

COUNCIL ASSESSMENT REPORT

SYDNEY EASTERN CITY PLANNING PANEL

PANEL REFERENCE & DA NUMBER	PPSSEC-308 DA-2023/370 PAN-400244
PROPOSAL	Integrated Development - Demolition of existing structures, tree removal and construction of a mixed used development comprising of three (3) levels of basement car park, ground floor supermarket and retail premises and five (5) levels of residential comprising of 50 apartments
ADDRESS	277 The Grand Parade RAMSGATE BEACH NSW 2217 Lot 6 DP 11037 Lot 7 DP 11037 Lot 8 DP 11037 Lot 9 DP 11037 Lot 10 DP 11037 Lot 11 DP 11037 Lot 8 SecD DP 10747 Lot 55 DP 613007
APPLICANT	Mr Richard Cridland
OWNER	Moside Pty Ltd
DA LODGEMENT DATE	24 January 2024
APPLICATION TYPE	Development Application (Integrated)
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	\$ 49,706,049 (excluding GST)
CLAUSE 4.6 REQUESTS	Height - Section 4.3 of the Bayside Local Environmental Plan 2021.
KEY SEPP/LEP	<ul style="list-style-type: none"> State Environmental Planning Policy (Planning Systems) 2021

	<ul style="list-style-type: none"> • State Environmental Planning Policy (Biodiversity and Conservation) 2021 • State Environmental Planning Policy (Sustainable Buildings) 2022 • State Environmental Planning Policy (Housing) 2021 • State Environmental Planning Policy (Resilience and Hazards) 2021 • State Environmental Planning Policy (Transport and Infrastructure) 2021 • Bayside Local Environmental Plan 2021 • Bayside Development Control plan 2022
TOTAL & UNIQUE SUBMISSIONS KEY ISSUES IN SUBMISSIONS	<p>First Notification - Nineteen (19)</p> <p>Second Notification – Eleven (11)</p>
DOCUMENTS SUBMITTED FOR CONSIDERATION	<ul style="list-style-type: none"> • Architectural Plans • Application Design Statement • Landscape Plans • Civil Plans • Demolition Plans • Public Domain Plans • Original Statement of Environmental Effects • RFI Response • 1.5m Setback Justification • Clause 4.6 HOB • Access Report • Acid Sulfate Soil Management Plan • BASIX Certificate • Flood Impact Assessment – dated 24 October 2024 • Flood Impact Assessment – dated 10 October 2024 • Geotech (Revised) • Geotechnical (Prelim) • Heritage Impact Statement • NatHERS Certification • Preliminary (Stage 1) Site Investigation • Remedial Action Plan • Section J Energy Compliance Report • Traffic Report • Waste Management Plan

RECOMMENDATION	Refusal
DRAFT CONDITIONS TO APPLICANT	No
SCHEDULED MEETING DATE	21 November 2024
PREPARED BY	Felicity Eberhart – Senior Development Assessment Planner
DATE OF REPORT	25 October 2024

1. EXECUTIVE SUMMARY

Council received Development Application No. DA-2024/10 on 24 January 2024 for the demolition of existing structures, tree removal and construction of a mixed used development comprising of three (3) levels of basement car park, ground floor supermarket and retail premises and five (5) levels of residential comprising of 50 apartments. This application is Integrated Development as it requires a permit under the Water Management Act 2000.

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 has been notified on two occasions in accordance with the BDCP 2022. The first notification was carried out between 5 February to 6 March 2024 and nineteen (19) submissions were received. The second notification occurred between 27 September to 14 October 2024, eleven (11) submissions were received. All issues raised in the submissions, have been considered in the assessment and identified in the report below.

The key issues associated with the proposal included:

- Height – Under the BLEP 2021 the site's permissible Height of Building (HOB) is 20.5m. The subject application proposes a maximum HOB of 22.8m. The applicant is seeking to contravene the HOB development standard by 2.3m to the upper most levels including the lift overruns. This results in a variation to the development standard of 11.21%.
- Flooding – Council records indicate that the lot is subject to flooding in a 1% AEP event. The primary source of flooding within the existing site in the 1% AEP and PMF storm event is localised ponding within the car park and adjacent to the Coles supermarket due to this area being within a sag point and not from overland flows from upstream catchments. The existing stormwater network is currently at capacity. The applicant's revised material, received on the 21 October and 29 October 2024, has failed to satisfy Council's Development Engineers. It is considered that the development does not satisfy the requirements of Section 5.21 of the Bayside Local Environmental Plan (BLEP) 2021.
- Earthworks – The proposal seeks for substantial excavation to support the requested three (3) levels of basement car parking. The applicant has failed to satisfy Council's Development Engineer that the proposed design could be supported. The submitted

geotechnical report does not provide enough certainty regarding the proposed shoring wall systems to be adopted for the basement construction.

- Stormwater - Council's Development Engineer have identified that the application cannot be supported due to insufficient information. The significant issues relate to the inadequate design of the flood storage tank, overall inadequate information and the lack of detail on the plans. The development does not meet the requirements of Section 6.3 of the BLEP 2022 and Part 3.9 of the Bayside DCP 2022 and Bayside Technical Specification Stormwater Management).
- Transitional rear boundary - The development has not been designed sensitively along the transitional boundary shared with the R3 Medium Residential Zone development to the south. It is considered that the development has not been designed in accordance with the objectives of the Part 7.3- Ramsgate Beach Commercial Area of the BDCP 2022 which is to *protect the amenity of the low and medium residential areas which adjoin the Centre*.
- Work to Councils Land - The development's frontage along Ramsgate Road is currently a public carpark and forms part of the road reserve. The existing arrangement would require to be significantly modified to accommodate the proposal. Sufficient information has yet to be provided by the applicant to satisfy Council staff that proposal can be supported.

The development has been significantly amended since the previous application presented to the SECPP for a hotel development (DA-2022/237). Further, the proposed development has been improved since the first iteration of this application. The development, as amended, is generally in accordance with the envisaged future character of the area as addressed below. However, the design fails to consider critical and primary fundamentals of the proposal including flooding, earthworks and stormwater. It has been assessed that these issues cannot be overcome by conditions of consent.

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

2. RECOMMENDATION

That the Sydney Eastern City Planning Panel, exercising the functions of Council as the consent authority pursuant to s4.16 and s4.17 of the Environmental Planning and Assessment Act 1979, REFUSE Development Application DA-2023/370 Integrated Development - Demolition of existing structures, tree removal and construction of a mixed used development comprising of three (3) levels of basement car park, ground floor supermarket and retail premises and five (5) levels of residential comprising of 50 apartments at 277 The Grand Parade RAMSGATE BEACH for the following reasons:

- a) Pursuant to the provisions of Sections 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the aims of the Bayside Local Environmental Plan 2021, including.
 - i. to reduce community risk and improve resilience to, and from, urban and natural hazards.

- b) Pursuant to the provisions of Sections 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the following sections of State Environmental Planning Policy (Housing) 2021, specifically;
 - i. 3E, Deep Soil Zone, Objective 3E-1 in that complaint soil depths have not been provided.
 - ii. 3F, Visual Privacy, Objective 3F-1 in that a complaint first floor rear setback has not been provided.
- c) Pursuant to the provisions of Sections 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the following sections of Bayside Local Environmental Plan 2021, specifically;
 - i. Section 5.21 - Flood Planning
 - ii. Section 6.2 - Earthworks
 - iii. Section 6.3 - Stormwater and water sensitive urban design
- d) Pursuant to the provisions of Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposed development does not meet the objectives and controls of the Bayside Development Control Plan 2022 including:
 - i. Part 3.5 - Transport, Parking and Access
 - ii. Part 3.9 - Stormwater Management and Water Sensitive Urban Design
 - iii. Part 3.10 - Flood Prone Land
 - iv. Part 3.12 - Waste Minimisation and Management; and
 - v. Part 7.3 - Ramsgate Beach Commercial Area
- e) Pursuant to the provisions of Section 4.15(1)(b) and Section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979, insufficient information has been provided by the applicant to allow a proper and thorough assessment of the impacts of the proposed development and the suitability of the site for the development regarding flooding, stormwater, earthworks and overshadowing.
- f) Pursuant to the provisions of Section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979, insufficient information has been provided by the proponent to enable a proper and thorough assessment of the impacts of the proposed development and the suitability of the site for the development in its current form.
- g) Having regard to the issues raised in submissions received by Council in opposition to the proposed development, pursuant to the provisions of Section 4.15(1)(d) of the Environmental Planning and Assessment Act 1979, the proposal results in unacceptable impacts on nearby properties and to the immediate locality.
- h) Pursuant to the provisions of Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979, and in consideration of the impacts and submissions made, the proposed development is not in the public interest.

3. THE SITE AND LOCALITY

3.1 The Site

The subject site is located on the corner of The Grand Parade and Ramsgate Road, Ramsgate Beach. The site is commonly known as No 277 The Grand Parade, Ramsgate Beach. The site

comprises 8 allotments and is legally identified as Lot 6 DP 11037, Lot 7 DP 11037, Lot 8 DP 11037, Lot 9 DP 11037, Lot 10 DP 11037, Lot 11 DP 11037, Lot 8 SecD DP 10747 and Lot 55 DP 613007, with a total surveyed area of 4,479sqm. The site is generally flat, with a level of around 2.5m-3m above sea level, and the site is subject to localised flooding.

The site has a frontage of 55m to The Grand Parade and a frontage of 86m to Ramsgate Road. The site contains a one-storey supermarket, located at the eastern portion of the site, on the corner of The Grand Parade and Ramsgate Road, with an open at-grade car park is located at the western portion of the site for which vehicular access to and from is via Ramsgate Road.



Figure 1: Aerial of the subject site



Figure 2: Existing Building



Figure 3: Existing Building and Bus stop



Figure 4: Existing Building and Bus stop



Figure 5: Existing Building and Bus stop



Figure 6: Parking and neighbouring development at the rear

3.2 The Locality

The area is characterised by a mixture of retail premises and both low-rise and medium density residential developments.

The area in front of the subject site provides parking for 27 cars and various street furnishing. A mature row of Norfolk Island Pine trees is located along both Ramsgate Road and The Grand Parade which provide landscape homogeneity and attraction, and also help to frame the urban context.

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



Figure 7,8,9,10 and 11: Development to the South

To the west of the site are low-scale retail/commercial/business uses of which are generally two storeys in height. There are two rows of perpendicular parking within the southern portion of the Ramsgate Road abutting the site, which is to the south of the road thoroughfare of Ramsgate Road.



Figure 12: Development to the West

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



Figure 13: Development to the North



Figure 14: Development to the north

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



Figure 15, 16 and 17: Cook Park to the east

storage, ramps, access, lifts to both the residential units and retail use on the ground floor above.

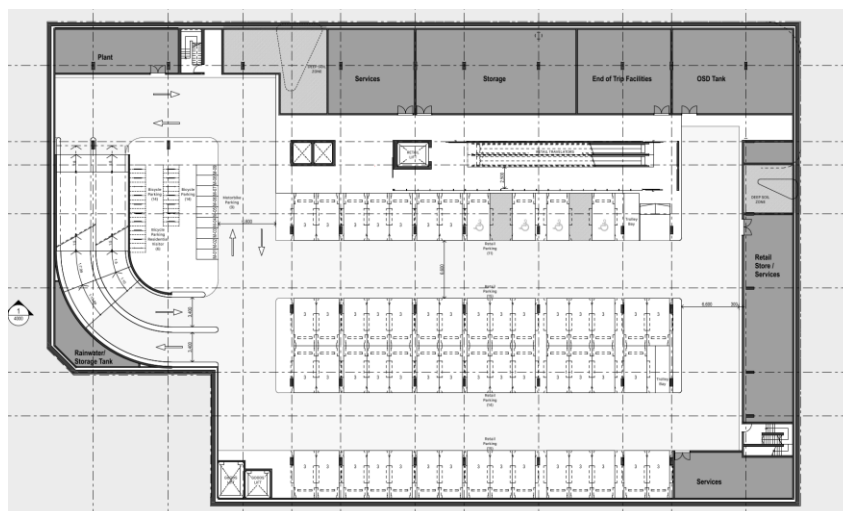


Figure 19: Basement 1 - Commercial / retail

Basement Two

Fifty-five (55) parking space for the retail us, five (5) click and collect spaces, services and storage for the retail tenant, ramps, access, lifts to both the residential units and retail use on the ground floor above.

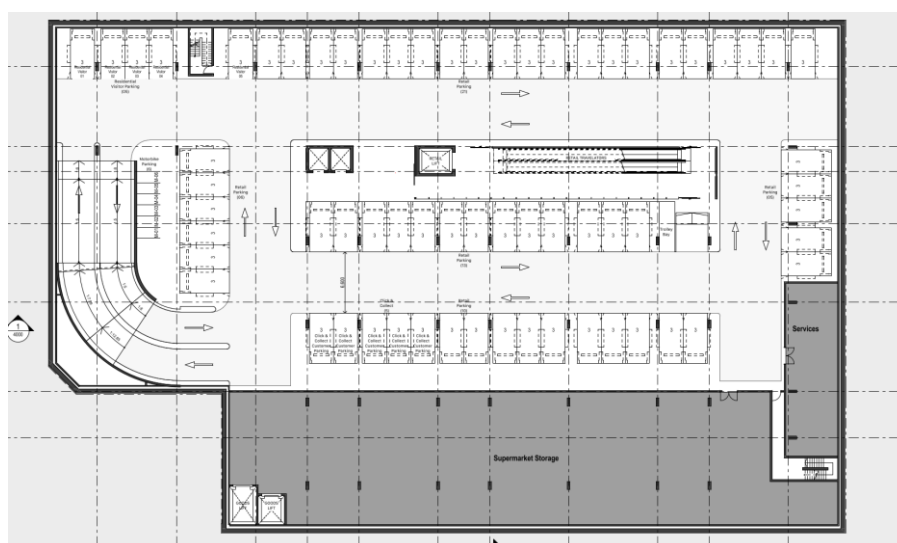


Figure 20: Basement 2 – Commercial / retail

Basement Three

One hundred (100) car parking spaces for the residential use including ten (10) accessible spaces, fifty (50) bicycle parking for the residential use, services, residential bin storage, cleaners room. lifts to both the residential units and retail use on the ground floor above.

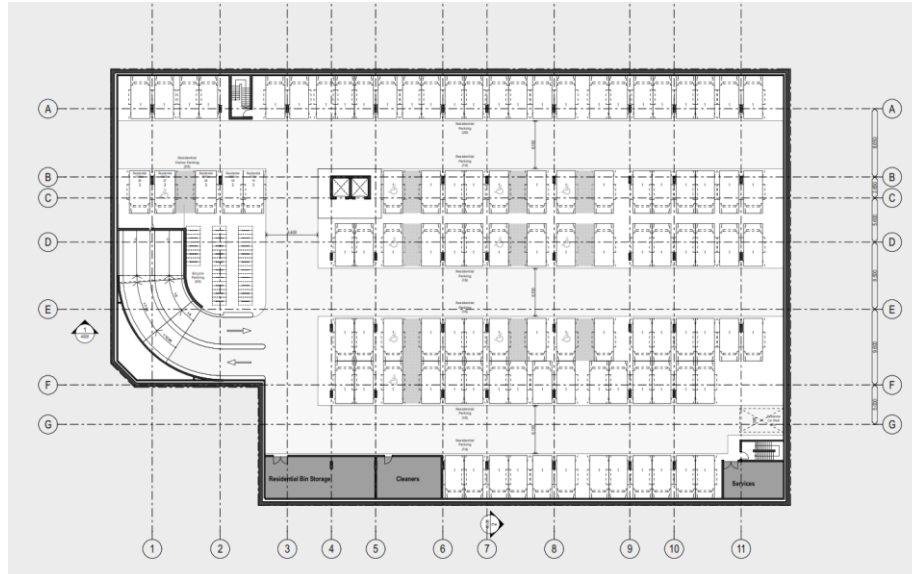


Figure 21: Basement 3 – Residential

Ground Floor:

- Vehicular access from the north-western corner off Ramsgate Road (triple driveway), including ramped access down to the basement and at-grade internal loading, including a rear ground floor loading dock with turntable,
- “Anchor Retail”, referenced to be a supermarket in supporting documentation, with an internal area of 2307.7sqm,
- Two (2) retail tenancy. One located on the corner of Ramsgate Road and The Grand Parade with an area of 549.8sqm. The other it just located along Ramsgate Road, with an area of 104.2sqm,
- Residential lobby with two (2) lifts which access to other levels,
- Substation in the south-eastern corner,
- Awnings along both Ramsgate Road and The Grand Parade; and
- The plans also indicate a relocated bus stop along The Grand Parade, although this would have be subject to TfNSW approval.

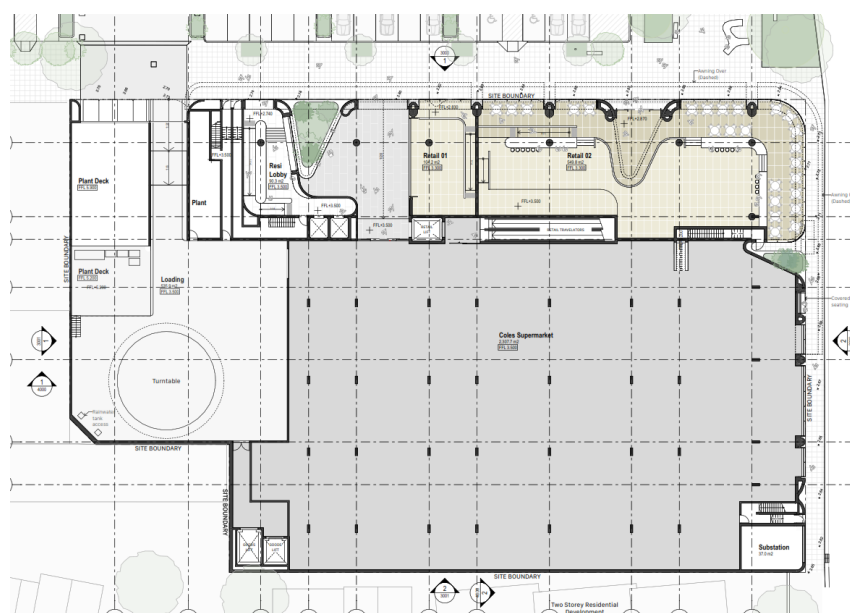


Figure 22: Ground floor plan

First Floor:

- Ten (10) residential dwellings (8 x 2 bed / 2 x 1 bed) with associated private open space areas,
- Two (2) lift core adjoining communal circulation lobbies,
- One (1) Commercial Space with an area of 1245.9 sqm. The communal open space has proposed BBQ areas, booth seating, built in benches, Childres Play area, raised planter beds and a communal bathroom; and
- Service cupboards within the lobby/hallways.

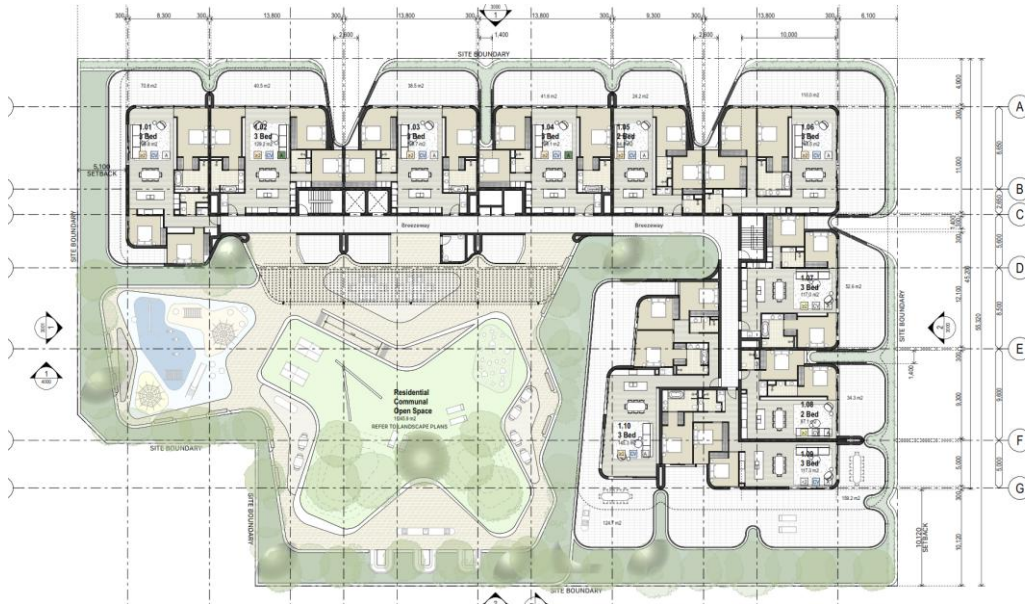


Figure 23: First floor plan

Second to Fifth Floor

- Ten (10) residential dwellings (8 x 2 bed / 2 x 1 bed) with associated private open space areas,
- Two (2) lift core adjoining communal circulation lobbies; and
- Service cupboards within the lobby/hallways.

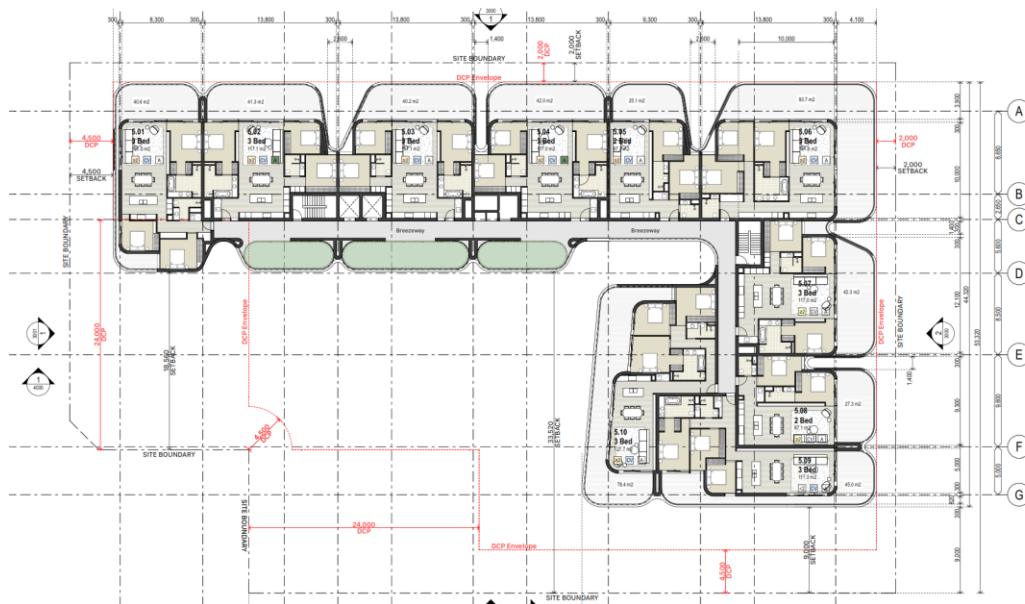


Figure 24: Typical floor plan

Roof

- Photovoltaic panels; and
- Lift overruns



Figure 25: Northern elevation along Ramsgate Road



Figure 26: Eastern elevation along The Grand Parade

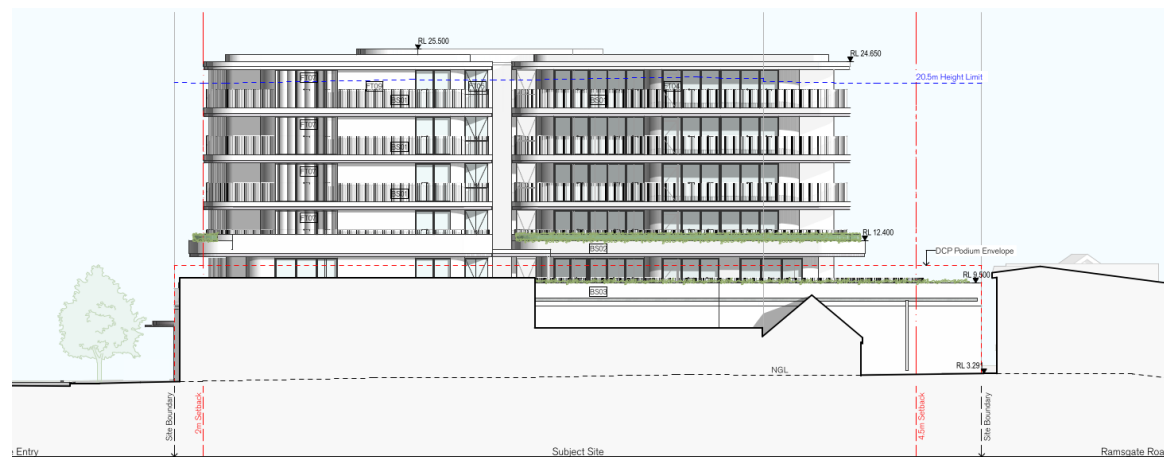


Figure 27: Western elevation



Figure 28: Southern elevation along R3 Zone



Figure 29: Proposed material along The Grand Parade



Figure 30: Proposed material finishes along Ramsgate Road

Landscaping and Fencing

- As shown above, landscaping is provided mostly above ground and mostly as perimeter planting at Level 1, with some ground floor landscaping adjoining the residential lobby off Ramsgate Road and near the bus stop along The Grand Parade,
- Smaller planter boxes are also proposed along the southern elevation for each floor associated with the hallways,
- A boundary wall is also proposed to the southern boundary, of similar height to the existing boundary wall, although that existing boundary wall is only for part of the southern boundary (the Coles supermarket, not the carpark and western portion of the site);
- Building to the western side boundary.
- Relocation of the bus stop in The Grand Parade 4m to the south.

Signage

- No specific signage is proposed, nor has a signage zone been identified.

Use/Operational Matters

- The application does not seek for the use of any of the proposed tenancies.

4.2 Site History

Pemberton Ramsgate Baths

The subject site was previous known as the Pemberton's Ramsgate Baths. This site was considered to be a pioneering aquatic centre and was hub for swimming, diving and socialising in which the first pool was instilled in 1924. The site was in operation for 45 years until its demolition in 1970, to be replaced by the existing Coles building.

DA-2022/237 – Hotel DA.

A DA for Integrated Development Application seeking Demolition of existing structures and construction of a six-storey mixed-use development comprising retail uses, hotel accommodation, food and drink premises, basement carparking, public domain works and tree removal was submitted to Council on 10 August 2023.

This application was first referred to the Sydney Eastern City Planning Panel for its initial briefing on 22 September 2023, with a second briefing on the 14 March 2024.

The application was considered at a determination meeting on the 24 November 2023, in which the Sydney Eastern City Planning Panel decided to defer the application. The Sydney Eastern City Planning Panel agreed with concerns that were raised by Council with regards to bulk and scale, height, setbacks, context, and associated amenity impacts to the neighbours and the beach side location. However, the Sydney Eastern City Planning Panel were of the view that it was appropriate to defer determination of the application and invite the applicant to submit revised plans and supporting documentation for one further consideration and determination by the panel.

The applicants were required to address the following concerns:

- Ensure all pedestrian access to the supermarket is to and from Ramsgate Road, with windows to the Grand Parade at the supermarket level.
- Ensure the upper levels of the building above the fourth story fully complies with the 24m setback from the southern boundary
- In order to reduce the bulk of the proposal, reduction of one level; and
- Increase the setback of the southern podium wall by at least 1.5m from the southern boundary(s).

The application was withdrawn on 1 February 2024.

4.3 Background

The development application was lodged on **24 January 2024**. A chronology of the development application since lodgement is outlined in **Table 2**.

Table 2: Chronology of the DA

Date	Event
24 January 2024	The development application was lodged.
5 February to 6 March 2024	The application was placed on exhibition for 30 days from 5 February to 6 March 2024.
6 February 2024	DA referred to external agencies.
7 March 2024	The application was presented to the DRP.
9 April 2024	The application was presented to the SECPP.

	<p>At the meeting the previous application, the hotel DA which was withdrawn, was discussed.</p> <p>The panel members were made aware that the subject application did not fully address the SEPP previous requested changes, noting change of use and removal of one floor only.</p>
3 May 2024	<p>A comprehensive request for further information was sent to the applicant. The letter raised several issues including comments from the SECPP Briefing Meeting and DRP.</p> <p>The letter raised the non-compliances with the ADG, BDCP 2022, flooding (and the lack of TUFLOW modeling), stormwater, parking, landscaping, traffic and waste.</p> <p>The letter questioned why a Detailed Site Investigation (DSI) was not undertaken when then The Preliminary Site Investigation (PSI) concluded that one was required.</p> <p>The letter outlined that the cause 4.6 for height was inadequate and that a cause 4.6 for FSR was missing.</p> <p>Other matter raised included heritage, active street frontage, geotechnical issues, acoustic matters, and the lack of BASIX.</p>
14 May 2024	<p>A meeting was held between Council staff and the applicant regarding the RFI that was sent to the applicant on the 3 May 2024.</p>
16 May 2024	<p>A meeting was held between Council Engineering staff and the applicant.</p>
27 June 2024	<p>A second meeting was held between Council Engineering staff and the applicant.</p>
3 July 2024	<p>A second meeting was held between Council Planning staff and applicant to show planning staff the revised design.</p> <p>The application had introduced a new architect/urban designer to the team.</p> <p>At this meeting it was explained to the applicant was required to be referred back to the DRP from</p>

	comments, noting that major changes to the plans had occurred.
11 July 2024	Schematic Plans submitted for DRP Review. No landscaping plans were provided.
17 July 2024	Applicant requested a determination date to be set by the Planning Panels team despite not receiving revised information.
1 August 2024	Revised plans presented to the DRP for their review.
5 August 2024	A third meeting was held between Council Engineering staff and the applicant.
21 August 2024	DRP minutes were sent the applicant via an email. The application was also advised that all of the matters outlined in my letter dated 3 May 2024 had yet to be addressed. Furthermore, some additional comments were provided noting the change in the design. In particular the applicant was requested to provide further information with regards to breezeway.
9 September 2024	Plans submitted to Council for review, all reports and all other associated document remained outstanding.
10 September 2024	A second briefing was held with the the SECPP and the applicant. At this meeting the panel chair, as noted in the minutes of the meeting, advised the applicant that the outstanding plans and documentation was required to be submitted by 17 September 2024.
17 September 2024	Outstanding information was not provided by the applicant with the deadline imposed by the SECPP.
18 September 2024	Some information was provided by the applicant. Applicant advised that Civils were lagging and would require an extra day or two to be provided.

19 September 2024	<p>An email was sent to the applicant acknowledging that the Civils will take an extra day or two.</p> <p>The applicant was advised that the revised SEE and CI4.6 had yet to be lodged. Furthermore, it was identified that the submitted plans did not have setback annotations on them. It was advised to the applicant that this element of the plans is critical to ensure that those impacted by the proposal have a full understanding of what is proposed and can make an informed review of the revised material.</p>
20 September 2024	<p>The applicant advised they were working on progressing the information to Council to enable a November 2024 determination.</p> <p>The outstanding clause 4.6 for the height variation was provided.</p>
27 September to 14 October 2024	<p>The application was placed on exhibition for 14 days from 27 September to 14 October 2024.</p>
9 October 2024	<p>An email was sent to the applicant advising that the following was outstanding;</p> <ul style="list-style-type: none"> • The flood report including modelling files (TUFLOW) • The stormwater plans & report including modelling files (DRAINS & MUSIC) • The civil & landscape design for the changes to the public car park & Ramsgate Road fronting the site. • Amended geotechnical report with the response to the RFI, the additional geotechnical investigation and the response to the neighbour's geotechnical submission. <p>It was advised to the applicant that above is critical to the assessment of the application and adequate time is required to be provided for staff to make an assessment.</p>

16 October 2024	<p>A second email was sent to the applicant advising that the following was still outstanding</p> <ul style="list-style-type: none"> • The flood report including modelling files (TUFLOW) • The stormwater plans & report including modelling files (DRAINS & MUSIC) • The civil & landscape design for the changes to the public car park & Ramsgate Road fronting the site. • Amended geotechnical report with the response to the RFI, the additional geotechnical investigation and the response to the neighbour's geotechnical submission. <p>The Applicant was informed by Council staff that there was inadequate time to determine the application give the above missing information.</p> <p>The Applicant was informed to enable a favorable determination that the application will have to be moved to an early date in 2025.</p> <p>Applicants requested that the application be determined by the SECPP in November despite the geotechnical report and civil plans still not being submitted.</p>
17 October 2024	Geotechnical report and Civil plans submitted.
22 October 2024	TUFLOW modelling was submitted.
28 October 2024	Revised Flooding Report and Civils submitted. A RAP was also submitted.

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),*
- 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.*

These matters are further considered below.

It is noted that the proposal is Integrated Development (s4.46) and addressed later in this report.

The following Environmental Planning Instruments are relevant to this application

- *State Environmental Planning Policy (Planning Systems) 2021*
- *State Environmental Planning Policy (Transport and Infrastructure) 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 (Housing) 2021; and*
- *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 (Transport and Infrastructure) 2021	The application is subject to an assessment under Chapter 2 Infrastructure. The particular: <ul style="list-style-type: none"> • Division 5 / Subdivision 2 – Clause 2.48 – Development likely to affect an electricity transmission or distribution network. • Division 17 / Subdivision 2 – Clause 2.120 - Impact of road noise or vibration on non-road development. • Division 17 / Subdivision 2 – Clauses 2.119 – 2.122 Development with frontage to classified road, 	Yes

	excavation adjoining classified road and Traffic Generating Development	
	The development is acceptable. See below discussion.	
State Environmental Planning Policy (Resilience and Hazards) 2021	The application is subject to an assessment under Chapter 2 Coastal Management. The development is acceptable. See below discussion.	Yes
	The application is subject to an assessment under Chapter 4 Remediation of Land. Council's Environmental Scientist is of the opinion that the site can be made suitable had the application been recommended for approval. See below discussion.	Issues - See below discussion
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 (Housing) 2021	The application is subject to an assessment of Chapter 4 Design of residential apartment development and Schedule 9 Design Principles for Residential Apartment Development. The proposed development is seeking variations to the SEPP Housing controls including setback and the lack of providing any deep soil. These variations are addressed below.	No - See below discussion
Bayside Local Environmental Plan 2021	The application is subject to an assessment of the BLEP 2021. The development seeks to vary the height of building development standard as addressed below. Critical to the assessment of this application is the assessment of flooding impacts, earthworks and stormwater management for which the applicant has yet to satisfy the requirements in the BLEP 2021. See below discussion.	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

State Environmental Planning Policy (Planning Systems) 2021

Schedule 6 of the State Environmental Planning Policy (Planning Systems) 2021 triggers the proposed development to be determined by the Sydney Eastern City Planning Panel as the

capital investment value (CIV) of the proposal is greater than \$30,000,000. The overall CIV proposed is \$ 49,706,049 (at DA lodgment).

State Environmental Planning Policy (Transport and Infrastructure) 2021

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

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

The application was referred to Ausgrid for comment. By response dated 20/02/2024, Ausgrid advised no objections were raised to the proposed development subject to the imposition of conditions of consent which would be able to be included as conditions of consent if the application is approved. While the proposed development has been amended since Ausgrid's comments, their comments and conditions are valid and applicable to the revised proposal. The application is consistent with the provisions of the SEPP and is acceptable in this regard.

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

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

The proposed development is on land in or adjacent to the road corridor with an annual average daily traffic volume of more than 20,000 vehicles and that the consent authority considers is likely to be adversely affected by road noise or vibration.

An amended acoustic report, prepared by Renzo Tonin and Associates dated 13 September 2024 concludes that the development can be constructed to meet Australian Standards. Within the report it is identified that it is necessary that windows to apartments are kept closed in order to maintain internal noise levels that meet the requirements of the SEPP. Furthermore, the report outlines those acoustic treatments such as glazing for windows, acoustic seals for all external windows and doors as well as construction out of masonry would be required.

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

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

The proposed development is located on land with a frontage to a classified road (in this case being the Grand Parade, a State Road, with Ramsgate Road being a classified Regional Road). In this regard, Clause 2.119 - Development with frontage to a classified road of the SEPP must be considered before consent can be granted. Provisions of the SEPP related to excavation close to a Classified Road and Schedule 3 of the SEPP (Traffic Generating Development) also apply to the proposal.

The original application was accompanied by a Traffic Report prepared by Verga Traffic Planning and was amended as part of the revised scheme. The original application was referred to TfNSW for comment. TfNSW responded on 27 February 2024 raising no objection to the proposal and recommending eleven (11) conditions to be imposed had the application been supported. The letter is contained in a separate Attachment to this report.

The proposal has been amended since the referral comments from TfNSW, to include pedestrian access being relocated to Ramsgate Road and the relocation of the bus stop. As amended plans were only received on 17 October 2024 inadequate time has been provided in order to undertake a detailed assessment. Furthermore, the plans have only focused on Ramsgate Road and has failed to address The Grand Parade; in particular the bus stop for which the applicant requested to be moved 4m to the south. Adequate information has yet to be provided to Council to enable a detailed assessment.

State Environmental Planning Policy (Resilience and Hazards) 2021

Chapter 2: Coastal management

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

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

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

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

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

- (1) Development consent must not be granted to development on land that is within the coastal use area unless the consent authority—*
 - (a) has considered whether the proposed development is likely to cause an adverse impact on the following—*

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

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

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

In terms of overshadowing, Cook Park only becomes overshadowed by the proposal at around 2 - 3pm in mid-winter and is generally focused within the carparking area. In this regard the overshadowing impacts of the proposal on Cook Park are not unreasonable.



Figure 31: Overshadowing

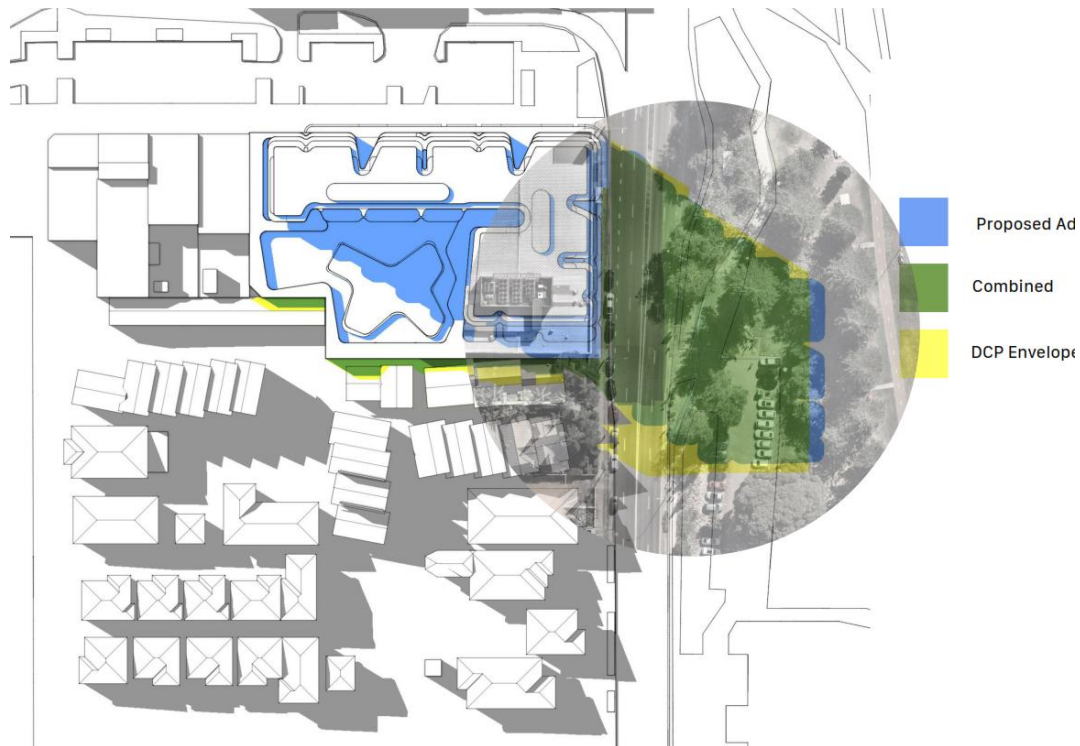


Figure 32:: Impacted area of Overshadowing

Notwithstanding the above, given the orientation of the site and the relevant planning controls which apply to the property, it is inevitable that the development will not generate some degree of overshadowing in midwinter to the east, as the sun sets in the west. It is acknowledged that the applicant has reduced overshadowing, from the development onto the foreshore, by substantially reducing the building height from both the original hotel iteration on site and now the revised residential scheme.

Given that shadow impact from the proposed redevelopment of the site cannot be reasonably avoided, the Assessing Officer is of the view that the development has been sited and setback from property boundaries in a manner which seeks to minimise adverse shadow impact upon the foreshore and therefore is satisfactory in this regard.

Consideration of the above clauses was undertaken during the assessment of the application. It is considered that there will be no significant adverse impact onto the waterway, surf zone or foreshore area as a result of the proposal. The objectives of the Coastal Management SEPP have been addressed by the applicant and the proposal is satisfactory with regard to the relevant provisions of the SEPP.

Chapter 4 – Remediation of Land

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

Specifically, that Clause states:

- (1) *A consent authority must not consent to the carrying out of any development on land unless—*
 - (a) *it has considered whether the land is contaminated, and*
 - (b) *if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for*

- which the development is proposed to be carried out, and*
- (c) if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.*
- (2) Before determining an application for consent to carry out development that would involve a change of use on any of the land specified in subsection (4), the consent authority must consider a report specifying the findings of a preliminary investigation of the land concerned carried out in accordance with the contaminated land planning guidelines.*
- (3) The applicant for development consent must carry out the investigation required by subsection (2) and must provide a report on it to the consent authority. The consent authority may require the applicant to carry out, and provide a report on, a detailed investigation (as referred to in the contaminated land planning guidelines) if it considers that the findings of the preliminary investigation warrant such an investigation.*
- (4) ...*

In accordance with the requirements and considerations of the SEPP, the following documents/reports were reviewed as part of this development proposal:

- 'Preliminary Geotechnical Investigation prepared by JK Geotechnics Pty Ltd, dated 4 January 2024;
- 'Acid Sulphate Management Plan prepared by KK Environments Pty Ltd, dated 9 January 2024; and
- 'Preliminary (Stage 1) Site Investigation prepared by JK Environments Pty Ltd, dated 9 January 2024.

These documents were sent to Council's Environmental Scientists who has noted the following:

- The majority of sampling and analysis was conducted as part of the previous hotel proposal. These results have been carried over to the new PSI report. Sampling was limited due to the presence of the existing retail building on site.
- Soil sampling density was below the minimum guideline density and a detailed investigation will be required to assess the full extent of soil contamination risks.
- Bonded asbestos was detected at a concentration above the human health Site Assessment Criteria (SAC) in fill material beneath the paved area at one location (BH6). The source of asbestos is considered likely to be associated with imported fill material, or with historical demolition activities, but the exact source is unclear. Further assessment, management, and remediation of asbestos at the site is considered to be necessary.
- Nickel was detected at concentrations in fill that exceeded the ecological SAC at multiple locations, and is considered likely to be associated with imported fill material. The presence of nickel is considered to pose a low ecological risk as the proposed basement will extend across the majority of the site.
- Elevations of arsenic, copper and zinc were encountered in the groundwater at concentrations greater than the marine ecological receptor criteria. These elevations were not considered to represent a significant ecological risk as the results were typical of runoff encountered in urban groundwater, are consistent with regional conditions, have limited leaching mechanisms, and were not above the HIL concentration levels
- No evidence of groundwater contamination from the off-site service station was identified.

The Primary Site Investigation (PSI) concluded that the site can be made suitable for the proposed development, however it was recommended that a Detailed Site Investigation (DSI) should be completed to provide for more soil and groundwater sampling to better characterise the site conditions and contamination issues and inform whether the preparation of a Remediation Action Plan (RAP) is necessary.

It is noted that in the Resilience and Hazards SEPP, a PSI is mandatory, and the consent authority may require a DSI and RAP if the PSI warrants that. This also needs to be balanced against the provisions of Clause 4.6(1)(3), namely being satisfied that the land will be remediated before the land is used for that purpose. Taking that into consideration, Council in their letter dated 3 May 2024, requested that the required DSI was to be completed and provided. It was advised to the applicant that the DSI must make a clear conclusion about site suitability without being subject to the completion of significant investigations that would negate the site suitability conclusion. Following completion of the DSI, if remediation is required to make the site suitable, a Remedial Action Plan (RAP) must be prepared and submitted to Council with the DSI.

The applicant did not provide a DSI nor did they provide any justification as to why they don't have to provide the documentation. A RAP, however was submitted to Council on 28 October 2024.

Notwithstanding the absence of a DSI and any substantial justification by the applicant, Council's Environmental Scientist are of the opinion that the recommendations contained within the PSI report are satisfactory and can be supported. These recommendations include conditions of consent including a HAZMAT survey, Sampling Analysis and Quality Plan and additional boreholes for a Detailed Site Investigation (all prior to CC) and an ASSMP, DESI and RAP prior to works.

The question was posed to the Council's Environmental Scientist if they are satisfied that PSI meets all requirements of Chapter 4 of the Resilience and Hazards SEPP. Furthermore, it was requested that they outline how they are satisfied that the site will be made suitable and the methods to be used to make suitable.

The following response was received:

The PSI found that the site history had minimal potentially contaminating uses. The site was occupied by a mechanics business over 100 years ago between 1915-1920 before being utilised as Ramsgate Baths until 1970. Given the limited period of ownership of the mechanics, this was not considered to have a potential residual contamination impact. Since 1970, the site was redeveloped and occupied by a Coles supermarket (eastern portion) and a carpark (western portion).

A limited sampling program was completed in the PSI consisting of seven boreholes and two groundwater monitoring wells across the carpark area. The eastern portion was not accessible given the occupancy of the Coles. The soil sampling program consisted mainly of fill samples and a couple natural soil samples. No contaminant exceedances were detected in soils with the exception of asbestos localised in a couple boreholes. The PSI concludes that further assessment and remediation of asbestos at the site are considered necessary.

No groundwater contamination was detected except for arsenic, copper, and zinc. However, these contaminant concentrations were considered representative of typical groundwater conditions in urbanised environments. I concur with this reasoning. In consideration of the Shell service station across the Grand Parade, no odours were detected in boreholes and no

hydrocarbons were detected in groundwater samples. As such, it was considered unlikely that off-site migration of contaminants associated with the service station had occurred.

Hence, there are no indications of significant or widespread contamination of soil or groundwater that would prevent the site from being made suitable. There are also no indications of previously contaminating activities based on the site history. As outlined in my Memo, site sampling was constrained by the presence of the Coles. To support the site suitability conclusion, they are required to complete a DSI, which I have conditioned prior to Construction Certificate (CC), and outlined what I required from the DSI (e.g. additional sampling points, etc). Completion of DSI additional sampling is not possible due to the current site constraints and would require building demolition to occur.

I concur with the PSI conclusion that the site can be made suitable upon completion of a DSI to address data gaps and to inform the requirements of a RAP. This meets the requirements of Chapter 4 of the SEPP Resilience and Hazards 2021, clause 4.6.1b – “if the land is contaminated, [the consent authority] 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”. Should any further contamination be detected, controls are in place through the conditions outlined in my Memo including a Section B Site Audit Statement (SAS) before CC, and a Section A SAS prior to Occupation Certificate.

A Remedial Action Plan (RAP) was received as a late additional, received on the 28 October 2024. This RAP been established to address the following:

- Provisions to undertake a supplementary Detailed Site Investigation (DSI) following demolition to address data gaps identified in the PSI, including additional site-wide soil and groundwater sampling,
- Develop an appropriate draft remedial strategy (to be informed by the DSI) to conclude the site is suitable for the proposed high-density residential and commercial land-use; and
- Provide appropriate requirements for the validation and verification of the successful implementation of the remediation strategy and the remediation acceptance criteria to be adopted.

This document was also reviewed by Council’s Environmental Scientist, who identified inconsistencies. However, it was determined that the newly provided RAP is sufficient to remediate the site but has some information that is wrong or requires updating. Proposed development details, specifically the number of basement levels proposed (stated as two), is incorrect. The RAP, and any sampling or remediation that is dependent on the excavation depth, must be updated to be in-line with the architectural plans that show the depth of proposed excavation to be 9.900m below ground level, consisting of three basement levels.

Based on the PSI and Environmental Scientists assessment, it could be concluded the site is able to be made suitable for the proposed uses subject to conditions could be imposed.

State Environmental Planning Policy (Biodiversity and Conservation) 2021

Chapter 2 Vegetation in non-rural areas

This chapter applies to non-rural areas of the state, including the Bayside Local Government Area. The aims are 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 request to remove twenty – eight (28) trees.

The application is accompanied by an Arborist Impact Statement, prepared by Abnoba Arbor and dated 16 December 2023. That report assessed forty- five (45) trees on and adjoining the site, including in the road reserve and on the neighbouring site to the south.

The trees along the western boundaries of the site are trees numbered 1-16, while those to the north of the carpark are trees numbered 28-30. Trees numbered T17-T27, T44 and T45 are located in the adjoining property of 86-88 Alfred Street Sans Souci and T31- T42 are located within the council car park to the north of the site.

Retention Value	Low	Med	High
Tree No.	T1, T2, T3, T4, T5, T6, T7, T8, T9, T10, T11, T12, T13, T14, T15, T16, T22, T23, T25, T28, T29, T30, T45	T17, T18, T19, T20, T21, T24, T26, T27, T31, T32, T33, T34, T35, T38, T42, T44	T36, T37, T39, T40, T41, T43

Figure 33: Value of trees – Red ones are requested to be removed

Of the twenty – eight (28) trees that are being required to be removed, as advised by the Arborist's report, the proposed development seeks the removal of four (4) High Retention Value Trees, five (5) Medium Retention Value Trees and nineteen (19) Low Retention Value Trees.

Council's Tree Management Officer assessed the proposal and advised that nineteen (19) out of the requested twenty – eight (28) trees can be removed, all of which are located on the subject site. Trees on site that can be removed include Trees 1-13, *Murraya paniculata* (Mock Orange) which is an exotic species as well as Tree 16. *Agonis flexuosa* (Willow Myrtle) which is an Australian native within the subject site. Consideration has also been given to the removal of Trees. 28, 29 & 30, *Robinia pseudoacacia* (False Acacia) an Australian native located along the boundary of the subject site and the public domain. It would appear that the Council's Tree Management Officer has forgotten to specially identify Trees 14 and 15 *Leptospermum laevigatum* (Coast tea tree); an Australian native which would also be required to be removed to enable the construction of a basement.

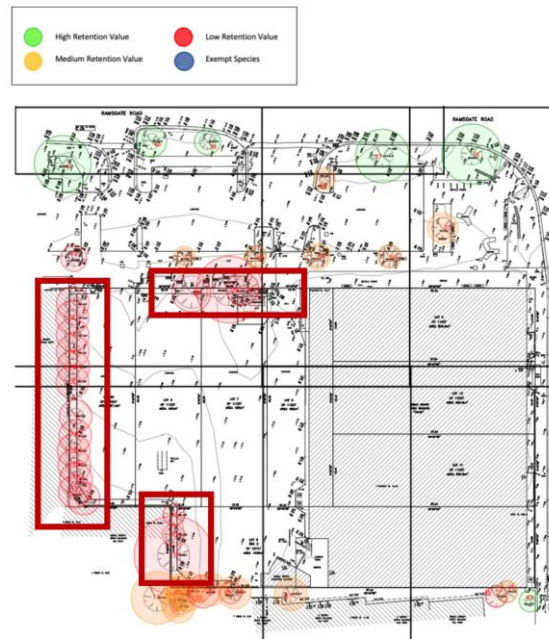


Figure 34: Tree location (red square to be removed)

To offset the loss of existing canopy the applicant is required to replace the tree at a 3:1 replacement ratio, therefore a total fifty-seven (57) new trees shall be planted to offset the canopy loss for environmental reasons. As there is insufficient space to plant and the applicant is seeking for no landscaping on site, had the application be supported a monetary contribution of \$353.00 per tree, a total of \$6 707.00, would have been imposed. This fee is imposed to offset the remaining trees by way to Council so it can facilitate replacement planting in Public Land.

State Environmental Planning Policy (Sustainable Buildings) 2022

The objective of this Policy is to ensure that the performance of the development satisfies the requirements to achieve water and thermal comfort standards that will promote a more sustainable development.

The applicant has submitted a BASIX Certificate for the proposed development, being Certificate number 1765422M. Commitments made within BASIX certificates result in reductions in energy and water consumption on site post construction.

In addition to the above a NatHER Report and a Section J Report, both prepared by Illawarra Basix Solutions. These report address Bayside Council's DA requirements for energy and water efficiency. It is noted that in order for the building to comply with NCC, a deemed to satisfy approach will be required to demonstrate compliance, or where minimum performance standards cannot be met, using verification via a reference building.

Had the application been recommended for approval, a condition would have been recommended to ensure that the stipulated requirements are adhered to. The proposal is satisfactory in this regard.

State Environmental Planning Policy (Housing) 2021

Chapter 4- Design of residential apartment development

In accordance with Chapter 4 of this policy, the consent authority must take into consideration the following:

a. The advice of the Design Review Panel (DRP)

The proposal has been referred to Councils Design Review Panel on two occasions being on 7 March and 1 August 2024. At the meeting of the 1 August 2024, the DRP recommends that various changes be made and be referred to the Panel for further consideration. The application was not sent up for a third time given the limited time between receiving the plans and the set determination date. The application before the SECPP is considered to have addressed the matters raised by the DRP and is supported.

b. Design principles for residential apartment development (Schedule 9)

An assessment of the design quality principles have been considered below:

Design Principal No. 1 - Context and neighborhood character

DRP comments:

A comprehensive context analysis was presented to the Panel, which included extensive 3D modeling, alignments, DCP envelope, existing built form, historical analysis, scale, character and preliminary language studies. While the DCP development envelopes presented do not correctly setback from the southern edge (24m) in the vicinity of the boundary step, built form above the podium appears not to be proposed for that portion of the subject site. Although the analysis did refer to some of the concerns with the recently withdrawn DA proposal, there was little mention of the poor visual and physical amenity of the existing Grand Parade frontage or direct impacts on properties south of the subject site – despite both subjects being raised repeatedly at previous Panel meetings.

Applicant's response:

The new mixed-use development - both retail and multi-unit residential sits at the junction between a predominately residential area and the "Ramsgate Beach Commercial Area" zone. The built form is characterised by a mixture of 2 storey retail premises and both low rise and medium density residential developments with several recently constructed 6 storey mixed use developments on the northern side of Ramsgate Road.

Directly opposite the site on the eastern side of The Grand Parade is Cook Park which extends the full length of the western shore of Botany Bay from Kyeemagh to Dolls Point and the clubhouse of the Ramsgate and Ramsgate Surf Life Saving Club. The vistas to the Bay are broad and are separated by The Grand Parade – designated as a State Road.

The site is an important site as it sets the precedent for a new typology along The Grand Parade. Consistent with the DCP, the character of the new proposal is reflective of a "coastal aesthetic" - wide, long balconies, screens with light and shade and a gently undulating facade.

The relationship between the public domain and the ground level has been carefully considered to provide easily identifiable entrances for both the retail and the residential lobby and also a strong connection between inside and out to maintain connections.

Assessment Officers Response:

The area has undergone a transition along the northern side of Ramsgate Road, noting the six (6) and seven (7) storey mixed use development to the north of the subject site. As addressed in the body text of this report the proposal is generally consistent with the strategic direction and is in line with the future character of Ramsgate Beach. Issues surrounding the setback to the southern neighbour are addressed below within the DCP section of this report under Note No. 3.

Design Principal No. 2 - Built Form and Scale

DRP Comments

The Panel welcomes the removal of the first level bar areas, which raised significant issues of GFA compliance, bulk and scale and likely adverse acoustic impacts on residential units above. The provision of communal open space at podium level appears to be a more sustainable and achievable proposition.

While the height of the proposal has been reduced slightly, it still exceeds the height requirements of the LEP. Therefore, it is crucial that the proposal demonstrably minimises adverse impacts on adjacent properties, public domain and streetscape. Given its significant length, is the same parapet treatment right around both frontages appropriate? Could some variation between built form height and parapet treatments be warranted?

While additional modulation is welcomed, the Panel queries why clear breaks between discrete built form elements are not proposed for such a large site. Such breaks would not only enhance breeze and openness and better align with bulk and scale on the northern side of Ramsgate Road, but they could also increase views to Botany Bay and foreshore landscapes.

At a minimum, the following measures should be considered:

- relocating some level 1 GFA elsewhere so as to allow communal open space to engage with the proposal's dramatic eastern outlook and minimise its reliance on views to the south over other properties.*
- extending the east west circulation gallery to the Grand Parade frontage, to allow views to Botany Bay from the long entry circulation; to this end it would be better to relocate or rotate the egress stair*
- amend the main entry "indentation" and its relationship to the residential lift core (perhaps bringing it to ground) so as to emphasize the residential entry's relationship with its unique bayside context*

As has been noted previously, the existing Grand Parade frontage has very poor amenity and does not appear to respond to the predominant setback along the Grand Parade in any way. The proposal represents a significant change in scale along the Grand Parade frontage and an increased setback would soften this transition in scale and allow for a better interface with the southern neighbours. The Grand Parade footpath appears barely wide enough to accommodate the existing bus stop while allowing pedestrians to pass. This frontage will be further constrained through the removal of the existing setback. This will not only reduce public amenity but is also liable to negatively impact on the proposal itself. The Panel therefore recommends that the proposal be setback to create a civic frontage to The Grand Parade and Botany Bay, of at least 3m to allow for a wider, high quality public footpath, with new paving, lighting, trees and integrated bus stop

Aside from an improved The Grand Parade frontage, the Panel encourages increased activation of this important public domain interface. While open glazing to the supermarket is supported, it was suggested at the meeting that having the entry at the Ramsgate Road corner (with the checkout located at the facility's eastern end) could allow patrons to directly engage with Botany Bay landscapes. Although this may involve some changes to

layout and current priorities, it could result in an a more appropriate method of responding to the site's unique context, while increasing footfall past Ramsgate Road retail.

As noted previously, the interface and lack of setback along the southern boundary is of significant concern. The existing built form has a 0m setback for only a portion of this interface. A minor setback would allow for landscape to soften this harsh built form interface and provide some visual amenity to adjacent properties.

A reduced podium height could also minimise overshadowing and visual impacts to the southern neighbours. It could also assist in reducing the overall height of the building. Landscaped setbacks are used to resolve this scale transition in the developments on the north side of Ramsgate Road.

Applicant's response:

The proposed built form is carefully articulated to harmonize with the context of surrounding buildings and streetscapes and to also provide a strong response to a corner site - between low rise residential and higher density commercial.

It offers a scale in terms of bulk and height that is thoughtfully calibrated to navigate the transition between the low rise residential to the south of the site along The Grand Parade and the 6 storey multi-unit residential developments to the north of the site along Ramsgate Road.

As the site is large, rather than presenting as a monolithic structure, the proposal introduces a series of articulated forms, which provide a hierarchy of form across the site. The design is also tailored to optimize environmental performance.

Generous balconies to the north and the east provide shading and protected outdoor rooms, ideal for a coast location. Finely detailed metal balustrades and screens provide an additional layering to the facades.

The overall development is a compliant 6 stories, however to accommodate the required height for the "large format" supermarket use, the height of the proposal is approximately 1m over and above the height plane.

Assessment Officers Response:

The above response from the applicant does not adequately address the DRP comments. Nevertheless, it is identified that the revised design has endeavoured to amend some aspects of the design changes as recommended above.

Like the DRP, the assessing officer has welcomed the removal of the first level bar/ food and drink area and agrees that the inclusion if the required communal open space at podium level appears is a better outcome. The bars' removal has resulted in the reduction of GFA as well as alleviated acoustic impacts on both future residential units and surrounding neighbours. Furthermore, it also ensures compliance with the ADG with regards to communal open space ensuing that future resident have a space to access beyond their balconies.

The DRP has raised concerns given its significant length that the parapet treatment right around both frontages require variation in material, which in the opinion of the assessment officer has been adequately applied. The application has sought to include, at the ground level, off form concrete, shop front glazing with powder coat aluminium framing, aluminium with specialist paint finish. The tower element seeks to include elements such as painted

metal rod balustrades, compressed fibre cement sheet with integrated colour (white) as well as a white texture render. Council's assessment officer is of the opinion that the proposed materials are adequate to differentiate different elements of the building.

Council assessment officer does not agree with the DRP, with regards to some of their comments. These include:

- The need for clear breaks within the built form elements. It is considered that development has been heavily articulated, provided variations to the building edge and avoid large expanses of blank walls as required by the BDCP 2022. The development is sufficiently designed along both The Grand Parade and Ramsgate Road to a discrete built form.
- The request to remove GFA from Level 1 to enable an eastern outlook is onerous, and would result in the reduction of housing during a time when Sydney is experiencing a housing crisis. The development meets the requirement with regards to the setback to the street frontage as is deemed to be acceptable.
- The majority of the circulation space is open and considered to be a breezeway. This space is already open to the elements therefore the suggestion by the Panel to include a window/opening facing The Grand Parade is not considered to be necessary in this instance; and
- Relocating the major tenants' entrances to the corner of Ramsgate Road and The Grand Parade. The assessing officer's preference is to have the retail/ café use at the corner. This ensures a consistent activation of this corner as opposed to the consistent movement of people in and out of an entrance.

The matter of the hostile environment created along The Grand Parade frontage has been a matter raised multiple times with the subject application and the previous application for a hotel use. It is agreed with the DRP that had the applicant provided a further setback from The Grand Parade, a civic frontage could have been created to allow for a wider, high quality public footpath. This civic area could have included new paving, lighting, trees and integrated bus stop. However, this is beyond the requirements of the BDCP 2022 which allows for podiums to be constructed to the site boundary. Had this change been implemented it would have also resulted in a significant reduction in overall GFA.

Finally, the applicant is seeking the removal of the existing bus stop and to incorporate seating into the building façade approximately 4m south of the existing bus stop. It is the opinion of Council staff that this will be enough to enable individuals a space to wait for the bus while allowing pedestrians to pass. However adequate information, including the civil designs, has yet to be submitted by the applicant to enable a detailed assessment of this interface to enable Council's Public Domain engineer to be satisfied. These civil designs were requested on multiple occasions as identified above in the DA history.

Design Principal No. 3 - Density

DRP Comments

While the GFA proposed appears to comply with the LEP's density requirements, a clear and accurate table of areas has not been submitted. More clarification and justification of density is required.

The Panel supports open galleries where inclement weather impacts can be managed and would not ordinarily consider them GFA; however, it is not clear if internal portions of the circulation are included in the GFA calculations.

Nor is it clear if the proposed 77 surplus car parking spaces are included in GFA calculations. The Panel is advised these spaces would represent an additional 997.9sqm.

Applicant's response:

The proposal is designed to achieve high- quality design outcomes that enhance the character and identity of the surrounding area.

The design responds sensitively to the context and neighbourhood character, integrating seamlessly with the existing built environment and respecting the coastal location.

Principles of good design excellence are integral to the project, ensuring that it contributes positively to the public domain and enhances the well-being of the community.

Through careful consideration of scale, form, and environmental performance, the development aims to create a sustainable and visually attractive addition to an area awaiting revitalisation.

The apartments are well designed with clear zoning, generous outdoor rooms, good solar and ventilation, maximisation of views and a consideration of privacy.

Assessment Officers Response:

Adequate information has been provided to enable a detailed assessment regarding density and how GFA and the resulting FSR has been calculated. See below discussion under section 4.4 of the BLEP 2021.

Design Principal No. 4 - Sustainability

DRP Comments

The proposal appears capable of achieving high levels of solar and cross ventilation compliance (notwithstanding potential acoustic privacy issues), which is positive. Apart from solar panels at roof level however it is not clear what sustainability measures and commitments are being made.

Applicant's response:

The project aims to deliver a sustainable residential building with low operational energy consumption / energy efficient equipment in line with BASIX requirements, reduced potable water use, water efficient tap ware and appropriate materials selection while at the same time maintaining a high level of indoor environmental quality through appropriate mechanical design, façade configuration and materials selection. Thermal comfort has been assessed and appropriate glass / insulation will be specified.

Assessment Officers Response:

The site is not subject to design excellence as such requiring the development to exceed the minimum requirements when it comes to sustainability is onerous. As outlined in the applicants ESD Report and Design Statement the development has been amended to incorporate various sustainability measures. These include:

- Water harvesting in which rainwater from roof is captured for distribution,
- Deep balconies to provide shading that will ensure the prevention of heat gain and maintain thermal comfort.
- Natural light and ventilation are provided to the walkway (breezeway); and
- Photovoltaic cells are provided to the roof.

The above is adequate sustainability measures and is consistent with other developments within the Bayside locality.

It is noted that the applicant has argued that they will be providing vegetation cover to mitigate the heat island effect. While planting is provided to the podium and within planter boxes the applicant has failed to provide any Deep Soil Zones within the site. This matter is addressed in detail below under the SEPP Housing 2021 section of the report.

Design Principal No. 5 – Landscaping

DRP Comments

No Landscape plans were provided prior to the Panel meeting and tabled during the meeting only. Comments are provided based only on the information provided prior to the meeting.

The landscape documentation should include the ground floor interface to the public domain surrounding this site and any treatment or revisions within this space that are proposed and required to enable the development.

To Ramsgate Road, the interface should include the revision of the vehicular interface for parking entry, deliveries and servicing.

To The Grand Parade interface, the existing services, bus stop and footpath should be detailed for all proposed works, improvements and/or restoration. It is noted that the existing bus stop is partially within the subject site boundary and that the streetscape footpath width is very narrow along this frontage.

The active street frontage requirement to this site overlaps with other important considerations for the proposed design development that have not been addressed. This relates to:

- addressing the subject sites transition and relationship to the adjacent zone interface*
- addressing the prevailing setbacks to the streetscape frontage, and*
- deep soil provision.*

The existing built form creates a negative and awkward interface to The Grand Parade and is at odds with the existing prevailing setback south of the site. While the proposal complies with the DCP envelope controls for this frontage, the proposal extends the encroachment of the built form into the existing landscape setback and reduces pedestrian amenity. It therefore cannot be supported without significant amendment.

The proposed development must respond to these landscape failings and deliver:

- a setback to the streetscape frontage that responds both to the zone transition, prevailing setback to the wider streetscape and a greater setback than that which is existing.*
- Enable within the setback the delivery of an active street frontage*
- Provide a public domain landscaped interface within and as apart of the active street frontage*
- Provide a deep soil zone within the setback, and*
- Resolve the interface and location of the existing bus stop as part of this submission.*

If a deep soil zone within the prevailing setback to The Grand Parade is not desired, and this area is programmed for active street frontage use (with landscape located only at podium level), then a deep soil zone should be allocated to the interface between the southern boundary of the subject site and to 280 The Grand Parade, Sans Souci. This

would result in a revised setting back of the built form and enable the provision of large-scale canopy trees.

The proposed Level 1 podium landscape provides for a series of active and passive recreation areas. The panel does not support the encroachment of usable spaces in close proximity to the southern and western boundaries. The design layout to COS and POS should be resolved to remove visual and acoustic privacy issues to instead favour landscaped planted beds within the perimeter treatment.

The raised central lawn area provides equitable access and a variety of active and passive spaces. Further detailed information is needed to understand the layout of the raised pergola structures, interfaces and views to and from adjacent POS and any potential negative relationships being created by these structures to POS areas.

The relationship between the breaking up of the built form and landscape is encouraged to progress so that an integrated approach can be developed with enhancement of COS views to Botany Bay being a positive outcome.

A Designing with Country approach and referencing of the history of the site is encouraged to extend into the Landscape treatment of the site. Subtle references, material and public art interpretation can occur within public domain spaces, public domain interfaces and communal open space areas.

Upper level communal balcony areas and planted balcony areas are understood to be in development and careful consideration should be given to spaces being created so they can be understood to be communal space and not potentially private.

Assessment Officers Response:

Detailed landscape plans were provided after the second DRP meeting, however a detailed response to the above comments was never provided. Nonetheless the plans were referred to Council's landscape architect who raised no issues with the proposal and had the application been supportable, a condition would have been imposed.

Design Principal No. 6 – Amenity

DRP Comments

As noted previously, the existing Grand Parade frontage has very poor amenity and appears barely wide enough to accommodate the existing bus stop while allowing pedestrians to pass. This frontage will be further constrained through the removal of the existing setback. For a project of this scale, this is an unacceptable outcome.

While increased modulation is supported, it does result in some very deep slots; the slot serving one bedroom only (in the Ramsgate Road facing built form) is excessively narrow and is liable to result in poor internal amenity.

The breezeway circulation gallery includes excessively large south facing gathering spaces that are liable to create excessive overshadowing and result in adverse impacts on adjacent units

It is not clear how cross ventilation can be achieved from the breezeway circulation gallery without introducing adverse acoustic impacts to interior spaces.

The balconies right around the built form are very large, which greatly inflates the proposal's visual and physical bulk

The western most apartments risk overlooking or being overlooked by future development on the site directly to the west. This interface should be modified to avoid this issue.

Applicant's response:

As illustrated in the ADG Compliance schedules submitted with the Development Application the proposed scheme is entirely compliant with the objectives and in many key areas, exceeds the minimum requirements.

All of the apartments have large living spaces - internally and externally that engage directly with views. The balconies are seen as generous outdoor rooms with finely detailed metal balustrades which allow access to light and views, yet respond to the maritime environment.

The apartments have clear zoning, allowing for family living. Access to the apartments at Ground Level is separated from the retail access and easily identified.

The external balcony accessway provides a strong connection to the environment - emphasising the beachside locale.

Assessment Officers Response:

The above comment from the applicant has not specifically addressed the DRP comments. However, it is considered that enough information has been provided with regards to cross ventilation.

It is acknowledged that the western apartments may risk overlooking or being overlooked by future development later, however given the nature of a commercial centre some overlooking is anticipated. In addition, by moving the bulk towards the western boundary it removes amenity impacts away from the southern neighbours, which is positive.

The matters about the hostile environment to the Grand Parade and modulation have been addressed in detail above.

Design Principal No. 6 – Safety

DRP Comments

It is not clear how the bus stop on The Grand Parade frontage can continue to function without maintaining or increasing the current setback. Even in its existing state, the width of the footpath makes passing the bus stop potentially unsafe. The applicant should provide analysis illustrating a setback that can resolve this issue.

Applicant's response:

The delineation between public and private has been carefully considered to provide a secure and safe ground level access the residents and highly visible connections to the public domain.

The retail use of the site including the supermarket entrance has been consolidated to the east of the site. All retail facades are predominately glazed to provide a high level of visibility. Glazed corners are curved to increase visibility and all entrances/exits including egress stairs are generous in width and highly visible.

The proposal aims to strike a balance between passive surveillance, achieved through active uses adjacent to the public domain, and maintaining privacy for neighbouring residents.

The external access ways to the apartments are visible yet screened to respect privacy and to provide a sense of connection and inclusion with other residents.

Similarly, the shared private communal area, provides a combination of screened and open settings. This approach ensures that the development promotes safety and security while respecting the privacy of surrounding properties.

Assessment Officers Response:

The above comments from the applicant have addressed the comments raised by the DRP. While it is agreed that using glazed elements increase causal surveillance to both The Grand Parade and Ramsgate Road, the applicant has failed to address the DRP comments when it comes to relationship between the building and The Grand Parade. As identified above, adequate civil designs along The Grand Parade, have yet to be submitted by the applicant to enable a detailed assessment.

Design Principal No. 8 – Housing diversity and social interaction

DRP Comments

Given their size and type, the apartment mix appears not to cater for a wide range of users, as intended by the DCP controls.

Applicant's response:

Recognising the need for family living including cross generational, the majority of the apartments are three bedrooms with 2 x two bedrooms per level. With remote work becoming more common, residents are seeking larger spaces to create home offices, workout areas, or simply to have more living space for personal comfort.

Assessment Officers Response:

While it is acknowledged that there are no one (1) bedroom units and it might be argued that this is not providing for a range of apartment types, the assessing officer is of the view that the development is providing for an influx of 3-bedroom units to the locality which is currently under resourced. The unit mix in this instance is appropriate.

Design Principal No. 9 – Aesthetics

DRP Comments

The material palette presented at the meeting is supported. However, the textures and grain proposed in presentation images do not appear to have translated into the three dimensional proposal, which appears quite monolithic and perhaps, overly horizontal. Given its scale and sheer frontage length, could some variation between built form height, parapet treatment, balustrade types etc. be warranted?

The design, materiality and character of exposed boundary facing podium facades require further development. The transition between these facades and street facing facades should be carefully considered.

As noted above, the Panel queries why clear breaks between discrete built form elements – rather than consistent curved indentations - are not proposed for such a large site.

Applicant's response:

Consistent with the Control: BDCP2022 Ramsgate Beach Commercial Area - C10. Developments should respond to the Centre's beachside location by using a variety of environmental protection elements such as screens and louvres and a palette of materials

which create a sense of lightness and openness and evoke a beachside feel, the architectural expression celebrates the organic forms of coastal landscapes, shifting sands and moving tides.

Characterised by broad veranda rooms, open breezeways, and a continuous connection to the outdoor environment, the development breaks away from traditional compressed apartment layouts to create vast internal vistas capturing views from all aspects of the site.

Large balconies predominately to the north and the east, create an extension to the living space and allowing for maximum coastal engagement.

As an abstraction of the undulating curves of Botany Bay, the facade expression is defined by a continuous curved profile at each floor level and a vertical rhythm of fine circular rods – either balustrades or screens encircling the perimeter of each apartment creating opportunities for texture, light and shade.

The materiality is subtle reflecting the sun bleached landscape. Planters with endemic landscaping, selected for the coastal environment soften the edges. Embodying the essence of the natural environment, the proposal emerges as a distinctive and carefully crafted form that seamlessly integrates with its coastal surroundings.

Assessment Officers Response:

The material palette has been amended since the schematic plans were provided to the DRP. Councils' assessment officers agree with the applicant in that material palette that has been proposed, which includes white painted metal road balustrade, white compressed fibre cement, lift off-form concrete and natural stones create a sense of lightness and openness and evoke a beachside feel as required by the BDCP 2022.

c. The Apartment Design Guide (ADG)

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

SECTION	DESIGN CRITERIA	COMMENTS	COMPLIES
3C – Public Domain Interface	Max 1m level change from footpath to ground floor level of building. Landscaping to soften building edge and improve interface.	The developments ground floor is required to be lifted due to flooding matters. Flooding has not been adequately addressed. See below discussion under section 5.21 of the BLEP 2021.	No – see below discussion under section 5.21 of the BLEP 2021.
	Mailboxes located in lobbies or integrated into front fence	Plans are not clear where the location of the mailboxes. Had the application been recommended for approval application will be conditioned that the mailboxes are to be	Yes-subject to conditions.

		located in the Residential Lobby.													
3D - Communal Open Space	25% (1119.825sqm) Site Area	1245sqm proposed.	Yes												
	50% (559.9sqm) to receive 2 hours solar access in midwinter 9am - 3pm	Solar access will be received to more than 50 % of the Communal Open Space from 1pm 3pm.													
3E - Deep Soil Zone	15% (671.895sqm) site area. Minimum Dimensions 3m	Nil on site. See below discussion.	No – see below discussion under Note No.1												
3F - Visual Privacy Min separation - side & rear boundaries.	<div> <p>Separation between windows and balconies is provided to ensure visual privacy is achieved. Minimum required separation distances from buildings to the side and rear boundaries are as follows:</p> <table> <tr> <th>Building height</th> <th>Habitable rooms and balconies</th> <th>Non-habitable rooms</th> </tr> <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> </table> <p>Apartment buildings should have an increased separation distance of 3m (in addition to the requirements set out in design criteria 1) when adjacent to a different zone that permits lower density residential development to provide for a transition in scale and increased landscaping (figure 3F.5)</p> </div>	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>Southern Boundary</u> Ground Floor – no setback. First floor to exterior balcony façade - 3.2m, seeking an 8.5m (60% variation.) First floor to Balcony 3.2m, seeking an 8.5m (60% variation). Second to Fifth Floor – 9m from rear boundary.</p> <p><u>Western Boundary</u> Ground Floor – no setback. First floor to balcony 2.6m, seeking a 3.4m (56% variation) Second to fifth floor 4.5, seeing a 1.5m (25% variation)</p> <p><u>Other Boundary</u> The northern and eastern elevations setbacks are determined by the BDCP 2022 and are addressed in detail later in this report.</p>	No – see below discussion under Note No. 2
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													
3G – Pedestrian Access & Entries	Multiple entries provided to activate street edge	Multiple entrances are provided along Ramsgate Road, to access either the residential portion, future Coles both of the retain space and the entrance to the residential lobby.	Yes												
	Building access clearly visible from public domain& communal spaces	Building access is clearly visible from public domain& communal spaces.													

3H – Vehicular Access	Car park access integrated with building façade & behind building line.	<p>Car park access is integrated with building façade.</p> <p>It is identified that access to both the Coles and Residential Parking will be accessed via the same entry and exit points.</p> <p>There is essentially a triple driveway to the western end (two lanes for cars, one for loading). This is wider than ideal however it limits the movement of cars and trucks to one locality and avoids having multiple driveways to the subject site.</p> <p>Adequate information has yet to be received to determine if vehicular access to the building complies with the Australian Standards.</p>	No
	Garbage collection, loading & servicing areas screened	<p>Garbage collection, loading & servicing areas are screened and located within the development.</p> <p>However as addressed later in the report The applicant's ongoing waste management plan does not meet the requirements of Council's Waste Management Technical Specifications 2022.</p> <p>Furthermore, adequate space within the development has yet to be provided to enable waste collection.</p> <p>See below discussion under Part 3.5.7 Waste collection of the BDCP 2022.</p>	No - see below discussion under Part 3.5.7 of the BDCP 2022.
	Pedestrian / vehicle access separated & distinguishable.	Pedestrian and vehicle access separated & distinguishable	Yes
3J - Bicycle & Car Parking	Parking as per Council DCP.	Parking numbers for the site comply, however there are issues with regards to access to site. See below discussion	Yes

		under Part 3.5 Transport, Parking and Access.	
4A – Solar & Daylight Access	<p>Living rooms + POS of at least 70% (35 of 50) of apartments receive min 2hrs direct sunlight b/w 9am & 3 pm mid-winter</p> <p>Max 15% (7.5 of 50) apartments receive no direct sunlight b/w 9am & 3pm mid-winter</p>	<p>35/50 will receive more than 2h (70%) of Solar & Daylight Access</p> <p>10/50 will receive less than 2 (20) of Solar & Daylight Access</p> <p>5/10 (105) will not receive direct solar access.</p>	Yes
4B – Natural Ventilation	Min 60% (30 of 50) of apartments are naturally cross ventilated in the first nine storeys of the building.	40/50 (80%) of the units will be naturally ventilated	Yes
4C – Ceiling Heights	<p><u>Floor to Ceiling</u></p> <ul style="list-style-type: none"> • Habitable – 2.7m • Non Habitable - 2.4m 	<p>Heights are adequate:</p> <ul style="list-style-type: none"> • 5m for the ground level. • 3.5m for first floor level • 3.2m for all other floors. 	Yes
4D – Apartment Size & Layout	<p>2 bed+ 2 bath – 75sqm</p> <p>3 bed + 2 bath - 95sqm</p>	<p>Sizes are adequate:</p> <ul style="list-style-type: none"> • 2 bed 87.- 94.5sqm • 3 bed 117-148.5sqm 	Yes
4E – Private Open Space & Balconies.	<p>2 bed – 10sqm / 2m min depth</p> <p>3 bed – 12sqm / 2.4m min depth</p>	All balconies are adequate in size	Yes
4F – Common Circulation & Spaces	Max apartments off a circulation core on a single level is eight.	<p>A maximum of then (10) have been provided, however two lifts have been provided to each floor. The building is properly serviced.</p> <p>Given the “breezeway” design, it is considered that adequate light and natural ventilation has been provided circulation space.</p> <p>Issues surrounding Breezeways design is addressed later in this report under Section 4.4 of the BLEP 2021.</p>	Yes

4G – Storage 50% is located within apartment	2 bed - 8 cubic metres 3 bed - 10 cubic metres	Storage areas are not nominated in the submitted floor plans or basement plans. Had the application been approved conditions requiring storage in the basement would have been imposed.	Yes – subject to conditions,
4K – Apartment Mix	Variety of apartment types provided & flexible apartment configurations to support diverse household types and stages of life	Only 2 bedroom and 3-bedroom units' styles are provided. While it might be argued that this is not providing for a range of apartment types, it is providing an influx of 3-bedroom units to the locality which is currently underserved. The mix is appropriate.	Yes
	Larger apartment types located on ground / roof level where there is potential for more open space & corners where more building frontage is available	Larger apartments are located throughout the development.	Yes

Note No.1 - Deep Soil Zone

In accordance with the ADG the development is required to provide 15% of the site as deep soil given that its size is larger than 1,500sqm. This would have required the applicant to provide for 671.90sqm on site with a minimum dimensions 6m. The objective of this control is to ensure that deep soil zones are provided on the site that allow for and support healthy plant and tree growth. The ADG outlines the provision of deep soil areas are important to allow the infiltration of rainwater to the water table and reducing stormwater runoff, promote the growth of healthy and large canopy trees.

The issue of the lack of deep soil was raised when seeking for amended material. The revised design has provided for 113 sqm of tokenistic "deep soil" area within the first-floor basement (see figure No. 33). Given that there are two levels of basement provided underneath, this is not a true definition of deep soil.

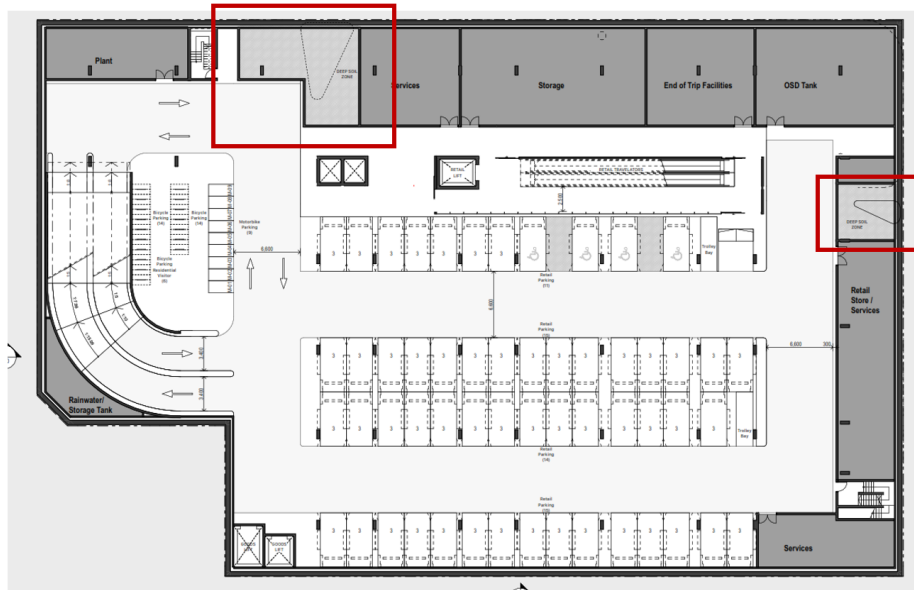


Figure 35: Location of "deep soil"

The development, as revised, is therefore still seeking for a 100% variation to the control.

It is acknowledged that the ADG does state that *"achieving the design criteria may not be possible on some sites including where, the location and building typology have limited or no space for deep soil at ground level (e.g. central business district, constrained sites, high density areas, or in centres) or here is 100% site coverage or non-residential uses at ground floor level"*

While the assessment officer can accept that the site is in a commercial locality, the above-mentioned statement is followed up by advising that *where the proposal does not achieve deep soil requirements, acceptable stormwater management should be achieved, and alternative forms of planting provided such as on structure*. In this instance adequate information with regards to stormwater management as well as flooding requirements has yet to be received. As such an acceptance for full variation to the control cannot be supported in this instance. Furthermore, a section detailing the depth of these deep soil area has also yet to be received.

Note No.2 - Visual Privacy

The development is subject to the separation distance as outlined in the ADG which requires that habitable rooms and balconies are to comply with a 6m and 9m setback to various levels of the development depending on the height. Furthermore, as the rear boundary is located on a transitional boundary which permits a lower density, an increased setback of 3m is required.

The definition of setback, as outlined in the BLEP 2021, is as follows

the horizontal distance between the property boundary or other stated boundary (measured at 90 degrees from the boundary) and—

- (a) a building wall, or*
 - (b) the outside face of any balcony, deck or the like, or*
 - (c) the supporting posts of a carport or verandah roof,*
- whichever distance is the shortest.*

The proposal as does not achieve the requirement to the rear and side boundaries.

Sothern boundary

The development setback to the residential tower complies with the requirement, except for the first floor. The development is seeking for 3.6m setback from the rear boundary to the outside face of two (2) balconies (see figure No. 34 below). The application is seeking 5.4m or a 60% variation.

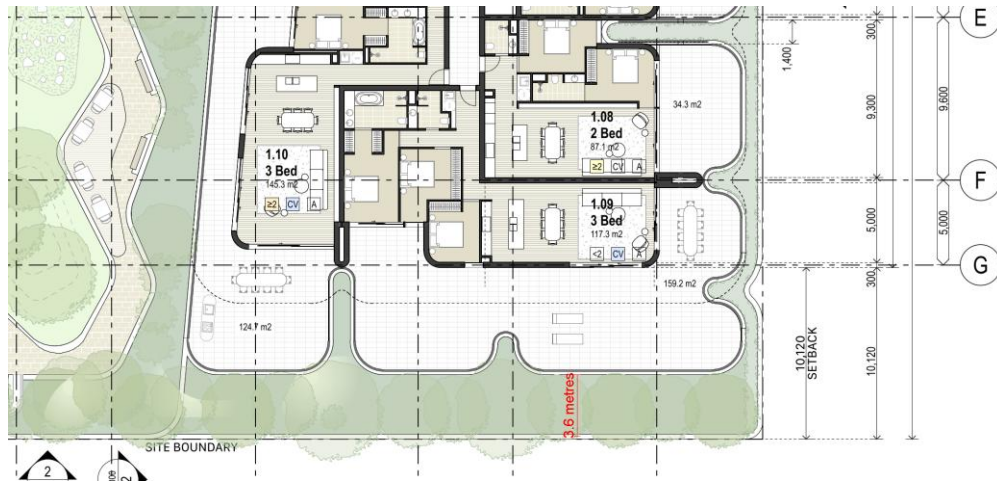


Figure 36: Proposed setbacks from boundary

While it is acknowledged that a planter is proposed within the setback, which once the vegetation is at maturity could provide some assistance in mitigating impacts, reliance on vegetation is not desirable. There is no guarantee that the development, once completed will maintain the vegetation. Had the application been recommended for approval a condition would have been imposed requiring that the terrace be reduced in size and be setback at the minimum requirement.

Western Boundary

The setback to the residential tower does not comply with the minimum requirements as stipulated in the ADG. In this instance the neighbouring site to the west has an equivalent zone as such an additional 3m setback is not required unlike the rear boundary.

The development has requested a 2.6m setback from the western boundary for the first-floor balcony façade, seeking a variation 3.4m or 56%. For the remainder of the building a 4.5m setback to the balcony façade is sought, seeking a 1.5m or 25% variation to the control. It is noted that a 5.1m setback is proposed to the exterior façade of the entire western façade.

In this instance a variation could have been supported to the equivalent zone, had the application been recommended for approval. It is accepted that there is some level of overlooking from a commercial centre to an equivalent zone. The development has incorporated adequate screening located along the balcony façade in line with living rooms glass doors to mitigate overlooking into the active space.

Bayside Local Environmental Plan 2021

The LEP also contains controls relating to development standards, miscellaneous provisions and local provisions. The controls relevant to the proposal are considered in **Table 4** below.

Table 4: Consideration of the LEP Controls

Control	Requirement	Proposal	Comply
Height of buildings (CI 4.3(2))	20.5m.	22.8m	No – but acceptable. See below discussion under section 4.6 of the BLEP 2021
FSR (CI 4.4(2))	2:1 (8,958sqm)	Applicants' calculation 2:1 (8,958sqm) Assessment staff calculation 2:1 (8,983sqm)	Yes – but see below discussion under section 4.4 of the BLEP 2021.
Heritage (CI 5.10)	Adjacent to item	Proposed works are adequate	Yes – subject to conditions
Flood Planning (CI 5.21)	1% AEP event	Proposed works are not adequate	No - see below discussion under section 5.21 of the BLEP 2021
Acid sulphate soils (CI 6.1)	Class 3	Proposed works are adequate	Yes – subject to conditions
Earthworks (CI 6.2)	Significant excavation proposed	Proposed works are not adequate	No - see below discussion under section 6.3 of the BLEP 2021
Stormwater and water sensitive urban design (CI 6.3)	OSD Proposed	Proposed works are not adequate	No - see below discussion under section 6.3 of the BLEP 2021
Active Street Frontages (CI 6.9)	Applies to both the Grand Parade and Ra	Proposed works are adequate	Yes – subject to conditions

1.2 - Aims of the Plan

While not a stated mandatory consideration for DAs, the aims of the Plan are relevant insofar as considering environmental planning instruments within Section 4.15(1)(a)(i) of the Act.

Clause 1.2 of the LEP illustrates the strategic intent of the LEP and its provisions and is considered relevant to the assessment of this application. Clause 1.2 of the LEP Plan includes a range of aims, namely:

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

The proposal is consistent with most of these general aims. However, noting the non-compliance associated with flooding on site it is considered the proposal is inconsistent with aim (c) to reduce community risk.

2.3 - Zoning

The site is located within the MU1 - Mixed Used pursuant to Section 2.3 of the Bayside Local Environmental Plans 2021. The proposed development is characterised as a mixed-use development comprising the following land uses:

- Commercial Premises (shops, supermarket, food and beverage premises), and
- Residential Flat Building – residential accommodation

These land uses are permissible with consent.

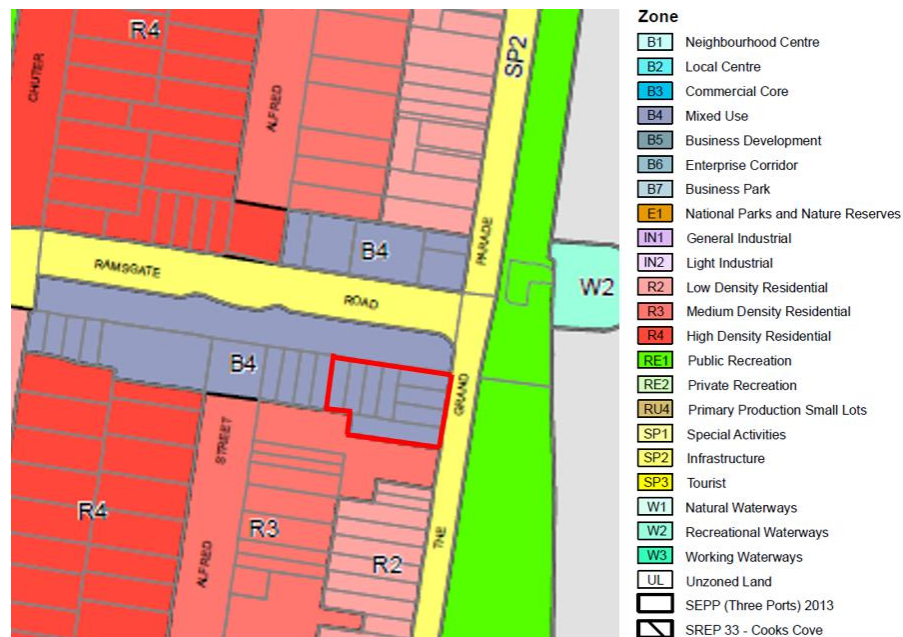


Figure 37: Zoning Map extract (Note B4 = MU1)

The objectives of the zone are:

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

The proposed development is considered to generally satisfy the objectives of the zone/. However, it is considered that the proposed development has not ensure the amenity of the southern facing neighbours has been protected.

4.3- Height of buildings

A maximum height standard of 20.5 metres applies to the subject site. Under the BLEP 2021 the site's permissible Height of Building (HOB) is 20.5m. The subject application proposes a maximum HOB of 22.8m. The applicant is seeking to contravene the HOB development standard by 2.3m to the upper most levels including the lift overruns. This results in a variation to the development standard of 11.21%. Excluding the lift overrun, the height exceedance is 1.3m or 6.3%. If the habitable floor level weren't required to be raised by 0.76m due to flooding, the height exceedance (excluding lift overrun) would be 0.54m or 2.6%

The application is supported by a clause 4.6 statement to contravene the development standard and is addressed later in the report.

4.4 – Floor Space Ratio

A maximum FSR standard of 2:1 (equating to a Gross Floor Area, or “GFA” of 8,958sqm) applies to the subject site. The applicant has provided a GFA calculation plans (see figure No. 36) suggesting that they are only seeking GFA of 8,958sqm or an FSR of 2:1.

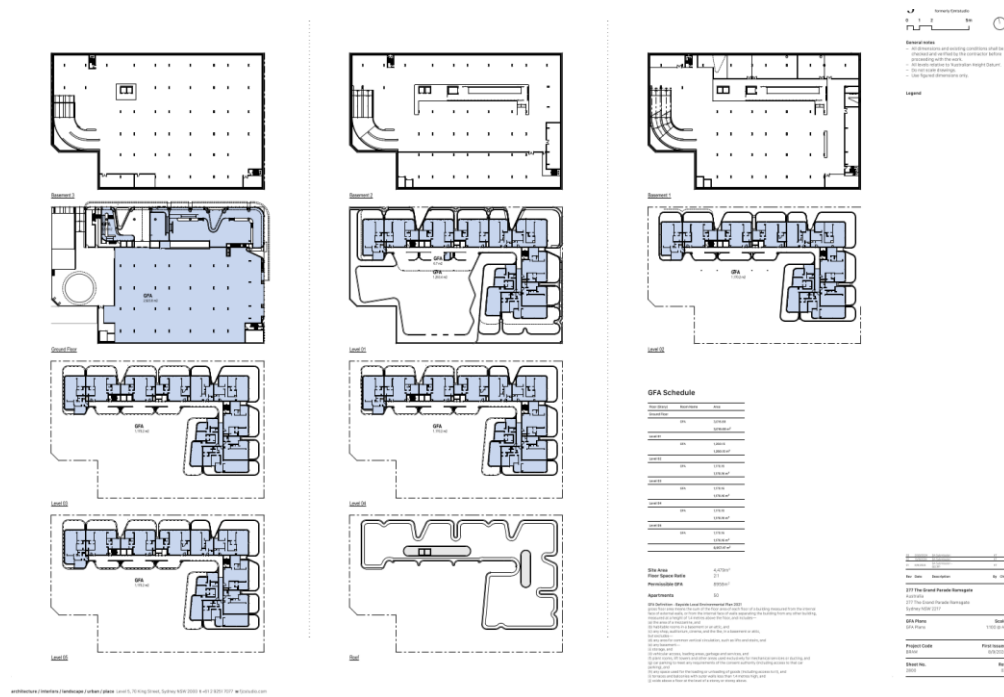


Figure 38: GFA calculations

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

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

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

The assessing officer is in general agreement with most of the areas that have been identified as excluded from the calculation of GFA in accordance with the definition as outlined above. However, some areas excluded from GFA warrant close consideration.

It is accepted that the area within the basement (see figure No. 18, No. 19 and No. 20) that are nominated as plant, storage, services, OSD tanks, loading or unloading, parking etc are

all excluded in line with the above definition. It is also accepted that that end of trip facilities is not considered to be habitable room and as such can be excluded from the calculation. As such there are no areas within the basement considered to be GFA.

It is noted that a significant area to access the residential units have been excluded from the calculations as the application is seeking for breezeways. Adequate plans have been received for the assessment officer to considered that this space is a true breezeway.

Nonetheless the assessment office is of the opinion that the area highlighted in green and pink in figure No. 37 below, should have also formed part of the overall GFA calculation. It is considered that this portion of the building is enclosed and not exposed to the elements. The green rectangle in figure No. 37 accounts for 6sqm, which when repeated over the five stories of the building accounts for an additional 30sqm. The pink rectangle accounts for 5sqm and 25sqm over the entirety of the development.



Figure 39: GFA calculations to be included

Based on the above, the total GFA of the building has therefore increased by 55sqm to a total of 8,988sqm. The development is still considered to have a FSR of 2:1 as such complies with the development standards.

4.6 - Exceptions to Development Standards

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

- *Section (3)(a)- 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.*

Clause 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 applicant is seeking to contravene the Building Height development standard by 2.3m which equates to a 11.21% variation. A contravention request in accordance with Clause 4.6 of the LEP, seeking to justify the proposed contravention, has been prepared by Planning Ingenuity.



<p>Objective (a) - to ensure that building height is consistent with the desired future character of an area,</p>	<p><i>The current or desired future character of the locality is not defined under BLEP. In the decision of Woollahra Municipal Council v SJD DB2 Pty Limited [2020] NSWLEC 115, Preston CJ held that the desired future character of the neighbourhood can be set by the existing, recently approved and proposed buildings within the neighbourhood. Therefore and with regards to the Ramsgate Beach Commercial Area, the locality is undergoing transition in accordance with the permitted planning controls, from low density commercial to higher density mixed-use developments.</i></p> <p><i>Within immediate proximity to the subject site, the neighbouring properties to the west are underdeveloped and do not represent desired future character of the locality as anticipated by the relevant development standards and controls. The immediately surrounding properties are permitted a maximum building height of 20.5m to the north and west consistent with the subject site) and 8.5m - 14.5m to the south. The built form immediately to the west of the site largely comprises 2 -storey commercial buildings and at grade carparking. Across Ramsgate Road to the north, lies built form that more closely reflects the intended density for the Ramsgate Beach Commercial Area.</i></p> <p><i>In addition to the above, it is also prevalent to note that the subject site and immediate neighbours within the MU1 and R4 zone are all capable of benefitting from the recent 30% density uplift afforded by Division 1 In-fill affordable housing of the Housing SEPP. The implementation of a 30% bonus will deliver building height of 26.6m in the MU1 zone and 18.85m in the R4 zone to the south-west of the site. As described in further detail below, the subject development, including the non-compliant building height, will be entirely compatible with the desired future character of the locality, where the additional height is located on a strategic corner lot with two frontages, in a prominent location and within a highly accessible area.</i></p> <p><i>The subject site is zoned MU1 Mixed Use and is within the Ramsgate Beach Commercial Area. The desired future character is defined in the Bayside DCP, specifically, the Ramsgate Beach Commercial Area, as follows:</i></p> <p><i>“Ramsgate Beach commercial area will grow and be revitalised in a way that takes advantage of its unique character, and become a vibrant, lively and attractive beach side centre. Redevelopment on both sides of Ramsgate Road which complements the generous and well landscaped public domain will provide a boulevard feel. As well as the redevelopment of older building stock on the southern side of Ramsgate Road, new development on the north side will expand the Centre to create additional commercial opportunities and a ‘loop’ for pedestrian with improved connection to the foreshore.</i></p> <p><i>The Centre will be characterised by diverse buildings with a sense of openness and lightness, typical of successful beach side centres. New buildings will create a generous scale to Ramsgate Road with breaks between them to ensure sunlight penetrates to the street, and overshadowing is minimised which will improve the Centre’s ambience.</i></p>
---	--

	<p><i>The Centre will continue to be convenient to visit for pedestrians and private motor vehicle users. New developments will include sufficient carparking to meet demand, some of which will be provided at-grade to respond to the high water table which limits excavation for basement parking. Parking will be located so that it does not detract from commercial activity within the Centre.”</i></p> <p><i>As outlined above, this future character is supported by the applicable planning controls within the centre. These controls permit a built form far greater than what currently exists within immediate proximity to the site. Further to this, the NSW State Government has also incentivised and encouraged growth beyond that currently permitted by the BLEP, through relevant State Environment Planning Policies (namely the Housing SEPP) and a desire to deliver Transit Orientated Development.</i></p> <p><i>The variation to the height of buildings development standard pertains to the building core and uppermost level of the development. As discussed in this Variation Statement, these areas of variation will not adversely affect the existing or desired future character of the locality. The proposal is designed to ensure that the non-compliant elements merge seamlessly into the compliant built form and will not appear as visually or physically obtrusive as viewed from the public domain. This approach has been undertaken to minimise environmental impact, whilst delivering a built form which is reflective of the strategic corner location of the site (with two frontages) and highly accessible nature.</i></p> <p><i>Whilst the non-compliance will result in the provision of a sixth storey, this is considered to be compatible with the character of the immediate locality, as outlined above. Furthermore, should any future development neighbouring the site benefit from Housing SEPP bonuses, a greater building height would be permitted. In this regard, the location of the site, fronting The Grand Parade, and its superior characteristics, ensure the variation will not result in a form which is incompatible with the desired future character of the locality.</i></p> <p><i>As such, the height variation is compatible to the varying scale of neighbouring properties, achieving objective (a).</i></p>
<p><i>Objective (b): to minimise visual impact of new development, disruption of views, loss of privacy and loss of solar access to existing development,</i></p>	<p><i>This objective seeks to minimise adverse amenity impacts to the surrounding developments.</i></p> <p><i>The upper portion of Level 5, where it is non-compliant, does not result in any privacy impacts as this pertains to a portion of the ceiling space, and is considered acceptable. To the south, the separation distances between the noncompliant building height and future neighbouring properties mitigates privacy impact. As such, the privacy impact created by the non-compliance is insignificant or nil.</i></p> <p><i>Whilst the proposal results in overshadowing to the properties south of the site, the height non-compliance does not contribute to any significant additional shadow being cast. The proposal provides for additional setback to the southern elevation to parts of the site which will reduce shadow impacts on those areas, resulting on balance in a reasonable shadow outcome. It is noted that the dwellings to the south have living</i></p>

	<p>rooms and POS areas oriented to the south which means that those spaces are unaffected by the proposal.</p> <p>As such, the development will allow adequate views, privacy and solar access to current and future neighbouring properties and achieves objective (b).</p>
Objective (c): to nominate heights that will provide an appropriate transition in built form and land use intensity.	<p>This objective seeks to ensure building height will transition appropriately to the surrounding locality.</p> <p>As described in this Variation, land on the northern side of Ramsgate Road is permitted a maximum building height of 20.5m. Land immediately west of the site is also permitted 20.5m. Directly to the south, the site is adjoined by low and medium density residential development with a varying 8.5m-14.5m permitted maximum building height. The proposal provides a well-designed and sensitive transition to the adjoining residential development to the south.</p> <p>The podium levels are well set back from the ground floor level which provides for a visual transition when viewed from Grand Parade and from the south. The built form is distributed to the two street frontages, with the eastern component of the building above podium presenting a short elevation to the boundary. These elements all contribute to an appropriate transition.</p> <p>Also relevant to consideration of the permitted maximum building height are the incentives provided by the NSW State Government. These incentives, of most relevance being the 30% in-fill affordable housing bonus permitted by the Housing SEPP, will permit a density and intensity of development greater than that permitted by the BLEP. Specifically, the implementation of a 30% bonus will deliver building heights of 26.65m to the north and west and 18.85m to the south in the R4 zone. The increase in density encouraged for sites in an accessible area must be considered for the transition in built form and land use intensity.</p> <p>In accordance with the above, the proposed non-compliance will be entirely compatible with the MU1 Mixed Use zone, and building heights throughout the locality. Whilst non-compliant, the site's strategic corner location (with multiple frontages), opposing the at-grade parking area, The Grand Parade and Ramsgate Road, ensures building height will transition appropriately to the surrounding locality. Importantly, the non-compliance is integrated into architectural character of the development and will not appear as visually or physically obtrusive from the public domain. The built form, including the non-compliance, will successfully address this important corner location within the Ramsgate Beach Commercial Area, and will transition appropriately to the surrounding developments. Particularly to the south, with the above podium component provided a generous southern setback.</p> <p>As such, the proposal is considered to satisfy objective (c).</p>

Officer Comment

The applicant makes worthwhile points regarding to the non-compliance and the applicant has

satisfied at least one of the tests outlined within *Wehbe v Pittwater*. It is accepted that, in principle, the proposal is found to be consistent with the objectives of the development standard, so therefore compliance can be considered unnecessary and unreasonable.

However, some of the above statements cannot be supported. These include:

- That the site directly to the south permits a height of 14.5m. This statement is in fact false. Directly to the south, the adjoining site is medium density residential development with a maximum height of 8.5m only. Sites that have an ability to seek an overall height of 14.5m are located to the south- east of the subject site appropriately 105m across from near Alfred Street.
- The suggestion that it is unreasonable and unnecessary to comply with the height standard due to fact that an additional height bonus could have been provided had affordable housing been sought. This choice may never come to fruition as such the argument does not hold any weight to satisfy the unreasonable or unnecessary test; and
- That the sites benefit from superior characteristics.

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

Applicant Comments/Arguments (summarised):

1. *The non-compliance will contribute to the character of the locality*

- Object 1.3(g) of the EP&A Act 1979 is “to promote good design and amenity of the built environment”. The proposed non-compliance is integrated seamlessly with the overall urban an architectural character of the development and will provide a high quality, contemporary architectural design. Whilst the proposal will contravene the height standard, including habitable rooms, the visual and physical appearance of height, bulk and scale is considered to be entirely compatible with the desired future character of the Ramsgate Beach Commercial Area.*
- As considered in Woollahra Municipal Council v SJD DB2 Pty Limited [2020] NSWLEC 115, the desired future character is subjective and can be set by the existing, recently approved and proposed buildings within the neighbourhood. The immediate locality (southern side of Ramsgate Road) does not reflect the desired character of development in the Ramsgate Beach Commercial Area and is anticipated to undergo significant transformation in accordance with the planning controls. Within the wider locality, development has taken place which is reflective of the desire character, such as the built form along the northern edge of Ramsgate Road, comprising largely six storey mixed use buildings. The proposed built form is consistent with that established in th northern extent of the Ramsgate Beach Commercial Area, comprising of six storeys.*
- Crucial to the above is the height of surrounding development, which is as follows:*
 - To the west, double storey commercial buildings;*
 - To the east, The Grand Parade and Ramsgate Beach;*
 - To the north, Ramsgate Road and seven storey mixed use buildings; and*
 - To the south, multi dwelling single and double storey development.*

Per the above, the subject site is located at a unique juncture of low-rise dated commercial buildings, road infrastructure and higher density mixed-use development, reflective of the intended future character for the Ramsgate Beach Commercial Area. The proposal is generally consistent with the built form and density controls of Bayside DCP and is designed so that the height

noncompliance will not create any adverse impact on the perceived bulk and scale of the development.

- d. In accordance with BLEP 2021, the Brighton Le Sands town centre along Bay Street permits building heights of up to 51m on the corner of The Grand Parade and Bay Street. Along this same street, a 28m height allowance is permitted adjacent to low/medium density residential zoned lan with a maximum allowable building height of 8.5m. The impacts caused by the numeric building height exceedance of 2.3m, resulting in a total building height of 22.8m (including lift overrun), would be negligible compared to the impacts of a 28m building adjacent to single and double storey dwellings along Bay Street.*
 - e. In addition to the above, it is also imperative to note that the subject site and immediate neighbours are all capable of benefitting from the recent 30% density uplift afforded by Division 1 In-fill affordable housing of the Housing SEPP. The implementation of a 30% bonus will deliver building heights of 26.25m to the north and west and 18.85m to the south-west in the R4 zone. In this regard, the subject development, including the non-compliant building height, will be entirely compatible and will contribute to the desired future character of the locality, where the additional height is located on a strategic corner lot with dual frontages, in prominent location and within a highly accessible area.*
 - f. Ultimately, the overall development including the non-compliance will contribute to the character of the locality. The variation is integrated into the overall urban and architectural design of the development and will not be visually obtrusive or jarring as viewed from the surrounding locality. The height non-compliance is not the result of an additional residential storey, but requirement for additional ceiling height due to the full line supermarket to be provided at ground level and flood affectation at the site. The proposal is consistent with the relevant controls as set out in the Bayside DCP – Ramsgate Beach Commercial Area (Section 7.3.4).*
- 2. The site characteristics support the non-compliance*
 - a. The subject site is strategically located and contains superior characteristics which support the proposed non-compliance. Specifically, the site is located on a prominent and strategic corner allotment with dual frontages to The Grand Parade and Ramsgate Road. The relationship of the site to these frontages, alongside the various surrounding uses, allows for the delivery of a prominent corner development which will enhance the public domain. These public domain enhancements include the integration of the bus stop along The Grand Parade. The non-compliant building height will contribute to reinforcing the strategic location of the site and will also provide for additional residential accommodation within a highly accessible and diverse location. The size of the site and its north-south depth allow for the height above the podium to be set back generously from adjoining residential development to the south which is a unique site circumstance.*
 - 3. The non-compliance will not have any adverse visual impact to the public domain or neighboring properties*
 - a. The height breach is at its greatest to the lift overrun and uppermost level when measured from the existing ground level. This non-compliance will not result in any adverse impact as these elements are setback from the podium form below, and are integrated into the overall architectural and urban character of the development.*
 - b. In terms of the building core, this is necessary for the development to function and allow for equitable access to the uppermost level. To remove the lift overrun,*

which is generally concealed from the public domain and require stair access, is an inferior outcome in terms of accessibility.

- c. With regards to the non-compliances of habitable rooms, these have been designed so that they are setback from the southern boundary and are integrated seamlessly into the above podium form which complies with the development standard. The upper level (Level 5) incorporates a 2m setback to The Grand Parade and Ramsgate Road, 8.5m setback to the south-west (rear) boundary, 4.5m setback to west (side) boundary and 9m setback to the southern (side) boundary. These setbacks ensures that the variation is appropriately sited in relation to the surrounding locality and will not result in any adverse visual impact when viewed from the public domain or neighboring properties. Furthermore, the cohesive building design and materiality ensures that the uppermost levels are differentiated from the lower levels and therefore mitigates visual impact. Ultimately and as detailed above, the proposal will be compatible with the desired character of the locality.*
- d. Finally, and as detailed, the relationship of the non-compliant elements to the surrounding locality ultimately limits adverse visual impact, particularly given the site is located in a local center undergoing significant transition. As the buildings podium and tower are well articulated, the bul and scale of the non-compliance as perceived from the public domain is reduced. The L-shape design concentrates the built form to the street frontage and away from low and medium density residential land uses to the south. The remainder of the development meets the relevant Bayside DCP controls and is considered acceptable.*
- 4. The non-compliances achieve a high level of design excellence and is compatible with the existing and desired future character of the locality*
 - a. The proposal delivers a high quality urban and architectural design which clearly exhibits design excellence, despite the non-compliance. Specifically, the arrangement of bulk, scale and subsequent building height non-compliance are informed by the intended future character of the locality, as outlined in Ramsgate Beach Commercial Area DCP. The non-compliance is integrated into the overall architectural design, as to limit impact. Further, given the site contains dual frontages and arterial The Grand Parade to the front, the height breach will not be visually jarring.*
 - b. Ultimately, the maximum building height variations as they oppose Ramsgate Road and The Grand Parade will have minimal impact given the nature of the roadways, infrastructure an relationship to surrounding properties.*
- 5. The non-compliance is the result of flood affectation at the site*
 - a. The proposed development will be elevated above the existing ground level by 0.76m to accommodate a development that will be protected for all flood events up to the design flood level (1% AEP) affecting the site. Excluding the lift overrun, the height exceedance is 1.3m or 6.3%. If the habitable floor level weren't required to be raised by 0.76m, the height exceedance (excluding lift overrun) would be 0.54m or 2.6%. This is an extremely minor exceedance with negligible impacts*
- 6. The non-compliance is a result of the ground floor full line supermarket*
 - a. The height variation can be partly attributed to the need to provide adequate floor to ceiling clearance for a 2,400m² full line supermarket which has a pre-determined requirement for more than 4m clearance necessary for the functional and operational needs of the business. Typically, ground floor commercial would require a ceiling height of 3.2m. The retention of a full-line supermarket on the*

site provides significant benefits for the public, and economy of the surrounding locality, compared with development that does not have the same functional needs that may comply with the height limit.

7. *The non-compliance is a result of the redistribution of bulk and scale*
 - a. *The proposed development seeks to strategically redistribute bulk and scale throughout the site. That is, the proposal provides compliant street walls along the frontage and provides a narrower tower to reduce bulk and scale as perceived from the public domain. That is, strict compliance with the building height standard may be achieved through a wider tower, however, the distinct benefits provided by the current scheme would be surrendered. Importantly, the proposed noncompliance will not result in any adverse visual, physical or amenity impacts. The widening of the tower would ultimately reduce the level of amenity achieved to existing neighboring dwellings to the south.*
 - b. *The additional building height allows for a significantly reduced footprint above the podium level which incorporates significant side setbacks, well in excess of the minimum requirements under the DCP. This has spatial and amenity benefits that can be directly linked to the proposed height breach.*
8. *Orderly and economic use of land*
 - a. *The social benefits of providing additional infill housing within a highly sought-after location should be given weight in the consideration of the variation request. It would be a loss to the community (and contrary to the public interest) to deny the variation and require the removal of additional housing within a well located and well-designed development. This is a disproportionate response to the relatively minor impacts created by these elements, as discussed throughout this Variation.*
 - b. *The non-residential uses within the development that contribute to the height non-compliance will provide for significant jobs growth in the locality, representing a wide range of skill sets, that will contribute to local economic growth.*
9. *The non-compliance would not result in adverse amenity impacts*
 - a. *It is considered that there is an absence of any significant material impacts attributed to the breach on the amenity or the environmental values of surrounding properties, the amenity of future building occupants and on the character of the locality. Specifically:*
 - i. *Specifically, the accompanying shadow diagram analysis indicates the extent of noncompliance creates no unreasonable additional adverse overshadowing to neighboring properties during the winter solstice. In essence, the additional height has enabled a massing of the built form in a manner that provides for greater than required setbacks at the mid-section of the southern part of the building. This results in a significant reduction in shadow impact. Also, the height breach does not result in any significant view impacts over and above a compliant scheme.*
 - ii. *The height breach does not result in any adverse additional privacy impacts. Where the non-compliance pertains to the habitable rooms on the upper levels, opposing the northern boundary, separation distances, highlight windows and solid balustrades ensure privacy will be maintained despite non-compliance. This ensures any existing residential development to the south or future development to the west will maintain adequate privacy. Accordingly, the privacy impact is considered acceptable despite non-compliance.*

- iii. *The height breach does not result in adverse view loss compared to a compliant building envelope. This is due to the low rise nature of development to the south and west of the site.*
- 10. *The proposal meets aims and objectives of key planning documents*
 - a. *The proposed development meets the objectives of the development standard and meets the objectives of the MU1 Mixed Use Zone (refer below);*
 - b. *The proposed development achieves the objects in Section 1.3 of the EPA Act, specifically:*
 - iv. *i. The proposal promotes the orderly and economic use and development of land through the*
 - v. *redevelopment of an underutilise site for residential uses (1.3(c));*
 - vi. *ii. The proposal promotes the delivery and maintenance of affordable housing (1.3(d)); and*
 - vii. *iii. The proposed development promotes good design and amenity of the built environment through a*
 - viii. *well-considered design which is responsive to its setting and context (1.3(g)).*

Officer Comment

The applicant demonstrates environmental planning grounds to support the height variation. It is accepted that, in principle; the uses are appropriate for the site, massing has mostly been redistributed away from affected neighbours, the site is designed to ensure an orderly economic use of land, a public benefit is achieved by providing a supermarket and issues of flood-affectation may provide a reasonable basis for some height non-compliance.

Nonetheless, there are comments within the documentation that can not be relied upon for supporting contravening the development standard. These include:

- That the buildings at Brighton Le Sands, which is located some 3km north from the subject site, have greater impacts than the subject site. The subject site is not considered to share attributes or characteristics that are similar at Brighton Le Sands. The suggesting that the shadowing impacts that are greater in this locality than the subject site and thus the shadows proposed here are negligible in comparison in not an environmental planning ground.
- That the neighbours are capable of benefitting from the recent 30% density uplift afforded by Division 1 In-fill affordable housing of the Housing SEPP. This is an assumption that the neighbouring properties may choose to apply for at some stage. This choice may never come to fruition as such the argument does not hold any weight as a planning ground.
- Having a unique and prominent location located on the corner; and
- Providing jobs growth in the locality.

Had the application been recommended for approval, the assessing officer would have recommended the SECPP to accept the clause 4.6 statement and the proposed variation to the development standard.

5.10 – Heritage Conservation

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

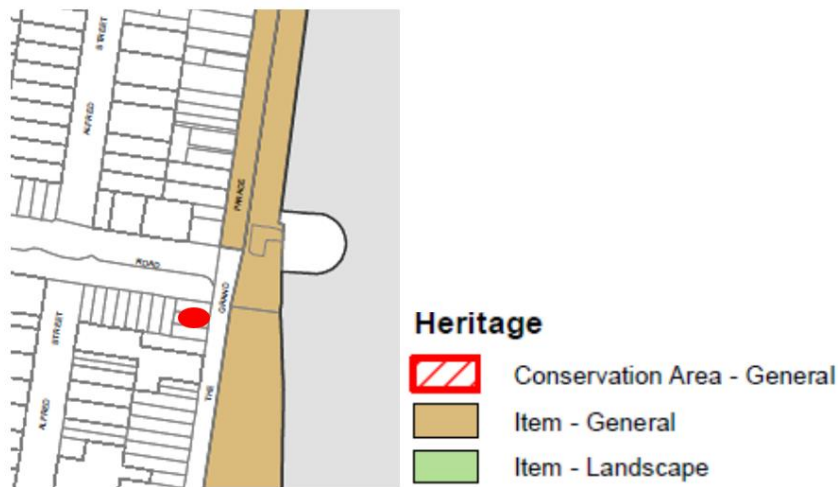


Figure 41: Heritage Item

The application was supported by a draft heritage statement prepared by Weir Philps and dated 17 September 2024, who advised that the proposed works will have a minimal and acceptable impact on heritage item. The report takes into consideration the distance from the item, that the view corridors are in an opposite direction and will not be blocked and advised that the height of the building will be lower than the existing items.

The above report was referred to Council's Heritage Officer for their consideration. It has been advised that:

- There is considerable amount of activation along the eastern façade on ground floor, providing views to Cook Park and Botany Bay. The curved glazed façade around the northeastern corner allow visual connections to the Norfolk Island Pines along The Grand Parade, and the landscaped public square proposed to the north of the site is a soft and interactive address to the heritage items across the road.
- The Orientation of upper-level residential units and the balconies is an appropriate address to the views towards the heritage items to the east and northeast.
- Proposed public art strategies and the suggested locations are appropriate for interpretation of the site's history in the public interface.

No issues were raised by Council's Heritage Officer, subject to conditions. Had the application been supported the details of the public art concept for heritage interpretation is submitted for approval prior to issue of Construction Certificate.

Clause 5.21 - Flood Planning

Council records indicate that the lot is subject to flooding in a 1% AEP event. The primary source of flooding within the existing site in the 1% AEP and PMF storm event is localised ponding within the car park and adjacent to the Coles supermarket due to this area being within a sag point and not from overland flows from upstream catchments. The existing stormwater network is considered to be at capacity in the 1% AEP storm event due to the proximity of the site to Botany Bay (and the tailwater level for Botany Bay incorporated in the model) and the relatively low inverts of the stormwater network. As a result, surcharge from the existing stormwater network will pond within the sag area until flood levels recede and the stormwater is able to discharge via

the piped network.

The application was initially supported by a flood report prepared by SCP and dated 21 December 2023 which was reviewed by Council's Development and Floodplain Engineer who raised several concerns about the proposal. The applicant was given a detailed list on how to amend the development to meet Council requirements. Furthermore, there were multiple meetings with Council's Development Engineering and the applicant to ensure that flooding issues could be alleviated.

The revised material, submitted on 21 October and 28 October 2024 has yet to convince Council's Development Engineers that the development can be supported. The following comments were made:

The flood hazard within the public domain immediately adjacent to the site boundary observes an unacceptable increase in 1% AEP flood hazard from H1 to H2. An increase in 1% AEP flood level of 40-60mm is observed east to west along the frontage of the site/existing Council car park for a length of approximately 118m, impacting the adjacent commercial developments consisting of a liquor store, pharmacy and café. An impact of greater than 10mm is not acceptable, particularly due to the impact to private property outside the development site boundary. An impact in 1% AEP flood levels of 20mm and 45mm is also observed within the road reserve in Ramsgate Road and The Grand Parade, respectively which is not acceptable.

As per Section 9.5.4 the existing flood hazard is not permitted to be increased for all flood events for all flood events and the maximum flood afflux permitted is 10mm, of which this development does not comply with as previously identified. The development is filling the entire site with a proposed building which will displace all the floodwater to Council land and the neighbouring properties which is an unacceptable burden on the community. The approach the applicants engineer has taken to mitigate the impacts is not acceptable, the engineer has purely issued a statement that the flood mitigation measure will work by attempting to calculate an acceptable volume of a flood storage tank, however the engineer has to provide flood modelling with the flood mitigation measure to support the engineer's claim.

The flood modelling figures for the PMF flood event are not accurately depicted for the pre and post development as they show areas cut off abruptly for the flooding in Ramsgate Road, this does not align with the Council flood model which is not accurate. The PMF flood afflux modelling is not accurate as it shows nil impact and does not align with the other documentation submitted for the 1% AEP event. Hence the PMF flood impacts of the development cannot be determined, and the assessment is unable to be completed by Council.

Overall, the development has failed to demonstrate in the flood modelling a compliant flood afflux as per the Bayside DCP and no impact to flood hazard and therefore does not satisfy the DCP or the LEP controls for floodplain management.

In addition to these comments the following is noted:

The flooding report does not address nor does it comply with Section 3.10 of the BDCP 2022 or Section 9.5 of the NSW Governments Floodplain Risk Management Manual 2023. The following information has not been provided in the applicant flood report:

- No table was provided in the flood report demonstrating the compliance with the requirements of Section 3.10 and section 9.5 of the BDCP 2022.
- Confirmation of whether the modelling has used Council's flood study. If so, confirmation of updates to parameters is required. If not, the report will need to include significantly more detail regarding the model build.
- Tailwater condition used for the subject property's connection to the stormwater network

and the modelled stormwater network extent.

- Confirmation of how existing buildings within the site have been incorporated into the modelling.
- Blockage assessment for the proposed and existing stormwater infrastructure.
- Maps showing flood extent, flood contour, flood depth, flood hazard (H1 to H6) and velocity of pre-development and post-development for the 1% AEP, 1% AEP + climate change and PMF flood events.
- Velocity mapping for the 1% AEP and PMF flood events (pre and post development); and
- The flood hydraulic category has not been provided in the pre and post case scenario in the 1% AEP and PMF flood events, this modelling is required.

The flooding report also suggests that the development will not be able to comply with the flooding requirements:



As can be seen in Figure 10, the flood hazard within the public domain immediately adjacent to the site boundary observes a minor increase in flood hazard from H1 to H2. An increase in flood level of 40-60mm is observed east to west along the frontage of the site/existing Council car park for a length of approximately 118m, impacting the adjacent commercial developments consisting of a liquor store, pharmacy and café. An impact of greater than 10mm is considered not acceptable, particularly due to the impact to private property outside the development site boundary. The volume of water observed in the flood level increase along the frontage of the site and adjacent property equates to approximately 96m³ (60mm (max.) over 1600m²).

An impact of 20mm and 45mm is also observed within the road reserve in Ramsgate Road and The Grand Parade, respectively.

Figure 42: Extract of flooding report dated 10 October 2024

The revised flood report does not address NSW Governments Floodplain Risk Management Manual, Guideline FB01 Understanding and Managing Flood Risk. The applicant has not modelled the climate change and Sea Level Rise (SLR) to comply with the NSW Floodplain Management Risk Manual and Bayside Council Development Control Plan. Flood impact mapping has not modelled demonstrating the impacts of the proposal in the climate change scenario. The BDCP 2022 requires the flood modelling to include a climate change impact assessment and demonstrate that there is less than 10mm impact on surrounding properties considering climate change in the 1% AEP event and 50mm impact in the PMF.

The civil engineering plans and flood report are inadequate and insufficient details of the flood storage tank which prevents a full assessment. Further details should have been provided including sections, base plan and the lid plan and inlet design. Based on the limited details provided of the flood storage tank, the following issues are identified:

- Insufficient inlet capacity for the flood storage tank. The proposed 300mm wide grated trench drain will not provide sufficient inlet capacity for the flood storage tank.
- No detail of the flood storage tank was provided this tank could drain via gravity from the bottom of the tank to the Council drainage system on the Grand Parade. It is imperative to not that it is impossible for a tank located in the basement (below the ground floor) to drain via gravity to a road located at ground level (The Grand Parade). A pump system will not be supported as a measure to drain the flood storage tank; and
- As the flood storage tank is below the vehicle circulation area the minimum headroom clearance to be provided as per AS/NZS2890.1 2004 should have been provided.

Finally, a Flood Risk Management Plan/flood emergency response plan was also not provided. The flood risk and flood hazard on the site and its surrounds was required to be assessed for the 1% AEP and PMF flood events. This plan was required to make provision for the following:

- Recommendations on all precautions to minimise risk to personal safety of occupants and the risk of property damage for the total development,
- A flood evacuation strategy,
- The duration of the flood event; and
- Demonstrate how the proposed development does not result in increased risk to life in all flood events and is not an intensification of the site.

Clause 5.21 of the LEP states:

(2) *Development consent must not be granted to development on land the consent authority considers to be within the flood planning area unless the consent authority is satisfied the development—*

- (a) *is compatible with the flood function and behaviour on the land, and*
- (b) *will not adversely affect flood behaviour in a way that results in detrimental increases in the potential flood affectation of other development or properties, and*
- (c) *will not adversely affect the safe occupation and efficient evacuation of people or exceed the capacity of existing evacuation routes for the surrounding area in the event of a flood, and*
- (d) *incorporates appropriate measures to manage risk to life in the event of a flood, and*
- (e) *will not adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses.*

(3) *In deciding whether to grant development consent on land to which this clause applies, the consent authority must consider the following matters—*

- (a) *the impact of the development on projected changes to flood behaviour as a result of climate change,*
- (b) *the intended design and scale of buildings resulting from the development,*
- (c) *whether the development incorporates measures to minimise the risk to life and ensure the safe evacuation of people in the event of a flood,*
- (d) *the potential to modify, relocate or remove buildings resulting from development if the surrounding area is impacted by flooding or coastal erosion.*

Based on the information received and the advice to date, it cannot be concluded that the proposal is acceptable having regard to Clause 5.21 of the BLEP 2021. Furthermore, it is considered that adequate conditions of consent cannot be imposed to meet the requirements. The application is recommended for refusal.

Clause 6.1 Acid Sulfate Soils

Acid Sulfate Soils (ASS) Class 3 affect the site as such development consent is required where the proposal involves excavation of more than 1m. Given the potential for Acid Sulfate Soils and the depth of excavation proposed (i.e. around 10m including footings), a preliminary assessment of the proposed works was submitted with the PSI.

An ASS assessment was conducted to a depth of 7.0m below ground level for two boreholes and it was identified that no evidence of actual ASS was evident from field results. However, one of the boreholes did exceed the action criteria for net acidity and oxidisable sulfur, suggesting the soil contains potential acid sulfate soils (PASS). An updated ASS Management Plan (ASSMP) was prepared for the site to assess the risk and management associated with the disturbance of PASS. The updated ASSMP conforms to the minimum requirements for an ASSMP as set out within the guidelines and addresses the data gaps indicated by the previous hotel proposal.

As advised by Council Environmental Scientist it is anticipated that disturbance of PASS cannot be avoided given that the depth of proposed excavation will contain PASS material, and piling

spoil is expected to be generated from this depth.

Appropriate ASS management procedures have been outlined to the satisfaction of the Council Environmental Scientist, subject to conditions. Procedures include lime selection and liming rate calculations, treatment area set-up, water run-off management, excavation and handling, lime treatment and validation testing, and waste classification and off-site disposal. The ASSMP recommends that a detailed investigation occurs following demolition to better delineate the extent of the PASS and characterise the groundwater for PASS management purposes. Further, upon confirmation of dewatering details, an ASS Dewatering Management Plan is also recommended.

Had the application been recommended for approval appropriate conditions of consent would have been include in a draft notice of consent.

Section 6.2 – Earthworks

Substantial excavation is proposed to support the requested three (3) basement car parking levels to a depth of approximately RL -6.4 AHD. As such the application was supported by Preliminary Geotechnical Investigation prepared by JK Geotechnics Pty Ltd, dated 4 January 2024 and a Specialist Advice Report on Geotechnical Investigation prepared by Dougals Partners dated 16 October 2024 was reviewed by both Council's Development Engineer and Environmental Scientist.

Council's Environmental Scientist advised that a Geotechnical Investigation (GI) was conducted across the western portion of the site within the carpark area, and the eastern perimeter. Fieldwork consisted of the drilling and sampling of five boreholes to termination depths of 23.68-28.30m bgl. Depth of borehole drilling and sampling undertaken are reflective of the depth of proposed excavation works (RL -6.400m AHD). Additional drillings for Cone Penetrometer Tests (CPTs) and Standard Penetration Tests (SPTs) were completed to depths of 15.40 to 20.28m bgl.

Groundwater observations were made during the drilling of boreholes. Groundwater monitoring wells were installed into four of the boreholes (BH01-03 and BH05). Groundwater seepage was observed during drilling in boreholes at depths ranging from 1.6m to 2.0m bgl in the previous investigation. Groundwater measured from the monitoring wells after completion of drilling ranged from 1.60m to 2.42m bgl. Groundwater was slightly higher in the final GI investigations. Groundwater flow direction was considered to likely flow in an eastward direction towards the bay.

Results indicate that groundwater will be present well within the depth of the proposed basement excavation. Hence, dewatering will be required during excavations and the basement will need to be designed as a tanked structure. This will require the construction of an impermeable shoring system along the basement walls. Construction dewatering licencing will be required from WaterNSW. The GI recommends an additional geotechnical investigation be completed following site demolition to allow for site-wide drilling access.

Notwithstanding the above Council's Development Engineer has raised concerns to the proposed design of the basement. They have advised that the geotechnical report does not provide enough certainty regarding the proposed shoring wall systems to be adopted for the basement construction. Section 9.5.1 of the report details three different systems that could be adopted, with one of these systems being considered high risk. The lack of certainty provide regarding the proposed shoring wall design does not provide sufficient certainty that the construction of such a large and deep basement along the waterfront will be constructed appropriately to minimise risk and ensure nil impact to surrounding properties and infrastructure.

Based on the information received and the advice to date, it cannot be concluded that the proposal is acceptable having regard to Section 6.2 of the BLEP 2021. Furthermore, it is considered that adequate conditions of consent cannot be imposed to meet the requirements. The application is recommended for refusal on this grounds.

6.3 – Stormwater and WSUD

The development originally proposed On Site Detention (OSD) that would have used Council's infrastructure to dispose of the stormwater into Botany Bay. This design was not supported by Council's Development Engineer and the applicants were given a detailed list on how to amend the design to meet Council requirements.

The revised civil and stormwater plans, submitted on 17 October 2024, was reviewed by Council's Development Engineers. They have identified that the application cannot be supported due to insufficient information provided. The significant issues relate to the inadequate design of the flood storage tank and the overall limited information provided. Council's Development Engineer is not satisfied that the submitted information demonstrates compliance with Section 6.3 of the BLEP 2021 and compliance with Part 3.9 of the BDCP 2022 (Bayside Technical Specification Stormwater Management). The following issues were identified:

- The stormwater plans do not provide adequate conveyance of flood waters into the flood storage tank from the Council car park. The plan should have demonstrated that the flood storage tank could have provided sufficient inlet capacity to ensure overland flows/flood waters could have been captured into the flood storage tank and that the flood storage tank was required to drain via gravity and not be pump system.
- The plans lack details of the flood storage tank. Adequate plans and sections showing the surface levels, invert levels of the inlet and outlet pipe have yet to be provided.
- Stormwater plans were inconstant with the revised flooding report.
- The MUSIC modelling could not be assessed as the modelling does not align with the WSUD catchment plan or the architectural plans.
- A concept stormwater basement plan has not been provided with a pump out pit along with calculations designed as per Bayside Technical Specification Stormwater Management Section 4.
- No details were provided of the pump out pit including its size, or what was being pumped out whether it be drain surface run-off or groundwater.
- No concept stormwater roof drainage plan was provided.
- The stormwater plan has not identified that the basement is required to be fully "tanked" system. In this instance, no groundwater is permitted to enter the subsurface structures and, no pump-out system is permitted to be used to drain and discharge groundwater from the subsurface structures.
- An oil separator was not provided in the basement to treat the surface run-off.
- No sedimentation basin was provided along with details and calculations.
- No rainwater tank re-use details were provided. The rainwater tank should have been connected to all toilet flushing, all landscape irrigation, car wash bay and all clothes washing machines.
- The rainwater tank size does not comply with the minimum 70kL rainwater tank as outline in the submitted BASIX; and
- The stormwater plans do not provide adequate conveyance of flood waters into the flood storage tank from the Council car park.

Clause 6.3 of the LEP states

(1) The objective of this clause is to avoid or minimise the adverse impacts of urban stormwater

on the land on which development is to be carried out, adjoining properties, native bushland, waterways, receiving waters and groundwater systems.

(2) Before granting development consent to development on any land to which this Plan applies, the consent authority must be satisfied that—

(a) water sensitive urban design principles are incorporated into the design of the development, and

(b) riparian, stormwater and flooding measures are integrated as part of the development, and

(c) the stormwater management system includes all reasonable management actions to avoid adverse impacts on the land to which the development is to be carried out, adjoining properties, native bushland, waterways, receiving waters and groundwater systems, and

(d) if a potential adverse environmental impact cannot be feasibly avoided, the development minimises and mitigates the adverse impacts of stormwater runoff on adjoining properties, native bushland, waterways receiving waters and groundwater systems, and

(e) the development is designed to maximise the use of water permeable surfaces on the site having regard to the soil characteristics affecting on-site infiltration of water.

Based on the information received and the advice to date, it cannot be concluded that the proposal is acceptable having regard to section 6.3(1) and (2) of the BLEP 2021. Furthermore, it is considered that adequate conditions of consent cannot be imposed to meet the requirements. The application is recommended for refusal on this grounds.

Section 6.9 – Active Street Frontages

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

The development has been amended to satisfy the DRP in that the entrance to the supermarket has been redesigned from The Grand Parade to Ramsgate Road. This has remedied the problems associated with a narrow footpath and relatively hostile environment along The Grand Parade while also meeting the design and operational objectives of one controlled access and egress point for the supermarket. The Grand Parade is still considered to be activated due to the number of transparent windows along looking onto the public domain from the supermarket space.

Had the application been recommended for approval, a condition would have been imposed that the windows along The Grand Parade shall not be covered at any stage and remain transparent.

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

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

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

Bayside Development Control Plan 2022

The application is subject to the Bayside Development Control Plan 2022 (“the BDCP 2022”). This is the comprehensive DCP relevant to the proposal. The BDCP 2022 was adopted by the elected Council on 22 March 2022 and came into effect on 10 April 2023 and supports the provisions of the BLEP 2021.

Part 7.3 – Ramsgate Beach

Part 7 is dealt with first, as the BDCP 2022 states: “Provisions in the chapter [7] prevail over any similar provisions in other sections of the DCP”. This section of the BDCP 2022 provides controls and guidelines for 17 areas within the Local Government Area. Not all areas are included. The

areas chosen are either unique or have been subject to detailed master planning controls, with more specific controls to guide development.

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

The site is located within the Ramsgate Beach Area as identified in Part 7.3 of the BDCP 2022.

Description

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

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



Figure 43: Ramsgate Beach Commercial Area

Desired Future Character/Vision

The desired future character relevant to the proposal includes:

Ramsgate Beach commercial area will grow and be revitalised in a way that takes advantage of its unique character, and become a vibrant, lively and attractive beach side centre. Redevelopment on both sides of Ramsgate Road which complements the generous and well landscaped public domain will provide a boulevard feel. As well as the redevelopment of older building stock on the southern side of Ramsgate Road, new development on the north side will expand the Centre to create additional commercial opportunities and a 'loop' for pedestrian with improved connection to the foreshore.

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

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

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

Controls

The relevant objectives and controls relevant to the proposal are considered in **Table 5** below.

Table 5: Consideration Part 7.3 of the BDCP 2022

Requirement	Proposal	Comply
Objectives		
O1. To facilitate growth and revitalisation of Ramsgate Beach commercial area which enhances the Centre's commercial functions.	The proposal would help to revitalise the centre.	Yes
O2. To provide high quality buildings which create a varied and interesting streetscape which reflects to the Centre's beach side location.	The building has been amended to enable a development that is of high quality and has created an interesting streetscape, providing an improved contribution to the site and to the locality.	Yes
O3. To ensure new development allows significant solar access to Ramsgate Road, and creates a sense of openness in the Centre, allowing distant skyline views from the public domain.	Solar access to Ramsgate Road will not be affected, although some skyline views will be affected by the proposal including non-compliant height.	Acceptable
O4. To protect the amenity of the low and medium residential areas which adjoin the Centre.	<p>It is acknowledged that the adjoining dwellings to the south will be affected by the proposal due to nil setback along the shared boundary. Justification has been provided by the applicant as to why the requested 1.5m setback, by the SCEPP was not applied to the site.</p> <p>It is also acknowledged that the development will overshadow the southern property, having an impact on the existing amenity experienced by the development to the south.</p>	<p>See below discussion No. 3 With regards to setback.</p> <p>See below discussion No.4 with regards to overshadowing</p>
Controls		

C1. Where the water table restricts excavation for basement carparking necessary to meet the carparking requirements in Section 3.5, at-grade parking is permitted at the rear of the site	Basement parking is proposed, which is appropriate and preferred to at-grade parking. It is also identified that the development can meet the requirement off Part 3.5 with regards to parking numbers subject to conditions. However as addressed above adequate information with regards to basement construction has yet to be received.	No
C2. At-grade parking is not to be visible from the street frontage, except for a single access driveway, and it is to be located behind active retail uses which are at least 12m deep and address the street frontage	Not applicable in this instance	N/A
C3. A landscape screen is to be provided between any open at-grade parking and adjoining residential properties	Not applicable in this instance	N/A
C4. All developments are to express a 3 storey podium along Ramsgate Road which is to be built to the front property boundary	The development is only seeking a one (1) storey podium along Ramsgate Road. The variation is considered acceptable in this instance as the development result in a reduction of bulk and scale and has reduce impacts to the southern neighboring development.	Acceptable
C5. To create variation and articulation in street frontage facades, the levels of buildings above the podium should be setback at least 2m from the front property boundary	Above the podium, at level 2, the development has been setback 2m from the site boundary along both Ramsgate Road and The Grand Parade.	Yes
C6. The podium of all developments is to be built to the side boundary at the street frontage, except where vehicle or pedestrian access to the development is provided along the side boundary. Where this is required, the podium may be setback from the side boundary up to 4.5m	The podium seeks a nil side setback along the western boundary.	Yes
	See below discussion at note No. 3 about the setback to the southern boundary.	See below discussion No. 3 With regards to setback.
C7. The levels of all buildings above the podium are to have a side setback of 4.5m on sites with a street frontage width greater than 30m, and 3m on sites with a street frontage width less than 30m	Not applicable in this instance as the Apartment Desing Guide supersedes DCP controls.	N/A

C8. For development situated on the southern side of Ramsgate Road, any part of a building above the 4th floor must provide a minimum rear setback of 24m		
C9. The Ramsgate Road facade of any development is to be heavily articulated with variations to the building edge, and is to include a high proportion of balconies and avoid large expanses of blank walls	The development has been amended to ensure that the façade along Ramsgate Road has been heavily articulated to provide a high-quality building which has created a varied and interesting streetscape.	Yes
C10. Developments should respond to the Centre's beachside location by using a variety of environmental protection elements such as screens and louvres and a palette of materials which create a sense of lightness and openness and evoke a beachside feel	<p>The development has been amended to propose a palette of materials which create a sense of lightness and openness and evoke a beachside feel.</p> <p>Materials that are proposed include a white painted metal road balustrade, white compressed fibre cement, lift off from concrete, natural stones. Please refer to description section of this report from an image of the proposed materials.</p>	Yes
C11. For buildings with a width at the street frontage greater than 30m, the facade of the levels of building above the podium is to be broken with significant recesses. These are to be at intervals no greater than 24m and are to give the impression of breaks between buildings. They should be at least 4.5m wide and 3m deep	<p>The development has been amended to propose significant recesses to the building along both the Grand Parade and Ramsgate Road.</p> <p>Along Ramsgate Road the depth of the breaks are proposed at 6.9m, while the width range from 5m to 800mm. Along the Grand Parade the depth of the one break is 4.8m while the width range from 3.4m to 800mm</p>	Yes

Note No. 3- Rear Setback

As outlined in the history section of this report the SECPP requested that a 1.5m setback was to be provided to the previous hotel scheme on site. It is the assessment officer understating that this was requested to afford some greater visual relief to the southern neighbouring property given the multiple relevant objections received.

During the assessment of the subject application the applicant were requested to amend the application to address the previous request of the SECPP. As noted on the amended material this setback has yet to be provided and in leu the applicant has provided the following justification:

Bayside Development Control Plan 2022, at Section 7.3.4 Control 6 states "the podium of all developments is to be built to the side boundary at the street frontage, except where vehicle or pedestrian access to the development is provided along the side boundary." Control C4 requires that "all developments are to express a 3 storey podium along Ramsgate Road which is to be built to the front property boundary". Accordingly, the DCP requires a nil setback in relation to the ground level (and in fact first three storeys) of the proposed development and the proposal complies with this control. The DCP requires this to each boundary where a property fronts a street. The existing building on the site has a

nil setback to the southern boundary, albeit being only one storey.

Clause 4.15(3A)(a) of the Environmental Protection and Assessment Act 1979 (EP&A Act) states – ‘if those provisions set standards with respect to an aspect of the development and the development application complies with those standards—is not to require more onerous standards with respect to that aspect of the development.’ It is therefore unreasonable to require a 1.5m setback from the southern boundary, where a nil setback is permitted under the DCP.

One of the key outcomes of the meeting with Council held in May 2024, was Council’s preference, based on reference to the SECPP minutes from consideration of the previous DA, that a 1.5m setback is provided to the ground level podium. Council agreed however that the applicant’s argument for a nil setback could be put to the SECPP in an upcoming briefing meeting. The applicant pointed to the SECPP report on the original Hotel DA that supported a nil setback to this level, and also to the fact that any deep soil area within that space would not meet the ADG requirements for being characterised as such.

The additional provision of landscaping and deep soil planting would be limited and low quality if a 1.5m setback along the southern boundary were to be implemented. Challenges from a landscaping perspective include limited growth potential given the narrow width of the setback, with planting having to be contained in potential root spread. It is highly unlikely planting along the setback would grow above the boundary fence and be visible from The Grand Parade. The landscaping would be difficult to maintain and prone to failure given the lack of solar access due to orientation and location immediately adjacent to the podium. The ADG requires deep soil planting to contain a minimum dimension of 6m to ensure quality of planting. The requested setback would provide a minimum deep soil dimension of 1.5m, effectively redundant in permitting larger planting characteristic of deep soil zones. There is further no contextual cue for a landscaped strip of this nature in the locality and such a planting strip is highly unusual for a commercial centre site.

The above argument is supported by a letter from Site Design and Studios, that provides the following considerations:

- 1. Deep Soil Strip Compliance: The suggestion for a 1.5m deep soil strip does not comply with the ADG, which mandates a minimum soil zone depth of 6 meters.*
- 2. Planning Requirements: The proposal is not required to provide deep soil planting on this site due to its location in a central business zone and the non-residential use on the ground floor.*
- 3. Horticultural Considerations: Generally, plant species suitable for these conditions tend to grow both wide and tall, which could lead to potential issues in the private open spaces of existing courtyards, such as competition with current vegetation, leaf drop, and reduced aesthetic appeal. Given the south-facing orientation, it is crucial to select species that can withstand prevailing winds, which may be exacerbated in this corridor. Consequently, our options for species that thrive in narrow spaces while achieving sufficient height for effective buffering are limited. Furthermore, the proximity of these plants to footings and foundations may hinder their growth, preventing them from reaching the desired height and density for adequate buffering.*
- 4. Maintenance Challenges: Long-term maintenance in such confined areas poses additional challenges. For a species to attain the necessary height and density for effective buffering, access for maintenance could be significantly restricted.*
- 5. Proposed Solution: A more effective solution is proposed through the incorporation of podium planting on Level 1. The current landscape design features a total planting area of 270m², with podium planters exceeding 3 meters in width. This design allows for a diverse*

range of planting options, including cascading plants along the southern setback, creating a lush green curtain. This approach has been successfully implemented in numerous frontline buildings over extended periods. Moreover, the selected plant species are generally easier to maintain, more cost effective, and provide better long-term results.

A 1.5m setback to the southern boundary would provide a poor outcome in terms of CPTED, effectively creating negative space to which the site could be entered informally, diminishing access control. This would create safety concerns not only at the site but adjoining properties to the south. The setback would create an area that does not achieve adequate passive surveillance, where clear sight lines cannot be achieved, is secluded and hidden that could encourage anti-social behaviour. The setback is entirely in opposition to the CPTED principles communicated in Section 3.13 of the DCP.

There are no increased amenity benefits to residents or neighbours as a result of the 1.5m setback. The provision of solar access and privacy (upper-level residential) would remain almost identical. Further, the existing Coles building abuts the southern boundary. The amenity impacts due to the proposed ground level podium align with the existing arrangement on the site. There are seven townhouses that share the southern site boundary. With living areas, POS and COS areas facing south and therefore orientated away from the proposed development.

The previous application (DA-2022/237), now withdrawn, similarly proposed nil setback to the southern boundary. Although DA-2022/237 overall was not supported by the SECPP, the nil ground level southern setback was deemed suitable by the independent assessment of that application. We request the same approach regarding the southern setback be applied to this application.

The following was also provided in a separate attachment:

- The existing supermarket wall is currently being used by 86-88 Alfred St, Sans Souci as a usable surface from The Grand Parade for 38.5m. 29m of the existing properties at 86-88 Alfred St are affected by the new Commercial Box.
- If the new built form is setback 1.5m, this will create a strip of south-facing unusable land (65m x 1.5m). There is concerns that this will present a health and safety issue.
- The adjacent property is an "Over 55's" complex. (Now replaced by the Housing SEPP) Upon review of the plans of the adjacent properties, only 2 units (#32 and #33) are affected by the new development and all other conditions remain as existing.

- Affected Units #32 and # 33/86-88 Alfred Street
Living Rooms (Dining)

The living areas to the 2 affected units are not materially affected by the new large format retail "supermarket" box as the current DCP Envelope already overshadows the units. There is no additional overshadowing - refer page 108 - 113. There is no effect to #32 as the windows are to the south of the Living Area and #33 has the advantage of the shared window from the Living Area to the south.

2nd Bedroom

The 2nd bedroom is affected on both #32 and #33/86 – 88 Alfred Street as indicated which is compliant with the Housing SEPP requirements for Seniors Living as it is not the main bedroom.



Figure 44: Affected neighbour at unit No.32 – provided by applicant

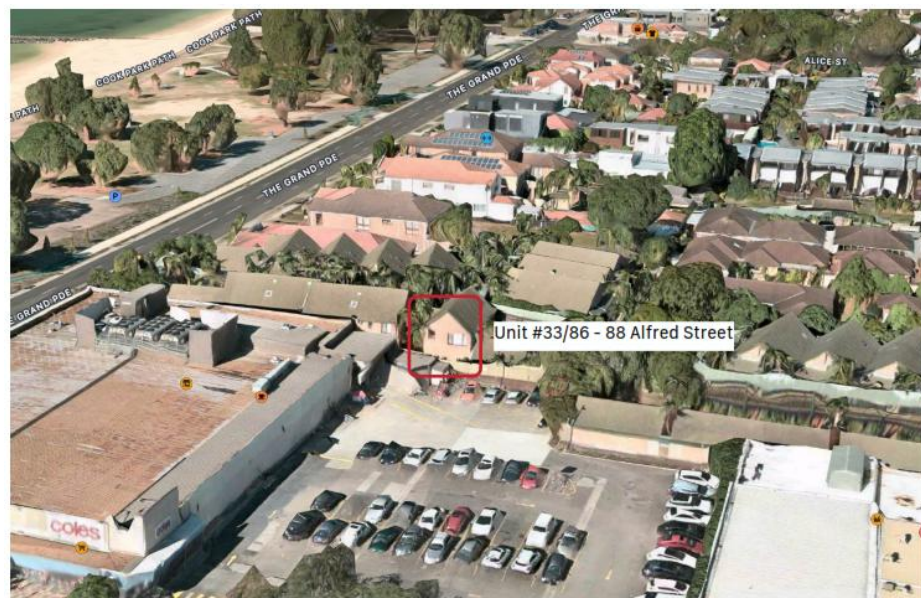


Figure 45: Affected neighbour at unit No.33 – provided by applicant

The assessing officer has read the above justification and agree with the argument that a 1.5m setback would create a strip of south-facing unusable land with the lack of an ability to provide for landscaping treatment, this is also supported by Council's Landscape Architect. It is also agreed that if the 1.5m setback was requested that the development would be inconsistent with the Crime Prevention Through Environmental Design (CPTED) principles and thus would not comply with the requirements Part 3.13 of the BDCP 2023.

The BDCP 2022 does not specify a rear control setback for structures on the ground floor and only for the fourth floor and higher and it is acknowledged that the BDCP 2022 also allows for a three-storey podium, which if had been proposed, the impact to the southern development would have been much worse. Having Council DCP being silent on the numerical rear setback, noting that the BDCP has a requirement for a side setback only, is challenging to provide what is an acceptable setback along this shared boundary. It is therefore the requirement for the applicant

and Council's Assessing Officer to considered that objectives of the controls which includes *to protect the amenity of the low and medium residential areas which adjoin the Centre*.

The above justification is sufficient in detailing why a 1.5m may not be the best outcome but it has yet to justify the fundamental aspect which is to protect the amenity of the adjoining property which includes access to sunlight. The assessing officer is not convinced that the adequate amenity of the neighbouring developments has be retained.

Note No. 4- Overshadowing

Neither the ADG or the BDCP specify a specific hour or percentage of land to be retained when a site adjoins a lower residential development with regards to time allocated to solar access. The BDCP only states that objective *to protect the amenity of the low and medium residential areas which adjoin the Centre*. However, it generally considered that a minimum of 2 hours direct sunlight in habitable living areas (family rooms, rumpus, lounge, and kitchen areas) and at least 50% of the primary private open space between 9am and 3pm in mid-winter.

The subject site is orientated north- south with the frontage of the site facing the north and the rear of the site facing the south. The lot pattern of the street is such that each adjoining site also has the same orientation. The most effected dwelling properties is the over-55s development to the south.

The applicant has only provided hourly overshadowing plans in midwinter and failed to provide existing overshadowing plans, plans at the equinox, plans at summer solstice nor has elevational diagrams been provided. Furthermore, the applicant's solar analysis compares the shadowing of the proposed building to a DCP envelope. The two issues with this are the assumption that an envelope can be filled. Due to a lack of information, it is not made clear if the southern setback causes additional overshadowing to the properties to the immediate south. The applicant should have provided additional plans as part of their justification for supporting a nil setback.

It is clear from the submitted overshadowing diagrams that the developments located along the southern boundary will be impacted.

Based on the information provided, given that there are data gaps, it is reasonable to conclude that as the lack of a setback along the southern boundary has resulted in additional overshadowing to existing development, causing amenity impacts and the applicant has yet to satisfactory address that *amenity of the low and medium residential areas which adjoin the Centre* has been retained.

Part 3.5 – Transport, Parking and Access

The developments frontage along Ramsgate Road, is currently a public carpark and forms part of the road reserve. The Coles car park is currently designed with two separate access points from the public car park into the existing Coles development in conjunction with two access points to Ramsgate Road fronting the site.



Figure 46: Two separate access points to subject site from Ramsgate Road

This arrangement is required to significantly redesigned to accommodate the proposal which access has been reduced to one location towards the western boundary. Significant changes to the car park and road design should have been undertaken by the developer prior to lodgement of revised plans.

The applicant has failed to address the following issues:

- impacts upon existing mature trees,
- car parking spaces and traffic flow ,
- signage and line marking,
- Pedestrian car park crossing modifications. The wider driveway requires the deletion of an existing pedestrian crossing point so that pedestrians can move from the bus stop on Ramsgate Road, this has not been addressed,
- Bus stop modifications to facilitate the wider single driveway access point to Ramsgate Road,
- Reconfiguration of lanes on Ramsgate Road with new slip lane design; and
- Drainage changes to facilitate the new car park works.

Additionally, there is a slip lane, along the Grand Parade, with a bus stop with a bus shelter that straddles across both the public land and private land. It is not clear as to how the development will preserve this bus shelter as part of the development to the satisfaction of the bus authority. Detailed civil plans were not submitted.

Overall, there is a significant lack of information to assess the feasibility of these changes to the road reserve. This means there is not enough certainty provided to ascertain whether the proposed development scheme's access arrangements are feasible or not. The developer has failed to address and respond to the concerns raised by Council's Development Engineer. Furthermore, all of the above requested changes to the road reserve fronting the site still require approval from the Bayside Local Traffic Committee with subsequent endorsement by the Councillors at the Bayside Council meeting. Whilst this may have been a deferred commencement condition the information submitted is wholly inadequate and cannot be relied upon. The submitted documentation provides no certainty that a deferred commencement could even be activated.

The application is supported by a traffic report prepared by Varga Traffic Planning PTY LTD and dated 1 October 2024. It was confirmed by Council's Development engineer that the SIDRA capacity analysis has confirmed that the surrounding road network will continue to operate at satisfactory Levels of Service "A" or "B" and that the proposed development will not result in any unacceptable traffic implications in terms of road network capacity.

With regards to access to the site, in principle, the location of the parking facilities on the site is acceptable having regard to the nature of the site and roads. There is essentially a triple driveway to the western end (two lanes for cars, one for loading). However, a longitudinal driveway profiles for the vehicular access for the loading dock and the basement has yet to be submitted. Furthermore, the longitudinal section plotting the headroom clearance along the travel path of the HRV has also yet to be provided.

It has been confirmed by Council's Development Engineer that the application does not comply with the requirements of the BDCP 2022. See the following compliance table:

Component	Required	Provided	Compliance
Residential			
1 bedroom unit (0)	1 spaces/unit = 0	100	Yes
2 bedroom unit (10)	2 spaces/unit = 20		
3 or more bedrooms unit (40)	2 spaces/unit = 80 spaces		
Visitors Parking	1 space/5 units = 50/5=10	10	Yes
Retail			
Retail (654 m2)	1 space per 40m2 = 17 spaces	115 spaces	Yes (5 excess)
Supermarket (2308m2)	1 space per 25m2 = 92 spaces		
Other			
Car Wash Bay	1 space per 60 dwellings (minimum dimensions 3.5m widex5.4mlong) = 1 space	0	No (shortfall of one space – to be conditioned)
Service Bay	1 HRV &1 SRV	1 HRV&1SRV	Yes
Bicycle / Motorcycle Parking			
Residential Bicycle Parking	1 space per dwelling=50 spaces 1 visitor space per 10 dwellings=50/10=5 spaces Total spaces 55	84 spaces	Yes (to be conditioned be correctly allocated to retail and to residential with visitors included)
Retail bicycle parking	1 bicycle space per 150sqm GFA = 20 1 bicycle space per 400sqm GFA provided for visitors = 8 Total spaces 28		
Motorcycle Parking	1 space per 15 car spaces = 15	15	Yes
Car Share Bay			

Car Share Bay residential	1 space per 50 car spaces = $88/50=2$ spaces	0	No (no space provided – to be conditioned)
Car Share Bay supermarket	1 space per 50 car spaces = $91/50=2$ spaces	0	No (no space provided – to be conditioned)

Had the proposal been recommended for approval, the application could have been conditioned to convert the five additional spaces for the required parking and remove the two that were in access.

Part 3.6 – Social Amenity, Accessibility and Adaptable Design

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

The development provides four (4) accessible car spaces located within the basement level and these spaces are located generally near the lift and travelator. The development also provides eleven (11) accessible car spaces for the residential use, one (1) to be allocated to visitors parking.

The applicant has provided a revised access report prepared by Purely Access, dated 17 September 2024. The report concludes that the proposal is capable of meeting the requirements of the SEPP Housing, Bayside DCP and the Performance Requirements set out in the National Construction Code Building Code of Australia Volume One 2022 (BCA) and referenced Australian Standards with respect to access for people with a disability.

As amended, due to the removal of Food and Drink/ Bar premises a Social Impact Assessment was not required. Furthermore, a Plan of Management ("PoM") for the use retailer tenant and the other uses was not required in their instance. Had the application been recommended for approval a condition would have been included to require approval for that first use.

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

The site is not identified as having high biodiversity value in the BLEP 2021.

No deep soil landscaping is proposed as addressed above under the Housing SEPP. It is noted that landscaping is proposed in two (2) small pockets, one (1) along Ramsgate Road and the other along Grand Parade. Panter bed area proposed along the first floor around the perimeter of the development and also adjacent to the breezeway facing south.

Council landscape architect has reviewed the application and raise no issues subject to the inclusion of recommended conditions. Had the application been recommended for approval conditioned requiring the replacement of dead plants and trees for the life of the site would have been imposed.

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

Part 3.9 - Stormwater Management and Water Sensitive Urban Design and Part 3.10- Flood Prone Land

Stormwater and Flooding have been addressed above in detail. Based on the information

received and the advice to date, it cannot be concluded that the proposal is acceptable. Furthermore, it is considered that adequate conditions of consent cannot be imposed to meet the requirements. The application is recommended for refusal.

Part 3.12 – Waste Minimisation and Management

Adequate information has yet to be provided to the satisfaction of Council Waste Officer.

The applicant did not provide a demolition phase waste plan referencing all waste streams along with estimated volumes and include recognised processing facilities, nor did they advise how the treatment and disposal of any hazardous material will be managed. Furthermore, a construction phase waste plan referencing all waste streams are referenced with estimated volumes and include recognised processing facilities.

Council's Waste Officer has also advised that the development has still yet to meet the requirements or the collection of waste on site including:

- A height clearance of 4.5 metres, allowing for all ceiling or roof attachments such as vents, signage, and piping, for Collection Vehicles to access and service the site
- Ensure all allocated bins are collected on-site, not impeding access to any vehicles or pedestrians.
- Have a minimum unobstructed 3.5 metres carriageway width to the Collection Point(s), which includes all attachments such as vents, signage, and piping.
- Ensures vehicle can enter and exit the site in a forward driving direction; and,
- Ensures a swept path of 21 metres and a turning circle of 25 metres to accommodate the length of a Collection Vehicle to safely manoeuvre within the development.

Had the application been recommended for approval, the above could have been conditioned.

Part 3.14 - Noise, Wind, Vibration and Air Quality

Noise considerations related to road and rail noise have been addressed previously in response to SEPP (Transport and Infrastructure) 2021. The acoustic considerations from the proposal, in particular the residential tower, are now considered to be acceptable due to the removal of the food and drink premises.

In terms of potential wind impacts, the DA was originally supported by a wind impact letter making reference to a 2022 July report, which was eventually submitted at a later date. The revised scheme triggered the need for a further review to be undertaken. The updated letter dated 18 September 2024 prepared by Vipac outlines the following:

- Due to the shift of the building towards the eastern and northern boundaries it is expected to increase corner accelerating winds at the ground level. Given the height of the proposed development, wind levels are not expected to be in excess of the recommended walking comfort criteria.
- The level 1 communal open space is sheltered by the building from north and east sectors. It is expected to have acceptable wind conditions with the proposed design features and landscaping.
- The reduction in overall height are expected to slightly improve the wind conditions compared to the previous design.

Vipac concluded that the proposal would be expected to generate the similar wind environment to previous design, or even better. Had the application been supported the recommendation would have been incorporated as a condition of consent.

Part 6.1 – General Controls

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

Part 6.2.6 - Uses Involving the Preparation and Storage of Food

There is a lack of detail regarding food preparation areas, although this is not critical given the application is not seeking a specific use and is recommended for refusal.

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

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

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

There is no Planning Agreement applicable to the subject application.

(f) 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)); and
- Had the application been supported demolition works are able to meet the provisions of Australian Standard (“AS”) 2601 by conditions of consent.

These provisions of the 2021 EP&A Regulation have been considered and are addressed in the recommended draft conditions (where necessary).

5.2 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. Other issues also include:

Construction Impacts

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

Economic Impacts

In terms of economic impacts, the proposal will cause some anticipated potential negative economic impacts during phases of construction for a temporary period although would result

in net positive economic impacts from the materials and labour needed for construction and ongoing use of the proposal, including from the people and businesses accommodated on the site, to the wider benefit of Ramsgate centre. The economic benefits of the proposal outweigh the impacts

Social Impacts

The social impacts of the proposal are expected to be positive. The development will provide the addition of additional housing that is of a high-quality design and amenity to meet the needs of future residents, within a form compatible with the emerging character of the area. Had the applicant provided additional overshadowing plans, as well as address the issues associated with flooding, stormwater and earthworks the assessing officer may have been in the position to advise that the proposal would have not resulted in significantly adverse impacts to the surrounding neighbors and advise that the impacts to be expected from development of the site, given the planning controls.

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

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

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

These submissions are considered in Section 5 of this report.

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

Granting consent would not be in the public interest.

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 5.

Table 2: Concurrence and Referrals to agencies

Agency	Concurrence/ referral trigger	Comments (Issue, resolution, conditions)	Resolved
Concurrence Requirements (s4.13 of EP&A Act)			
Transport for NSW	Clause 2.119 and 2.122 of the State Environmental Planning Policy (Transport and Infrastructure) 2021	In a letter dated 27 February 2024 TfNSW provided their concurrence subject to Councils satisfaction with the design for the proposed vehicular access on Ramsgate Road (taking into consideration relevant standards, guidelines, safety and traffic considerations), Furthermore, it was advised that TfNSW would provide concurrence to the proposed vehicular access and associated	Yes – subject to Council satisfaction and conditions.

		<p>civil works on Ramsgate Road under section 138 of the Roads Act 1993, subject to Council's approval.</p> <p>TfNSW as requested that a number of conditions also be included on the consent.</p>	
Referral/Consultation Agencies			
Design Review Panel	Chapter 4 – SEPP (Housing) 2021. Advice of the Design Review Panel ('DRP')	The advice of the DRP has been considered in the proposal and is further discussed in the SEPP (Housing) 2021 assessment and the Key Issues section of this report.	Yes
Integrated Development (S 4.46 of the EP&A Act)			
Water NSW	Water Management Act 2000	<p>The DA has been lodged as Integrated Development, as an approval under the Water Management Act 2000 is required, and specifically the development involves a temporary construction dewatering activity.</p> <p>The proposal involves excavation of three (3) basement car parking levels to a depth of approximately RL -6.4 AHD.</p> <p>Testing on site has been undertaken and the geotechnical report prepared by JK Geotechnics, dated 29 June 2022, which demonstrates that groundwater was encountered at approximately 1.8m below ground level (or approximately RL 0.9AHD).</p> <p>The application was referred to Water NSW for concurrence.</p> <p>In a letter dated 12 June 2024, Water NSW provided their General Terms of Approval (GTAs) for the proposal. It is noted that the referral and GTAs were based on the original DA, which has been revised. Despite this, the excavation and basement levels are very similar between the</p>	Yes – subject to conditions.

		original DA and revised DA (and importantly to the same depth and excavation extent), such that the GTAs by Water NSW are considered relevant and applicable to the latest revised proposal.	
--	--	--	--

6.2 Council Officer Referrals

The development application has been referred to various Council officers for technical review as outlined **Table 6**.

Table 3: Consideration of Council Referrals

Officer	Comments	Resolved
Stormwater / Flooding	Council's Development Officers have reviewed the submitted stormwater plans and flooding information and have raised concerns in relation the lack of information. In this instance condition cannot be imposed that would adequately address the matters raised.	No
Traffic	Council's Development Officers have reviewed the submitted plans and traffic report. While there are no corners with traffic flow or parking numbers adequate information to access the site has yet to be received.	No
Landscaping	Council's Landscaping officer has reviewed the application and supported the proposal subject to conditions.	Yes, subject to conditions.
Development Contributions	Council's Development Contributions officer has reviewed the application and has proposed a conditioned requiring the payment of \$482,223.44 in accordance with the adopted Rockdale Section 94 Contributions Plan 2004.	Yes, subject to conditions
Environmental Scientist	Council's Environmental Scientist, as addressed above, has reviewed the application with regards to ASS and contamination. As identified above there is a mix of an opinion between the assessment officer and the Environmental Scientist as to if a DSI is required. This has been addressed in detail above.	Yes, subject to conditions
Environmental Health	Council's Environmental Health officer has reviewed the application and supported the proposal subject to conditions.	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 had been recommended for approval conditions could have been provided.	No

Heritage	Council's Heritage officer has reviewed the application and supported the proposal subject to conditions.	Yes, subject to conditions
Tree Manamnet Officer	Councils Tree Manamnet Officer has reviewed the application and supported the removal of nineteen (19) trees subject to conditions as addressed above within the relevant section of the SEPP.	Yes- subject to conditions.

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

6.3 Community Consultation

The development application underwent two rounds of public notification in accordance with the BDCP 2022. The first round was carried out between 5 February to 6 March 2024 and nineteen (19) submissions were received.

The second round of notification occurred between 27 September to 14 October 2024, eleven (11) submissions were received.

The matters raised include:

Issue: Property damage during construction / structural movement / need for dilapidation reports / insurance cover / other construction impacts (cranes etc.) / monitoring put in place for soil movement

Comment: Impacts from construction would ordinarily be addressed by conditions of consent if approved, including the requirement for dilapidation reports. The proposal is recommended for refusal.

Issue: Aquifer / Geotechnical peer review commissioned by southern neighbours (Morrow Geotechnics) / Adopt the recommendations in the Morrow Geotechnics report Excessive excavation / three (3) basement proposed

Comment: The southern neighbour commissioned a peer review of the geotechnical reports done for the applicant by JK Geotechnics, which was undertaken by Morrow Geotechnics and suggested a number of recommendations. This document was reviewed by Council's Development Engineer who requested that the applicant responded to the submission made by neighbouring residents and addressed data gaps in their geotechnical assessments. This response was never provided.

However, as identified above; Council's Development Engineer have raised concerns to the proposed design of the basement. They have advised that the submitted geotechnical report does not provide enough certainty regarding the proposed shoring wall systems to be adopted for the basement construction. The lack of information provided regarding the proposed shoring wall design does not give sufficient certainty that the construction of such a large and deep basement along the waterfront will be constructed appropriately to minimise risk and ensure nil impact to surrounding properties and infrastructure. The lack of information forms a reason for refusal.

Issue: Unsightly southern wall / Inadequate setbacks / DCP non-compliance to ground floor / visual impacts

Comment: Initially there were multiple concerns to the lack of the required 1.5m setback. Upon submission of the revised plans, it appears that this is no longer a concern subject to the

developer undertaking works to the southern site including the provision of a skylights in units No. 31, 32, 33 and 16. This is a civil agreement and cannot be enforced by either the determining body (SCEPP) or the consent authority (Bayside Council). As addressed above the assessing officer has raised issues that the development has yet to be designed to ensure the protection of the amenity of the neighbouring development.

Issue: Overlooking and loss of privacy to the residents to the south of the subject site / Setback to comply with the 9m requirements

Comment: As addressed above the development setback to the residential tower complies with the minimum requirements, except for the first floor. Had the development been recommended for an approval; a condition would have been imposed requiring that the terrace be reduced in size to be setback at the minimum requirement

Issue: Overshadowing / loss of skyline

Comment: As identified above adequate information has yet to be received to enable a detailed assessment of the impact of the proposal.

Issue: Noise from bar / Noise and Disturbance / Security and safety / anti-social behaviour / Developer fully encloses the Food and Beverage

Comment: The Food and Beverage / Bar use on the first-floor use has since been removed and no longer form part of the requested design.

Issue: The removal of existing structures and trees should be balanced with enhancements to local greenery and public spaces

Comment: An assessment of the lack of landscaping on site has been addressed above and the applicants request for a 100% variation can not be supported in this instance. The applicant has yet to satisfy that acceptable stormwater management is achieved on site.

Issue: Traffic

Comment: The application is supported by a traffic report prepared by Varga Traffic Planning PTY LTD and dated 1 October 2024. It was confirmed by Council's Development Engineer that the SIDRA capacity analysis has confirmed that the surrounding road network will continue to operate at satisfactory Levels of Service "A" or "B" and that the proposed development will not result in any unacceptable traffic implications in terms of road network capacity.

Issue: Parking

Comment: As identity above the development complies with the parking requirements as required by the BDCP 2022.

Issue: Loading

Comment: The development has provided the adequate amount of loading and unloading area. However, accessing this space particularly with regards to waste management has not satisfied Bayside waste requirements and forms a reason for refusal.

Issue: Flooding

Comment: Development consent cannot be granted in this instance as the consent authority is not satisfied the applicant has meet the requirements of section 5.21 of the BLEP 2021.

Issue: Pressure on infrastructure

Comment: The application was externally referred to various agencies including TfNSW and Water NSW. Furthermore, the application is also supported by a traffic report that indicates that development will not result in any unacceptable traffic implications in terms of road network capacity. It is considered that there are no unreasonable impacts on the existing infrastructure.

Issue: Entrance to retail space(s) to be moved to Ramsgate Road

Comment: The entrance to the supermarket and other retail tenancies have been amended to ensure that access is proposed along Ramsgate Road.

Issue: Access and pedestrian comfort for supermarket entry / Crowded pedestrian entry to retail and bus stop on Grand Parade / Design of the bus stop / Review shelter and safety of access for the bus stop on Grand Parade.

Comment: As identified earlier the entrance to all retail tenancies has been amended to ensure that access is provided along Ramsgate Road which is the preferred outcome. Nonetheless adequate civil design required to the proposed changes to the car park fronting the site as well as to the bus stop and pedestrian connection were only received on the 17 October 2024. These plans have focused only on Ramsgate Road which does not allow for a detailed assessment of the new bus location.

Issue: Loss of Ramsgate Beach village low rise charm and character/ turning area into a high-rise development / Overdevelopment

Comment: The Ramsgate Beach Village is a commercial centre with a dense FSR and 20.5m height limit applicable to it. As addressed above the development is considered to be acceptable as it complies with the FSR development standard. Furthermore, adequate justification has been provided for the variation to height.

Issue: Breaches FSR development standard

Comment: As addressed above the development is considered to comply with Section 4.4 of the BLEP 2021 and generally meets the requirements with regards to setbacks.

Issue: Breaches Height development standard / sets a precedent

Comment: As addressed above the development is considered to comply with Section 4.4 of the BLEP 2021. The height breach is supported for the reasons stated in this report.

Issue: Waste Management / Traffic from Waste Collection / Order and Vermin Controls

Comment: As identified above the development does not comply with the Waste Management requirements and forms part of the recommended reasons for refusal.

Issue: Heritage

Comment: Council's heritage advisor has raised no issues with the proposal subject to conditions. Had the application been supported these conditions would have formed part of the notice of consent.

Issue: Accessibility and Inclusivity

Comment: As addressed above the development is considered to comply with Part 3.6 of the BDCP 2022. Had the application been recommended for approval, appropriate conditions of consent would have been included to ensure fair access to both the public and private sectors of the proposal.

Issue: Incorporating sustainable design principles and community amenities can contribute positively to the neighbourhood's social and environmental fabric.

Comment: The development has incorporated sustainable design principles. These include Water harvesting and Photovoltaic cells. The proposed development has also been designed so that deep balconies will provide shading that will ensure the prevention of heat gain and maintain thermal comfort and natural light and ventilation are provided to the walkway via the breezeway design.

Issue: Wind

Comment: As addressed above the DA was originally supported by a wind impact letter. While winds were expected to increase at the ground level corner, there were not to exceed a walking comfort criteria. Furthermore, the reduction in height would have slightly improvements the wind conditions compared to the previous design. Had the application been supported the recommendations would have been imposed as conditions of consent.

Issue: Loss of view to low density development

Comment: It is considered that this subject application will not result in view loss. In terms of view loss from the neighbouring development, the subject application can be constructed to a height of 20.5m. It is not considered that the proposed height variation will result in any view loss.

Issue: Access for Emergency vehicles

Comment: Emergency vehicles can enter the site via the access on Ramsgate Road and use the loading bay if required.

Issue: Vegetation not to drop leaves

Comment: The proposed planting includes a variety of evergreen low and medium shrubs, several of them feature plans, all evergreen that will provide a green frame of 1 to 2.5 meters in height. As advised by Council Landscaping architect these will not drop leaves.

Issue: Lack of acknowledgement to true custodians of the land

Comment: This is currently not relevant consideration under Section 4.15 of the Act. Nevertheless, the applicant has provided an Acknowledgement to Country within the Application Design Statement,

Issue: Demolition of a boundary wall

Comment: The applicant is seeking to demolish all structures along the boundary. The boundary wall is a civil matter between the two neighbouring properties.

Issue: Construction noise

Comment: Noise impacts from construction would ordinarily be addressed by conditions of consent if approved. The recommendation is refusal.

Issue: Underpinning location

Comment: Underpinning would ordinarily be addressed by conditions of consent if approved. The application has been recommended for refusal.

Issue: Asbestos

Comment: Removal of asbestos that would have occurred during construction would ordinarily be addressed by conditions of consent if approved.

Issue: Insufficient time to make a submission during re-notification

Comment: The application was renotified in accordance with the BDCP 2022.

Issue: No affordable housing included

Comment: The applicant has not sought for the affordable housing as part of the proposal, nor are they required to provide it.

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

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

Issue: Developer cover the cost of soundproof windows

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

Issue: Developer finds the cost of installation of 2 large skylights in unit 31, 32 NS 33 and the extension of existing south facing windows for unit 33.

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

Issue: Developer to reimbursement the cost of geotechnical reports to cover DA submissions

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

Issue: Developer to ensure that a secure fence be maintained

Comment: This is a civil matter and is not a relevant consideration under Section 4.15 of the Act. Nonetheless had the application been recommended for approval, a condition requiring hording during the construction process would have been imposed.

Issue: Developer to cover the cost of lighting neighbouring proerpoty to ensure no rubbish is places in the front yards of the south adjoining neighbours

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

Issue: CCTV cameras to be place at the southeast corner of the building

Comment: Had the application been recommended for approval a CCTV camera along the southeast corner of the building could have been conditioned.

7. CONCLUSION

This development application has been considered in accordance with the requirements of the EP&A Act and the Regulations as outlined in this report. Following a thorough assessment of the relevant planning controls, issues raised in submissions and the key issues identified in this report, it is considered that the application cannot be supported.

8. RECOMMENDATION

That the Development Application (DA No – 2023/370) for Integrated Development - Demolition of existing structures, tree removal and construction of a mixed used development comprising of three (3) levels of basement car park, ground floor supermarket and retail premises and five (5) levels of residential comprising of 50 apartments at 277 The Grand Parade RAMSGATE BEACH NSW 2217 be refused pursuant to Section 4.16(1) (b) of the *Environmental Planning and Assessment Act 1979* subject to the reasons for refusal as outlined in the report.

The following attachments are provided:

- Attachment 1: Architectural Plans
- Attachment 2: Application Design Statement
- Attachment 3: Landscape Plans
- Attachment 4: Civil Plans
- Attachment 5: Demolition Plans
- Attachment 6: Public Domain Plans
- Attachment 7: Original Statement of Environmental Effects

- Attachment 8: RFI Response
- Attachment 9: 1.5m Setback Justification
- Attachment 10: Clause 4.6 HOB
- Attachment 11: Acoustic Report
- Attachment 12: Access Report
- Attachment 13: Acid Sulfate Soil Management Plan
- Attachment 14: BASIX Certificate
- Attachment 15: Flood Impact Assessment – dated 24 October 2024
- Attachment 16: Flood Impact Assessment – dated 10 October 2024
- Attachment 17: Geotech (Revised)
- Attachment 18: Geotechnical (Prelim)
- Attachment 19: Heritage Impact Statement
- Attachment 20: NatHERS Certification
- Attachment 21: Preliminary (Stage 1) Site Investigation
- Attachment 22: Remedial Action Plan
- Attachment 23: Section J Energy Compliance Report
- Attachment 24: Traffic Report
- Attachment 25: Waste Management Plan
- Attachment 26 : Wind Report
- Attachment 27: Ausgrid Response
- Attachment 28: Sydney Airports Response
- Attachment 29: Sydney Water Response
- Attachment 30: Transport for NSW Response
- Attachment 31: Water NSW Response
- Attachment 32: Water NSW GTA