to the FSR has been discussed in detail above. A discussion relating to setbacks has been assessed in the report above. The other developments to the east and west of the site are single ownership sites which when designed, approved and built had the capacity to provide greater setbacks. The mass and scale when viewed from Church Avenue and elsewhere is consistent with the surrounding existing and approved development.

Issue: Materiality and Design inconsistent with the area

Council Comment: The application was presented to a Design Review Panel who supported the colour scheme of the building. The colour and materials proposed are more subdued than those provided in the previous approved development on the site which has not been constructed.

Issue: Public Domain Plan

Council Comment: The application has been reviewed by Councils Landscape Architecture and Development Engineer who has raised no objection with regards to Public Domain Plan subject to conditions of consent.

Issue: Construction work may impact current Mascot tower project significantly, which imposes the potential risks to the passengers and vehicles passing by the property.

Council Comment: Appropriate conditions have been included to prevent this from occurring. The works proposed will not disturb the groundwater table. If required, it would be very limited and would be subject to the appropriate permits.

Dilapidation reports are required by condition on the neighbouring buildings in the instance where damage does occur during demolition, remediation and construction in which the subject developer will need to rectify damage. Vibration conditions have also been imposed to prevent vibration from disturbing adjoining buildings.

The size of the footpath is in accordance with Council's requirements stipulated by Public Domain department. The applicant is required to reconstruct the footpath which is required due to road widening at Church Avenue. Appropriate conditions of consent have been imposed.

Issue: Loss of Privacy

Council Comment: An assessment, with regards to privacy, is addressed above within the setback section of the report. The proposal does not include any balconies within the development and contains small windows within each room to comply with the BCA. It is not considered that there will be significant visual privacy concerns from the development. Nonetheless, the development has been conditioned that the first floor outdoor terrace at the rear of the building requires an additional setback. Appropriate conditions of consent have been imposed.

Issue: Setback from the street frontage to Church Avenue.

Council Comment: As outlined above Council's DCP does not specify any street setback requirements for new street alignments for the subject site. Regardless, the subject site proposes a front setback boundary line that is constant with the adjoining residential developments along Church Street.

Issue: Road widening of Church Avenue

Council Comment: The plans show the degree of road widening that would be carried out as part of this development application. This has been assessed by Council's Development Engineer who has imposed appropriate conditions requiring the road widening to be carried out prior to the occupation of the development.

Noise from construction / Pollution from construction

Council Comment: Appropriate conditions have been imposed in the consent to assist in mitigating noise and vibration. Conditions relating to hours of construction, a traffic management plan regarding to construction vehicle movements, vibration conditions and general conditions regarding works being carried out has been provided. Should the developer not adhere to these controls, then this becomes a compliance issue.

Issue: Health and safety especially for children in the childcare / Dust mitigation

Council Comment: Appropriate conditions have been imposed in the consent which relate to dust mitigation, traffic and construction vehicle impact, noise and any other disruptions.

Issue: Full architectural were not submitted

Council Comment: Revised plans nominated setback and these plans were placed on notification for a second time.

Issues: Notification of Application not carried out appropriately

Council Comment: The application underwent two rounds of notification therefore all immediate surrounding residents were notified of the application. Additional time was also provided to the second round to allow residents to provide another submission should they wish it.

Issue: Noise from exiting students and from the development / Noise from new residents

Council Comment: Conditions of consent have been imposed to place hours of operation of all the communal open space areas as well as limit the number of students within anyone one space. The hours that have been conditioned are reasonable and will not impact on the amenity of the residential properties.

Issue: Noise the industrial exhaust fan

Council Comment: Conditions of consent have been imposed to ensure that noise from industrial exhaust fan meets the requirements of the NSW EPA Noise Policy for Industry – 2017 and Protection of Environment Operations Act 1997 to ensure that these facilities will not give rise to an “offensive noise” as defined under the provisions of the *Protection of the Environment Operations Act 1997*.

Issue: Smell of washing powder contaminates the poor quality of air

Council Comment: The smell of washing power is not considered to be an offensive smell.

Issue: Footpath is not of an adequate size

Council Comment: The size of the footpath is in accordance with Council’s requirements stipulated by Public Domain department. The applicant is required to reconstruct the footpath which is required due to road widening along Church Avenue. Appropriate conditions of consent have been imposed.

Issue: The use as student accommodation in an area which is surrounded by residential and not near higher education location

Council Comment: The site is located within a B4 Mixed Use zone which permits co-living developments to be built, by virtue of the Housing SEPP. The location of the site in close proximity to Mascot Train Station and bus services that go to tertiary establishments is ideal for its nature. It is not considered that students residing on the campus would cause grievances to neighbouring residential development and this is demonstrated within other examples of the developers’ buildings across Sydney.

Issue: The development is inconsistent with the Mascot Station Town Centre Precinct Masterplan

Councils Comments: The proposal has addressed the LEP, DCP, and other critical EPIs. While the masterplan does not provide extensive feedback on the site itself, an assessment has been conducted against the Mascot Station Town Centre Precinct, as detailed above.

Issue: Developer is powerful and influential corporation

Council Comments: Powerful and influential of a corporation fall outside the scope of assessment.

Issue: Current Iglu caused view loss, the proposal will result in a further loss of a view



Figure 43 and 44: Loss of Outlook

Council Comments: The above it considered to be a loss of outlook and does not require and assessment under *Tenacity Consulting v Warringah Council [2004] NSWLEC 40*. Had a 100% complaint building been proposed the building still would have removed any outlook knowing that that site is subject to a maximum height standard of 44 Metres.

The following are additional comments made by a late submission:

Issue: DA2019/359 were required to amended plans to ensure that public domain was unimpaired.

Council Comment: The application has been reviewed by Councils Landscape Architecture and Development Engineer who has raised no objection to the proposed Public Domain Plan subject to conditions of consent.

Inaccuracy by applicant

Council Comment: The assessment officer has taken into consideration all the information that has been submitted and agrees with its content.

Issue: S7.11 Contribution

Council Comment: An assessment against section 7.11 has been undertaken as assessed above. Nevertheless, the applicant has entered into a Planning Agreement, which is anticipated to be endorsed by the elected members on November 27 2024, in lieu of S7.11 Contributions.

Issue: VPA Letter was not made public

Council Comment: Letters of offer and reasons to enter into a Planning Agreement are confidential and are not required to be made public. Upon endorsement of a Planning Agreement by the elected members the agreement will be made public. This is not required to be finalised prior to a determination of the subject application.

Issue: Development is not in the public interest

Council Comment: It is considered that granting approval to the proposed development will not have significant adverse impact on the public interest.

7 CONCLUSION

In accordance with Schedule 7 of the State Environmental Planning Policy (State and Regional Development) 2011, the Application is referred to the Sydney Eastern City Planning Panel (SECPP) for determination.

The non-compliance with regards to parking under the SEPP Housing 2021 has been considered as part of the Clause 4.6 variation submitted by the applicant. Council is of the opinion that the Clause 4.6 variation demonstrates that the proposal is not unreasonable or unnecessary in this instance and should be supported. Furthermore, the non-compliance with regards to FSR under the Bayside LEP 2021 has also been considered as part of the Clause 4.6 variation submitted by the applicant. Council is of the opinion that the Clause 4.6 variation demonstrates that the proposal is not unreasonable or unnecessary in this instance and should be supported.

The departure in the setbacks has been justified and it is considered that the non-compliant setback will not adversely impact on the visual privacy or solar amenity of the neighbouring properties. With regard to solar access, there is a degree of overshadowing that is presented by the development to the rear adjoining owner, who happens to be the same applicant,

Finally, the fact that there is no car parking provided on the site has been assessed in detail after the applicant had provided surveys of other developments of theirs which operate in a similar manner. The site is located within 200 metres of Mascot Train Station and the development does provide for a number of bicycle spaces for its students which would be the two main forms of transport to tertiary establishments. The lack of parking is not considered to create any traffic generation into the area but would rather alleviate it as should the development have complied with the amount required under the Housing SEPP 2021 would put more cars onto the road network. Additionally, the lack of car parking results in there being no basement levels which would impact on the ground water and possibly the structural stability of the area.

The issues that were raised within the submissions received during the notification period have been considered in the report and have been provided to the Panel for further assessment should it be required. A number of issues have been resolved by the imposition of conditions within the consent.

The proposal has been assessed in accordance with Section 4.15 of the Environmental Planning and Assessment Act 1979. The proposal is permissible within the B4 Mixed Use zone and is considered to result in a development which is suitable in the context. Therefore, the proposal is recommended for approval subject to the conditions of consent in the attached Schedule.

8 RECOMMENDATION

In view of the below comments, it is RECOMMENDED that the Sydney Eastern City Planning Panel (SECPP), as the Consent Authority, resolve to:

- a) That the Sydney Eastern City Planning Panel, exercising the functions of the Council as the consent authority pursuant to s4.16 of the Environmental Planning and Assessment Act 1979 approves a variation to the car parking prescribed by Clause 68(2)(e) of State Environmental Planning Policy (Housing) 2021, as it is satisfied that the applicants' request has adequately addressed the matters required to be demonstrated by Clause 4.6 of that Plan.
- b) That the Sydney Eastern City Planning Panel, exercising the functions of the Council as the consent authority pursuant to s4.16 of the Environmental Planning and Assessment

Act 1979 approves a variation to the Floor Space Ratio prescribed by Section 4.4 of the Bayside Local Environmental Plan 2021 as it is satisfied that the applicants' request has adequately addressed the matters required to be demonstrated by Clause 4.6 of that Plan.

- c) Grant approval of Development Application DA-2024/10 for the construction of a thirteen (13) storey co-living development comprising 305 rooms and associated communal areas at 13A Church Avenue Mascot, subject to the conditions of consent in the attached Schedule; and
- d) That objectors be advised of the Sydney Eastern City Planning Panel decision.

The reason for the recommendation is as follows:

- The proposal is acceptable when considered against all relevant State Environmental Planning Policies, in particular the SEPP (Housing) 2021.
- The proposed variation to FSR has been assessed in accordance with Clause 4.6 of Bayside Local Environmental Plan 2021 and is considered acceptable subject to design changes and/or conditions of consent.
- The scale and design of the proposal is suitable for the location and is compatible with the desired future character of the locality. The development, subject to conditions, is consistent with the objectives of Bayside Development Control Plan 2022 and generally consistent with the relevant requirements of Bayside Development Control Plan 2022.
- The use is suitable to the site and area. The lack of parking for student accommodation has been adequately justified.

The following attachments are provided:

- Attachment 1: Draft Conditions of consent
- Attachment 2: Architectural Drawings
- Attachment 3: Shadow Studies
- Attachment 4: Landscape Plans
- Attachment 5: Stormwater Management Plan Report
- Attachment 6: Survey Plans
- Attachment 7: Updated Statement of Environmental Effects
- Attachment 8: RFI Response
- Attachment 9: FSR - Clause 4.6 Variation
- Attachment 10: FSR - Clause 4 Parking Variation
- Attachment 11: Copy of letter of Offer- VPA
- Attachment 12: Operational Plan of Management
- Attachment 13: Access Report
- Attachment 14: Acid Sulfate Soil Management Plan
- Attachment 15: Acoustic Report
- Attachment 16: Airspace Protection Form
- Attachment 17: Arborist Report
- Attachment 18: BCA Assessment Report
- Attachment 19: Construction, Traffic and Waste Management Plan

- Attachment 20: Cost Summary Report
- Attachment 21: Detailed Site Investigation
- Attachment 22: ESD Report
- Attachment 23: Fire Engineering Statement
- Attachment 23: Flood Advice Letter
- Attachment 24: Flood Emergency Management Plan
- Attachment 25: Geotechnical Assessment Report
- Attachment 26: Green Travel Plan
- Attachment 27: Letter of Support - Land contamination and remediation
- Attachment 28: Pedestrian Wind Study
- Attachment 28: Social Impact Statement
- Attachment 29: Stormwater Management Letter
- Attachment 30: Substation Correspondence
- Attachment 31: Sustainability Report
- Attachment 32: Transport Impact Assessment
- Attachment 33: Waste Management Plan
- Attachment 34: Ausgrid letter of consent
- Attachment 35: Sydney Airports - Notice to Proponent Controlled Activity Referred to
- Attachment 36: Sydney Airports - Referral to Secretary for Determination
- Attachment 37: Sydney Water letter of consent