

COUNCIL ASSESSMENT REPORT

SYDNEY EASTERN CITY PLANNING PANEL

PANEL REFERENCE & DA NUMBER	PPSSEC-314 – DA-2024/68
PROPOSAL	Integrated Development - Demolition of existing structures and construction of two (2) ten (10) storey mixed use buildings, comprising eighty-six (86) residential units, eight (8) ground floor commercial units, three (3) levels of basement parking, and associated landscaping
ADDRESS	Lot 106 in DP 738223 and DP Lot B in DP 397535 114-116 Hattersley Street & 345 Princes Highway Banksia NSW 2216
APPLICANT	Hattersley Developments P/L
OWNER	114-116 Hattersley Street - Hattersley Developments P/L 345 Princes Highway - Nascon Property Group P/L
DA LODGEMENT DATE	25/03/2024
APPLICATION TYPE	Integrated Development Application
REGIONALLY SIGNIFICANT CRITERIA	Section 2.19(1) and Clause 2 of Schedule 6 of State Environmental Planning Policy (Planning Systems) 2021 declares the proposal regionally significant development as: General Development that has an estimated development cost of more than \$30 million.
CIV	\$32,452,542.00 (excluding GST)
CLAUSE 4.6 REQUESTS	<ul style="list-style-type: none"> • <i>Mixed Use zone (MU1) – Bayside LEP 2021</i> • <i>Clause 4.6 variation to clause 4.4 – Floor Space Ratio of 2.5:1 - Bayside LEP 2021</i> • <i>Clause 4.6 variation to clause 16(1) – Floor Space Ratio of 3.25:1 - State Environmental Planning Policy (Housing) 2021</i>
KEY SEPP/LEP	<ul style="list-style-type: none"> • <i>State Environmental Planning Policy (Biodiversity and Conservation) 2021</i> • <i>State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004</i> • <i>State Environmental Planning Policy (Sustainable Buildings) 2021</i> • <i>State Environmental Planning Policy (Housing) 2021</i>

	<ul style="list-style-type: none"> • <i>State Environmental Planning Policy (Planning Systems) 2021</i> • <i>State Environmental Planning Policy (Resilience and Hazards) 2021</i> • <i>State Environmental Planning Policy (Transport and Infrastructure) 2021</i> • <i>Bayside Local Environmental Plan 2021; and,</i> • <i>Bayside Development Control plan 2022.</i>
TOTAL & UNIQUE SUBMISSIONS KEY ISSUES IN SUBMISSIONS	Five (5) unique submissions Traffic, Parking, Streetscape, Scaffolding, Land Isolation, Height, Amenity, Through Site Link and Overshadowing
DOCUMENTS SUBMITTED FOR CONSIDERATION	Architectural Plans Revision B, Clause 4.6 variation – FSR, Wind Report, Traffic & Parking Report, Acoustic Report, Access report, BASIX, etc.
SPECIAL INFRASTRUCTURE CONTRIBUTIONS (\$7.24)	Yes
RECOMMENDATION	Approval subject to Deferred Commencement Consent
DRAFT CONDITIONS TO APPLICANT	No
SCHEDULED MEETING DATE	24 October 2024
PLAN VERSION	11 November 2024 Version C (amended)
PREPARED BY	Michael Maloof – Senior Assessment Planner
DATE OF REPORT	11 February 2025

EXECUTIVE SUMMARY

The development application (DA-2024/68) seeks consent for the demolition of existing structures, the construction of two (2) ten storey (10) mixed use buildings to be used as shop top housing with eight six (86) residential units, three (3) basement parking levels, eight (8) commercial tenancies and associated landscaping ('the proposal'). The proposal includes 16 affordable housing units (or 18.6%) of the overall development.

The subject site is known as 114-116 Hattersley Street and 345 Princes Highway Banksia ('the site') and comprises two (2) lots with two (2) road frontages including Hattersley Street to the west and Princes Highway to the east. The site is located between Hattersley Street in the south and Taylor Avenue to the north and occupies an irregularly shaped area of 2,535.8m². There are multiple vehicle access points to the site, including from Hattersley Street.

Existing development on the site consists of a number of industrial buildings, being one and two storeys. The property at No. 345 Princes Highway fronts both the highway to the east and Hattersley Street to the west while the property at Nos. 114-116 Hattersley Street does not front the highway and backs onto another property at the rear (No. 361 Princes Highway).

Further to the north and south are more industrial buildings. To the immediate south, is an existing industrial building that has been approved under DA-2020/409 for demolition and construction of an eight (8) storey building comprising of ground floor retail and seven levels of boarding rooms. This was approved by the Regional Planning Panel on 5 May 2022. Further to the south is an eight (8) storey mixed use development under construction at 371 Princes Highway and 120-126 Hattersley Street (DA-2021/6).

The site is located in an area undergoing transition from the low density commercial / industrial area to the high density mixed use development in the Banksia Town Centre. The locality contains a diverse range of commercial, industrial and mixed use developments of heights between 1, 2 and 8 to 10 storeys. The proposal is therefore in keeping with the desired future character of the precinct.

The site is located within the MU1 – Mixed Use zone pursuant to Clause 2.2 of the Bayside Local Environmental Plan 2021 ('LEP 2021'). The proposed demolition and construction of shop top housing on the site is permissible with consent in the MU1 zone. The site is located within 100m of Banksia Railway Station and the railway line is opposite the site on the western side of Hattersley Street.

In 2020, two development applications were lodged with Council for the redevelopment of the site, with one DA on each of the two lots that currently make up the site. Both were subsequently refused, and a Pre DA was considered by Council last year which was in preparation of the current application. The current proposal has resolved the issues previously raised and largely complies with the controls applying to the site, apart from the FSR control.

The principal planning controls relevant to the proposal include State Environmental Planning Policy (Housing) 2021 ('SEPP Housing') including Chapter 4 which relates to Design Quality of Residential Apartment Development (formerly 'SEPP 65'), the Bayside Local Environmental Plan 2021 ('LEP') and the Bayside Development Control Plan 2022 ('the DCP'). The proposal is consistent with various provisions of the planning controls including:

- Design quality principles of SEPP (Housing) including Principle 1: Context and neighbourhood character, Principle 2: Built form and scale, Principle 3: Density and Principle 9: Aesthetics; and,
- Provisions of the ADG including the provision communal open space (Part 3D), visitor car parking (Part 3J), apartment size (Part 4E), housing mix, water management & conservation (Part 4V) and waste Management (4W).

However, the proposal involves the following contravention in respect to the floor space ratio control under the SEPP (Housing) 2021. The proposal has a minor gross floor area exceedance of 220.65m² in gross floor area (11%) of the SEPP Housing 2021 and this has been addressed later in this report.

The application is for integrated development pursuant to Section 4.46 of the *Environmental Planning and Assessment Act 1979* ('EP&A Act') and was referred to the Sydney Airport Corporation Ltd (SACL) and Water NSW under the Water Management Act 2000. The application has been reduced in height and as such, no objections were raised by these organisations with recommended conditions of consent being provided.

A referral to Ausgrid and Transport for NSW (TfNSW) pursuant to *State Environmental Planning Policy (Transport and Infrastructure) 2021* ('Transport and Infrastructure SEPP') were sent and raised no objections subject to conditions being imposed. The application was referred to Sydney Trains under the Transport and Infrastructure SEPP and no objections were raised subject to the imposition of conditions by way of a Deferred Commencement and

operational conditions. The NSW Police were also consulted while no response was received in this regard.

Jurisdictional prerequisites to the grant of consent imposed by the following controls have been satisfied including:

- Section 2.119, 2.121 and 2.122 of the Transport and Infrastructure SEPP for consideration of whether the proposal will impact on the surrounding road network;
- Chapters 2 & 4 of SEPP (Housing) in relation to affordable housing and the advice of any Design Review Panel have been satisfied;
- Section 2.48(2) of the Transport and Infrastructure SEPP in relation to the site being within the vicinity of undergrounded electricity infrastructure, along the rear frontage of the site within Hattersley Street; and,
- Section 2.99 of the Transport and Infrastructure SEPP for consideration of the impacts on the rail corridor.

The application was placed on public exhibition from 10 April 2024 to 10 May 2024, with five (5) submissions being received. These submissions raised issues relating to building height, streetscape, traffic, parking, scaffolding, land isolation, Through Site Link and potential privacy and overshadowing impacts. The diminished redevelopment potential of and vehicular access to an adjoining property were also raised. These issues are considered and addressed later in this report.

The application is referred to the Sydney Eastern City Planning Panel ('the Panel') as the development is '*regionally significant development*', pursuant to Section 2.19(1) and Clause (2) of Schedule 6 of *State Environmental Planning Policy (Planning Systems) 2021* as the proposal is development for *community facilities* and a *place of public worship* with a CIV over \$30 million.

A briefing was held with the Panel on 15 August 2024 where key issues were discussed, including the site context, configuration of the adjoining property, through site link and easement for basement access over the site to the adjoining property at No. 361 Princes Highway to enable future development of that site.

The proposed development has an exceedance of the FSR control in the Bayside LEP 2021 for one of the lots (114-116 Hattersley Street) but has been reduced to comply with the height standard, and addresses SEPP 65 design concerns as well as ADG non-compliances including overshadowing. The proposal addresses the potential for site isolation, amenity impacts and potential traffic and car parking issues.

Council has considered the previous request of the SECPP at the Briefing Meeting to provide affordable housing in perpetuity. Given the provisions of SEPP Housing 2021, Council was unable to persuade the applicant to provide affordable housing in perpetuity and this is discussed in more detail later in this report.

A Sydney Water sewer main runs through the middle of the property at No. 345 Princes Highway running north and south from the adjoining properties. Conditions will be imposed to ensure the proposal has regard for the sewer main and it will either be incorporated into the development or relocated.

The key issues associated with the proposal include the following which have been addressed in the report:

1. *Site Isolation* - The proposal does not involve the consolidation of the adjoining property at No. 361 Princes Highway and appears to isolate this property which will not have future vehicular access from Princes Highway. The proposal will allow future vehicular access to the adjoining property and this issue has been addressed later in this report.
2. *Floor Space Ratio* - The proposal exceeds the maximum FSR control under the SEPP (Housing) 2021 and Bayside LEP 2021 for the property at Nos. 114-116 Hattersley Street and a contravention has been considered under Section 4.6 of the Bayside LEP 2021. The bulk and scale of the proposal is consistent with the desired future character of the locality, and this is discussed in more detail later in this report.
3. *Affordable Housing* - The proposed residential flat building includes 13 units or 15.1% of affordable housing which is permissible in the MU1 Mixed Use zone. The proposal generally complies with the requirements of the SEPP (Housing) 2021 in respect to affordable housing and the Design Quality of Residential Flat Development. In this regard, the proposal is acceptable in respect to affordable housing.
4. *Traffic and Car Parking* - There are several fundamental car parking and vehicular access issues including an easement to retain vehicular access to the adjoining property at No. 361 Princes Highway through a basement level. One car parking issue that has been adequately addressed by the proposal, includes a shortfall in visitor car parking of around 5 spaces (DCP requirement) for the building at 114-116 Hattersley Street. In this regard, the other building being part of the proposed development will have additional 4 visitor car parking spaces at No. 345 Princes Highway. The proposal is not unreasonable in respect to the overall provision of visitor car parking across the entire site given it contains more parking spaces than required under the TfNSW Guide. The proposal is acceptable when considering the location of the site and its proximity to Banksia Railway Station. This has been addressed in more detail later in this report.
5. *Urban Design* - The proposed built form has been amended several times to achieve a sympathetic response to the existing and desired future context, and the building facades have been designed to contribute positively and contain visual interest to the existing streetscape character. In this regard, the proposal has achieved Design Excellence and was supported by the DRP. The front setbacks sufficient and the basement driveways have been designed not to dominate each frontage. As such, the revised proposal presents well to each street and will result in a suitable outcome in respect to the neighbouring properties and the streetscape.

Following consideration of the matters for consideration under Section 4.15(1) of the EP&A Act, the provisions of the relevant State Environmental Planning Policies, and the Bayside Local Environmental Plan 2021, the proposal is supported subject to the imposition of conditions of development consent.

Issues relating to the design of the proposed development have been satisfactorily resolved through amendments and the submission of additional information. The proposal includes two separate buildings containing two shop top housing developments over basement parking levels. The technical issues, along with the other design matters, have been satisfactorily addressed as considered in this report. Based on the above, the proposal as currently presented has acceptable outcomes and accordingly can be approved subject to conditions of development consent.

Following a detailed assessment of the proposal, pursuant to Section 4.16(1)(a) of the *EP&A Act*, the development application (DA-2024/68) is recommended for approval subject to the imposition of conditions contained at **Attachment A** of this report.

1. THE SITE AND LOCALITY

1.1 The Site

The subject site is a combined design for two adjacent but not contiguous parcels. These are 345 Princes Highway and 114-116 Hattersley Street, Banksia (referred to as the site in this report). The site comprises two lots and are legally identified as Lot 106 in DP 738223 and Lot B in DP 397535 respectively. The site is located within 100m of Banksia Railway Station and the railway line is opposite the site on the western side of Hattersley Street.

The subject site is occupied by one storey (Nos. 114-116) and two storey (No. 345) commercial/industrial buildings. The parcel at No. 345 Princes Highway comprises one lot that has an eastern frontage to the Princes Highway of 38.675m and western rear frontage to Hattersley Street of 48.28m. The southern side boundary of this lot has a “kink” of 1.77m resulting in the different widths at the front and rear. This lot has an area of 1,926sqm and the topography of the site falls from east to west by about 1.6 metres from Princes Highway to Hattersley Street. Adjoining this lot to the south is a lot of half the depth that contains a three storey residential flat building at No. 361 Princes Highway. This adjoining lot is not part of the site and has a 1.2m wide battle axe handle that cuts the subject site in half and extends to Hattersley Street, for pedestrian access.

To the rear (west) of No. 361 Princes Highway is the second parcel making up the site at Nos. 114-116 Hattersley Street. This lot has a western frontage to Hattersley Street of 21.92m and an eastern boundary that contains a kink that adjoins the rear of No. 361 Princes Highway. The side boundaries of this lot vary from 25.545m along the northern side boundary and 29.015m along the southern site boundary. This lot has an area of 609.8m². The topography of the lot falls from east to west by 1.1 metres from the rear of the lot to Hattersley Street.

The site contains ten (10) existing mature trees adjacent to the Hattersley Street frontage (to the rear of No. 345 Princes Highway) and a tree within the front and rear setbacks (total of two trees) at Nos. 114-116 Hattersley Street.



Figure 1: Aerial photograph of the site and surrounding context



Figure 2: Close up aerial photograph of the subject site

1.2 The Locality

The site is located between the Illawarra railway line opposite to the west and the Princes Highway to the east, with Taylor Avenue to the north and Kimpton Street to the south. Adjoining development to the sides includes a motor showroom to the north at 335-341 Princes Highway (that also has a dual frontage to Hattersley Street), a three-storey residential flat building between the two parcels at 361 Princes Highway and a commercial building to the south at No. 118 Hattersley Street. Further to the south are more commercial and industrial uses that front the Princes Highway. At the southern end of the street block is an eight (8) storey mixed use development (DA-2021/6) currently under construction which fronts Hattersley Street, Kimpton Street and the Princes Highway. This development will contain 37 residential apartments, ground floor retail, first floor childcare centre and basement parking. On the opposite side of the Princes Highway are more commercial and industrial uses.



Figure 3: Photograph of the northern end of the site at 345 Princes Highway



Figure 4: Photograph of the southern end of the site at 114-116 Hattersley Street

2. THE PROPOSAL AND BACKGROUND

2.1 The Proposal

Council is in receipt of a development application (DA-2024/68) at 1141-116 Hattersley Street and 345 Princes Highway, Banksia, which seeks consent to demolish the existing structures and construction of two (2) ten (10) storey mixed use developments comprising eighty-six (86) residential units, eight (8) ground floor commercial units with a gross floor area (GFA) of 640.1m², three (3) levels of basement parking, and associated landscaping.

The proposal comprises a total of 86 residential units being 1 x studio, 6 x 1 bedroom, 56 x 2 bedroom & 23 x 3 bedroom units, with 140 car parking spaces in the 3 basement levels. The proposal includes 13 affordable units (or 15.1%) with 9 units at 345 Princes Highway and 4 units at 114-116 Hattersley Street. The proposal includes a total of 18 adaptable units (1,180m²) with 13 units at No. 345 Princes Highway and 5 units at Nos. 114-116 Hattersley Street.

The proposal will include the removal of ten (10) established Spotted Gum trees along the Hattersley Street frontage and their replacement with trees of a similar height and spread throughout the site. The proposal has the following breakdown of commercial and residential units:

Table 1: Breakdown of the proposed development into units

No. 345 Princes Highway		Nos. 114-116 Hattersley Street	
Commercial	Residential	Commercial	Residential
Tenancy 1 85.8m ²	0 x 1 studio (0%)	Tenancy 1 56.8m ²	1 x 1 studio (4.2%)
Tenancy 2 80.5m ²	6 x 1 bedroom (9.7%)		0 x 1 bedroom (0%)
Tenancy 3 32.7m ²	40 x 2 bedroom (64.5%)		16 x 2 bedroom (66.6%)
Tenancy 4 49.6m ²	16 x 3 bedroom (25.8%)		7 x 3 bedroom (29.2%)
Tenancy 5 89.4m ²	0 x 4 bedroom (0%)		0 x 4 bedroom (0%)
Tenancy 6 95.5m ²			
Tenancy 7 122.2m ²	Total 62 units		Total 24 units
Total 612.5m ² 569		56.8m ²	
Affordable Units	9 units 101B to 105B 101C to 104C 203B		4 units 101A to 103A 201A to 203A
Parking spaces	115 spaces		25 spaces
Parking Breakdown	84 residential spaces, 14 retail spaces, 16 visitor spaces 3 share 1 car wash bay and 10 motorcycle spaces 70 bicycle spaces		24 residential spaces, 1 retail spaces, 0 visitor spaces, 0 car wash bay and 2 motorcycle spaces 22 bicycle spaces
Grand Total (Both buildings)	Residential 1 studio 6 x 1-bedroom units 56 x 2-bedroom units 23 x 3-bedroom units Total 86 units	Commercial 8 tenancies Total 640.1m ²	Affordable Units 13 units (or 15.1%) Parking Spaces 140 (16 comm & 124 res)

The proposal will provide 9 units in No. 345 Princes Highway and 4 units in Nos. 114-116 Hattersley Street as **affordable housing** which equates to 15% of units. The subject site is within an accessible area being directly opposite Banksia Railway Station (less than 800m distance). The affordable housing provisions of SEPP (Housing) 2021 applies to the site, which offers a bonus FSR of 30% above the FSR standard of 2.5:1 applying to the site (or 3.25:1). It also offers a bonus of 30% increase in the height standard of 28m applying to the site (or 36.4m).

The proposal includes the provision of a new pedestrian through site link from the Princes Highway to Hattersley Street. The proposal does not involve the subdivision of the site.

The development comprises three (3) commercial tenancies fronting the Princes Highway (307.1 m² commercial space) at 345 Princes Highway, with two (2) commercial tenancies fronting Hattersley Street along with a loading dock and basement car parking ramp providing vehicular access to three basement levels having a total car parking capacity for 115 vehicles. The formal pedestrian entrance to this building is via the main lobby along the site through link. The development comprises one commercial tenancy fronting Hattersley Street (56.8m²) at 114-116 Hattersley Street along with a formal pedestrian entry point and basement car parking ramp providing vehicular access to three basement levels having a total car parking capacity for 25 vehicles.

Associated landscaping and communal open space for 345 Princes Highway is provided at podium level between the two buildings and extends from the northern side boundary down to the edge of the through site link allowing a void above the link with direct solar access and ventilation. Associated landscaping and communal open space for 114-116 Hattersley Street is provided at the rear of the building on the ground floor level. A total of 140 car parking spaces are proposed within the three basement parking levels over the entire site. The breakdown of parking spaces is shown in Table 1 above.

The ground floor at the rear of No. 345 Princes Highway includes access to the loading dock for 1 small rigid vehicle. This area also contains the waste holding rooms behind the lobby. This building includes a main lobby off the through site link along with fire exits on the site. The ground floor of No. 114-116 Hattersley Street contains the main lobby and two fire exits on the site.



Figure 5: Perspective of the proposed mixed use development from Hattersley Street

Excavation to a maximum depth of 9.8m is proposed in order to provide for the three basement car parking levels on the site. The proposed basements will comprise parking areas, residential storage cages, plant rooms, lift access and fire stairs, along with bicycle storage, motorcycle parking and a garbage room for the development.

Amendments made to the scheme were submitted to Council on 13 November 2024 and included the following changes/improvements to the scheme:

- Reduction in building height to comply with airspace requirements of the Sydney Airport Corporation Ltd.
- Consolidated the lobby entry on the ground floor for Building 1, flanked by smaller shops to maximize activation.
- Consolidated the core throughout building 1, and relocation of the AC condenser farm.
- Incorporate solar panels on the roof tops of buildings
- Refine select units to ensure bathroom doors do not open directly onto dining areas. (Building 1.)
- Additional seating and bicycle storage in the through-site link, as suggested by the Design Review Panel.
- Further development of Level 1 communal open space with additional facilities to ensure an appropriate level of amenity. The communal open space located at Level 1 will act as the primary central communal open space following the removal of the roof communal open space. (Building 1.)
- Flooding and Stormwater concerns addressed through siting & design changes.
- The floor plans and arrangements associated with the loading and unloading of waste to address vehicle manoeuvring and swept paths has been reconsidered and amended to address Councils requirements.
- Design changes and rearrangement of the basement levels across both sites was undertaken to address concerns in relation to access and adequacy of car parking.
- The overall height and floor space ratio of the proposed development located on both sites have been amended and now complies with the relevant height and FSR bonus controls applicable to the site.

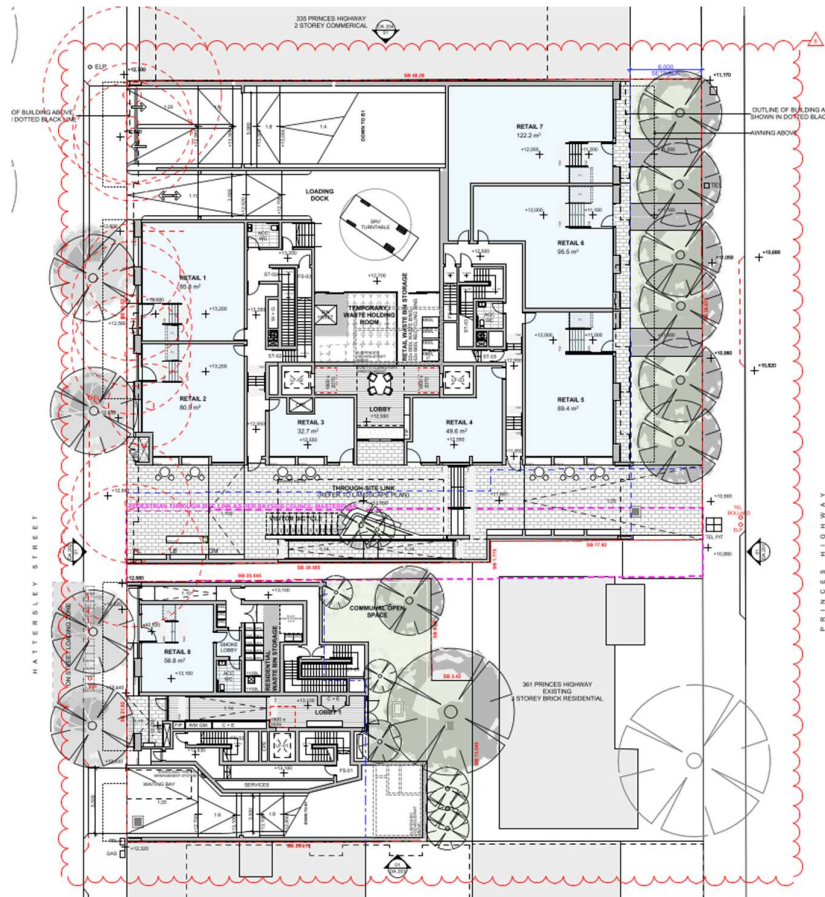


Figure 6: Proposed Ground floor plan

Table 2: Development Data

Control	Proposal
Site area	114: 609.8m2 345: 1,926m2 Total: 2,535.8m2
GFA	114: 2,202.5m2 345: 5,950.9m2 Total: 8,153.4m2 - this includes the commercial floor space of 710.5m2 in 8 tenancies
FSR (retail/residential) 2.5:1 or 3.25:1 under the SEPP	114: 3.612:1 – does not comply 345: 3.090:1 – complies Total FSR: 3.22:1
Clause 4.6 Request	Yes – 3.612:1 FSR variation for 114-116 Hattersley St A variation of 220.65m2 or 11.0% is sought – A clause 4.6 variation has been submitted (above 30% bonus or 3.25:1)
No of apartments	Total 86 units - 1 studio (1.2%) 6 x 1 bed (7%) 56 x 2 bed (65.1%) 23 x 3 bed (26.7%)

Control	Proposal
Max Height	Height claimed: 34.1m (RL 46.2 lift overrun at No.114) and 34.0m (RL 45.6 roof slab at No.345) SEPP allows the same 30% bonus for height. $28\text{m} + 30\% = 28 + 8.4 = 36.4\text{m}$ 114 Hattersley: $\text{RL } 46.2 - \text{NGL } 12.1 = 34.1\text{m}$ (lift overrun) 345 Princes: $\text{RL } 45.6 - \text{NGL } 11.6 = 34.0\text{m}$ (lift overrun)
Landscaped area	863.8m ² or 34.1% - appears to comply (BDCP requires 10%) (This includes the planter on level 6 at 345 Princes Hwy)
Deep Soil	248m ² or 9.7% - complies with 7% or 177.5m ²
Car Parking spaces	140 parking spaces in 3 basement levels Total parking spaces: (For separate buildings refer to Table 1) 16 visitor spaces 108 residential spaces 15 retail spaces 1 dedicated car wash bay 92 bicycle parking spaces 12 motorbike spaces
Setbacks	16.18m to 18m internal building separation and 6m to the highway at 345 Princes Highway, nil to the street at 114-116 Hattersley Street and 9m to the rear boundary and nil to the northern and southern side boundaries. This complies on all levels.
Communal Open Space Area	Requires 25% of site or 633.95m ² – both properties Total common open space area of 766.9m ² or 30.2% of the site which complies. (911.5m ² or 36% claimed as they included the site through link or 346m ²) Ground 151.2m ² (114-116) & setback 200m ² (345), L1 415.7m ² (345) and COS on the roof has been deleted to reduce building height. Total – 766.9m ² .

2.2 Background

Two development applications were previously lodged on the site, with one on each property (DA-2020/294 and DA-2020/297) for shop top housing with basement levels below. Both applications were refused by the local planning panel on 22/11/2022. Please refer to the site history below for more information.

A pre-lodgement meeting was held prior to the lodgement of the current applicant on 19/09/2023. The Pre DA scheme was referred to the Design Review Panel several times and was like the current development application but with a lower density. The applicant was given the minutes of the final Design Review Panel meeting which was held on 7 September 2023 and addressed various issues. A summary of the key issues and how they have been addressed by the proposal is outlined below:

- Height and FSR variations have been reduced but still exceed the controls (see below)
- Urban Design should better relate to the DCP controls and improve aesthetics.
- Improve the street scape landscape amenity within setbacks.
- Latest plans have improved setbacks and activated frontages.
- Latest plans have improved unit amenity but should incorporate floor to floor heights of the updated NCC and the ADG recommendations.
- Latest plans have a good range of unit sizes.
- Overshadowing has been reduced but check the COS of 114 Hattersley Street
- Removal of the established trees along Hattersley Street is necessary due to the driveway and zero setback encouraged under the DCP. A tree replacement and greening strategy is required to replace this amenity.
- Improve the amenity of the through site link.
- The through site link is to be legible, have a minimum 6m width and demonstrate “open to air” and other DCP requirements.

In respect to Density (height and FSR) the DRP stated the following:

“The proponent still needs to demonstrate what a scheme with a compliant FSR would look like, and what impacts the additional proposed FSR would have on the amenity of the surrounding buildings and precinct. As noted previously, any variation of built form controls proposed must be predicated on what benefits these bring to the overall urban outcome for the precinct. Benefits that accrue only to the amenity of the site itself may not be sufficient to merit consideration.”

The above points raised by the DRP have been addressed later in this assessment report.

The current development application was lodged on 25 March 2024. A chronology of the development application since lodgement is outlined below including the Panel’s involvement (briefings, deferrals etc) with the application:

Table 3: Chronology of the DA

Date	Event
25 March 2024	DA lodged
10 April 2024	Exhibition of the application for one month
18 April 2024	Request for Information from Council to applicant
1 May 2024	DA referred to external agencies
2 May 2024	Considered by the Design Review Panel
15 May 2024	Considered by the Bayside Traffic Development Advisory Committee
15 May 2024	Request for additional information email to applicant
17 May 2024	Site Inspection Photographs of the site
17 June 2024	Request for Information from Council to applicant
24 June 2024	Request for Information from Council to applicant

Date	Event
5 August 2024	Applicant submits revised Economic Assessment of 361 Princes Highway Banksia
15 August 2024	Briefing Meeting held with SECPP
27 August 2024	Amended plans and information submitted
27 August 2024	Legal advice received regarding affordable housing
27 August 2024	Submission of final amended plans and information, clause 4.6 request, contamination, stormwater and traffic reports from the applicant.
18 September 2024	Email to applicant with quick questions re affordable housing and the DA plans.
19 September 2024	Applicant response received regarding questions
20 September 2024	Assessment report preparation
22 September 2024	Internal referrals received – Flooding issue raised
	Applicant addressed the flooding information
24 October 2024	Panel meeting postponed to resolve flooding issues
22 November 2024	Dialogue with applicant and Council Engineer ongoing
24 January 2025	Revised flooding information received by Council
28 January 2025	Council Engineer advised applicant of revisions required to the plans
30 January 2025	Final revised Architectural Plans and flooding information received by Council

2.3 Site History

114-116 Hattersley Street Banksia

- DA-2020/294 - Integrated Development - Demolition of existing buildings and construction of a six (6) storey shop top housing with ground floor commercial tenancy and 17 residential apartments above and four (4) levels of basement parking – Refused by Council on 22/11/2022 (Note this DA was limited to 116 Hattersley Street only) – Refused by Local Planning Panel.
- DA-1987/92 – 2 Way Radio repair and installation – Approved 11/06/1987.
- DA-1985/26 – Office for forklift maintenance and storage – Approved 28/02/1985.

345 Princes Highway Banksia

- DA-2020/297 – Integrated Development - Demolition of existing buildings and construction of an eight (8) storey shop top housing with three (3) ground floor commercial tenancies and 57 residential apartments above and three (3) levels of basement parking – Refused on 22/11/2022 (Note this DA was limited to 345 Princes Highway only).
- DA-2008/77 - Removal of existing business identification sign and erection of new sign to existing commercial premises – Approved on 10/12/2007.

- DA-2000/714 – Proposed Internal Fit-out with some external alterations to the existing Uniden Building – Approved on 02/02/2000.
- Other minor DAs for commercial change of uses prior to 2000.

114-116 Hattersley Street and 345 Princes Highway Banksia

- PDA-2023/27 – Integrated Development – Demolition of existing buildings and construction of a six (6) storey shop top housing with four (4) ground floor commercial tenancies and 74 residential apartments above and three (3) levels of basement parking – DRP meeting held on 7/09/2023 and the letter was issued on 19/09/2023. The proposal considered in this PDA was like the current DA as it involved both properties that make up the site.

3. 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 considered to be (which are discussed later in this report):

- Integrated Development (s4.46) – Water NSW
- Requiring concurrence/referral (s4.13) – Transport for NSW

3.1 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

The following Environmental Planning Instruments are relevant to this application:

- *State Environmental Planning Policy (Biodiversity and Conservation) 2021*
- *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004*
- *State Environmental Planning Policy (Housing) 2021*
- *State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development*
- *State Environmental Planning Policy (Planning Systems) 2021*
- *State Environmental Planning Policy (Resilience and Hazards) 2021*
- *State Environmental Planning Policy (Transport and Infrastructure) 2021*
- *Bayside Local Environmental Plan 2021*

A summary of the key matters for consideration arising from these State Environmental Planning Policies are outlined in **Table 4** and considered in more detail below.

Table 4: Summary of Applicable Environmental Planning Instruments

EPI	Matters for Consideration	Comply (Y/N)
State Environmental Planning Policy (Biodiversity & Conservation) 2021	Chapter 2: Vegetation in non-rural areas Tree removal from the site and nature strip	Yes
State Environmental Planning Policy (Sustainable Buildings) 2022	BASIX: No compliance issues identified subject to imposition of conditions on any consent granted.	Yes
State Environmental Planning Policy (Housing) 2021	Chapter 2: Affordable Housing	Yes
	<ul style="list-style-type: none"> • Infill affordable housing, boarding houses, boarding houses Land and Housing Corporation, supportive accommodation, Residential flat buildings—social housing providers, public authorities and joint ventures, Residential development—Land and Housing Corporation 	Yes
	Chapter 4: Design of residential apartment development <ul style="list-style-type: none"> • Clause 145(2) – Referral to the DRP for review • Clause 147(1) - Design Quality Principles - The proposal is consistent with the design quality principles and the proposal is consistent with the ADG requirements for design, car parking, communal open space, landscaping, aesthetics and sustainability. 	Yes

State Environmental Planning Policy (Planning Systems) 2021	Chapter 2: State and Regional Development <ul style="list-style-type: none"> Section 2.19(1) declares the proposal regionally significant development pursuant to Clause 2 of Schedule 6 as it comprises shop top housing in excess of \$30 million. 	Yes
SEPP (Resilience & Hazards)	Chapter 4: Remediation of Land <ul style="list-style-type: none"> Section 4.6 - Contamination and remediation have been considered in the Detailed Site Investigation Report and the proposal is satisfactory subject to conditions. 	Yes
State Environmental Planning Policy (Transport and Infrastructure) 2021	Chapter 2: Infrastructure <ul style="list-style-type: none"> Section 2.48(2) (Determination of development applications—other development) – electricity transmission - the proposal is satisfactory subject to conditions. Section 2.118(2) - Development with frontage to classified road Section 2.119(2) Impact of road noise or vibration on non-road development Section 2.121(4) - Traffic-generating development 	Yes
Proposed Instruments	N/A	N/A
Bayside LEP 2021	<ul style="list-style-type: none"> Clause 2.3 – Permissibility and zone objectives Clause 4.3 – Height of Buildings Clause 4.4 – Floor Space Ratio Clause 5.21 – Flood Planning Clause 6.1 – Acid Sulphate Soils Clause 6.2 – Earthworks Clause 6.3 – Stormwater and WSUD Clause 6.7 – Airspace Operations Clause 6.9 - Active Street Frontage Clause 6.10 – Design Excellence Clause 7.1 - Special Infrastructure Contribution 	Yes – Apart from Floor Space Ratio (clause 4.4) Refer to the clause 4.6 variation addressed below.
Bayside DCP 2022	<ul style="list-style-type: none"> - 3.15 - Views - 3.5 – Transport, Parking and Access - 3.7 Landscaping, Private Open Space and Biodiversity - 3.12 - Waste Minimisation and Site Facilities - 3.14 – Noise, Wind, Vibration and Air Quality - 5.2.5 – Shop Top Housing and Mixed Use - 7.4 – Arncliffe and Banksia Precinct 	Yes

Consideration of the relevant SEPPs are outlined below.

State Environmental Planning Policy (Biodiversity and Conservation) 2021

The SEPP applies to the proposal as the site contains trees of which consent is required for their removal, given they are not exempted by Bayside DCP 2022. As per section 2.6 - Clearing that requires a permit or approval of the SEPP, approval is required for the removal of vegetation upon the subject site.

The application was referred to Council's Tree Management Officer who considered the proposal and the removal of the eight (8) Spotted Gum and three (3) Palm trees (with a total of 11 trees) that exist on site and within the adjoining nature strip to Hattersley Street. Eight *Corymbia maculata* (Spotted Gum) trees are located along the western boundary of the site fronting Hattersley Street, two (2) *Howa forsteriana* (Kentia Palm) and one (1) *Syagrus romanzoffiana* (Queen Palm) trees on the site are to be removed. depicted in red numbering in the below image.

Council's DCP 2022 encourages a nil setback to Hattersley Street and the provision of an active street frontage which would require removal of the trees along the western boundary and replacement with additional compensatory trees. The development complies with the DCP in respect to the active street frontage. To offset the loss of the canopy trees Council's Tree Management Officer requires replacement trees at the rate of thirty-three (33) trees for environmental reasons. If insufficient room is available on the site, the applicant may choose to offset the remaining trees to facilitate replacement planting on Public Land. Similarly, a monetary contribution can be paid as outlined in Council's Fees and Charges prior to the issue of any construction certificate.



Figure 7: Eight Spotted Gums on the site taken from Hattersley Street (left) and the replacement plantings on the proposed landscape plan (right)

Given the above, Council's Tree Management Officer has advised the trees nominated for removal in the application can be supported for removal subject to a 3:1 compensatory replacement for all trees. The proposal has been conditioned accordingly and is satisfactory in this regard.

State Environmental Planning Policy (Sustainable Buildings) 2022

State Environmental Planning Policy (Sustainable Buildings) 2022 ('BASIX SEPP') applies to the proposal. The objectives of this Policy are 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 application is accompanied by BASIX Certificate No.1735355M prepared by Credwell Energy Pty Ltd dated 09 February 2024 committing to environmentally sustainable measures. The Certificate demonstrates the proposed development satisfies the relevant water, thermal energy and material commitments as required by the BASIX SEPP. The proposal is consistent with the BASIX SEPP subject to the recommended conditions of consent.

State Environmental Planning Policy (Housing) 2021

Chapter 2: Affordable Housing

The proposal includes at least 16 of the 86 (18.6%) units as affordable housing and therefore complies with clause 15C of the SEPP. Pursuant to clause 16(2) of the SEPP, the proposal is afforded a 30% bonus in FSR which raises the FSR control from 2.5:1 to 3.25:1 for each property.

The proposal also benefits from the height bonus of 30% or 8.4m under clause 18 of the SEPP. The proposal will have a height of 34.5m and complies with the maximum height control of 36.4m under the SEPP Housing.

The proposal complies with the requirements of SEPP (Housing) 2021 apart from the following:

Clause 16 Affordable housing requirements for additional Floor Space Ratio

The proposal will have the following floor space ratio (FSRs) on each property:

- 114-116 Hattersley Street
GFA: 2,202.5m², FSR = 3.61:1 = which seeks a variation of 11.13% or 220.65m²
- 345 Princes Highway
GFA: 5,950.9m², FSR = 3.09:1 which complies

Total GFA for the development = 8,153.4m² (reduced from 8,188m²)

Proposed total FSR = 3.22:1 (reduced from 3.23:1) which complies.

Based on the above, a contravention is sought of 220.65m² for No.114-116 Hattersley Street which represents a variation of 11.13% – A clause 4.6 variation has been submitted. Please refer to the section below.

Clause 19 Non-discretionary development standards

The proposal complies with the following requirements under this clause:

- Minimum site area of 450m² – provides 2,535.8m².
- Minimum landscaped area of 30% - provides 34.1%.
- Car parking – 112 spaces required under the SEPP and provides 140 spaces.
- Minimum internal areas of units set out by the ADG for the residential development.

The proposal does not comply with the minimum deep soil requirement of 15% under section 19(2)(c) which is a non-discretionary development standard. In this regard, the proposal has 248m² or 9.7% deep soil area which is acceptable given the normal requirement for deep soil in a mixed-use precinct under the ADG is 7%. The proposal will provide a suitable landscaped front setback with dense tree planting along the Prince Highway. As such, the proposal is acceptable in respect to the provision of deep soil on the site.

- 3 hours of direct solar access to at least 70% of the dwellings

Clause 19 2(d) of the SEPP Housing at the time of writing required that living rooms and private open spaces for at least 70% of the proposed units receive a minimum of 3 hours of solar access between 9am 3pm in midwinter. Whilst the provisions of this clause require a minimum of 3 hours of solar access, the Apartment Design Guide stipulates 2 hours and as

such the ADG requirements supersede the 3 hours specified in this clause.

Given the orientation of the site, the design of the buildings, nature in which shadows fall to the south and surrounding context, submitted shadow diagrams confirm that the proposal will achieve natural lighting to more than 70% of the proposed units for more than 2 hours during winter (81%).

Based on the above, the proposal is satisfactory with respect of the objectives and requirements of this clause in respect to solar access.

Clause 20 Design Requirements

Under clause 20 the development cannot be approved unless Council considers whether the design of the residential development is compatible with a) the desirable elements of the character of the local area or b) the desired future character of the precinct, if undergoing transition.

The design of the proposed mixed use development is compatible with the desirable elements of the character of the area in that it will be commensurate in respect to building height and contain sufficient architectural fenestration and high quality materials and finishes. The design of the development includes two buildings that are appropriate for the site and consistent with the desired future character of the area.

The site is located within a Design Excellence precinct and has been amended to satisfy the design excellence requirements of section 6.10 of the Bayside LEP 2021. The DRP has supported the application in this regard.

Under clause 21 the affordable housing development must not be granted unless that the development will operate for a period of at least 15 years. In this regard, a condition has been imposed in the consent and the proposal is acceptable in this regard.

The proposal does not involve the subdivision of the development, and the proposal is acceptable pursuant to clause 22 of the SEPP.

Affordable Housing in Perpetuity

At the Briefing Meeting with the Sydney City East Planning Panel (SCEPP), Council was requested to consider achieving affordable housing in perpetuity rather than as prescribed under clause 21 of the SEPP Housing for a minimum period of 15 years. Council obtained legal advice which legally confirmed that it is difficult for Council to impose a condition in this regard when the SEPP only requires the provision of affordable housing for a minimum of 15 years before they are allowed to revert to freehold market housing. In this regard, changes are required to be made to the SEPP to facilitate an alternate provision of affordable housing in perpetuity rather than Council altering the provision of housing in any application and risk losing the potential benefits to the development under the SEPP.

Furthermore, changes to the number of units included as affordable housing to obtain some in perpetuity would reduce their number and impact upon the benefits to the scheme under the SEPP in respect to FSR and height. If that is the case, why would the applicant support these changes. Reducing the affordable housing component to obtain some in perpetuity may also reduce them to less than the threshold of 10% under the SEPP.

In considering means of achieving the request put forward by the SCEPP, negotiating with the applicant through the use of a Voluntary Planning Agreement (VPA) would not be counted under section 15C(2) of the SEPP. Finally, no other Council has achieved this

request other than those that have a housing policy and use alternate means by which to achieve an increase in the provision of affordable housing.

The applicant has responded to the request by confirming that developers value the provision of affordable housing at 75-80% of the usual market value and providing them in perpetuity would reduce this value to zero. The result would reduce the incentive to provide such housing so greatly, that it would undermine the objectives of the SEPP and result in a reduction in the supply of affordable housing.

Based on the above, Council is unable to implement the request of the SECPP at this time.

Chapter 4: Design Quality of Residential Apartment Development

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

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

At Pre DA, the proposal was considered by the DRP on 7 September 2023. Upon lodgement of the formal development application, the proposal was referred to the Design Review Panel (DRP) on 2 May 2024.

The Panel was satisfied that the proposal was an appropriate contextual response and consistent with the intended future desired character of the locality. In this regard, subject to minor changes, the application satisfied the design quality principles contained in SEPP 65 and achieved Design Excellence in accordance with Section 6.10 of the Bayside LEP 2021.

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

Documentation submitted by the applicant has addressed the relevant design quality principles of the SEPP. An assessment of the proposal against nine design quality principles of the SEPP has been detailed below.

Principle 1 – Context and Neighborhood Character

Panel Comment:

While currently surrounded by 1 to 2 storey commercial buildings, vacant sites, and light industrial buildings, the precinct is currently undergoing significant densification and transformation. The site is located within 100m of Banksia Railway Station making it an ideal candidate for a transit-oriented development as part of a larger transformation of the area.

One of the lots has a frontage to both the Princes Highway and Hattersley Street, the other fronts Hattersley Street only. Although significant trees are located along Hattersley Street, current pedestrian amenity is poor. The adjoining site at 361 Princes Highway is occupied by a residential flat building containing 7 units, with a rear private pedestrian access pathway within that lot linking back to Hattersley Street. This access pathway separates the two parcels of the subject site.

Council Comment:

The area is undergoing change and the proposal is consistent with the desired future character. The proposal responds to the immediate context, has reduced overshadowing and the revisions are appropriate for the site. The proposal includes a site through link which will provide increased permeability and activate the site.

Principle 2 – Built Form and Scale

Panel Comment:

The building massing provides for street front building blocks across both parcels consistent with the intentions of the DCP. This configuration allows for generally north-south oriented buildings fronting the streets with a generous 'courtyard' area that provides access to natural light and air for both parcels and into the rear yard of 361 Princes Highway.

The proposal exceeds the 28m HOB limit due to the Affordable Housing bonus provisions in the Housing SEPP. The allowable bonus height is set at 36.4m. Due to constraints imposed by the PANS-OPS and OLS heights, the building must remain below the maximum allowable (including bonus) height of building control and is therefore compliant with this parameter. The building is expressed as a mid-rise building, consistent with its future context, despite being a high-rise height due to the Housing SEPP height bonus. The slight break down in scale through the upper level setback and upper level material change are supported by the Panel.

The Panel supports the massing in principle and notes that it will provide an appropriate precedent for the further development of the block.

Improvements to the massing could include a refined relationship between gallery spaces and service cores – perhaps consolidating plant with core as an integrated element. As well as enhancing outlook, air movement and spaciousness, such refinements in the northern buildings could better relate elevators to a combined lobby at ground levels (as suggested in Amenity below). Further refinement to the southern lobby may result in similarly improved spatial qualities and a substantial reduction in ground level egress corridors, freeing up more area for the lobby and street facing commercial space.

Council Comment:

The scheme has been amended to include a combined plant with core as an integrated element. In this regard, the northern building has taken on an improved spaciousness with increased open areas in the lobby and basement areas. The design also results in a more usable first floor common area. The southern building has included the same amendment to a lesser degree. Notwithstanding, the southern building has improved openness in the corridor being an open gallery despite the lift and stairs not being consolidated. The proposal has been refined in this regard.

Based on the above, the proposal represents a quality solution for the site in terms of its built form and satisfies the matters raised by the DRP.

Principle 3 – Density

Panel Comment:

The site is subject to a maximum FSR of 2.5:1 per the Bayside LEP. The proponent has elected to take up the Affordable Housing Bonus which provides for an additional 30% GFA resulting in a 0.75:1 FSR increase taking the maximum allowable FSR to 3.25:1.

Taken together with both parcels averaging the FSR the overall GFA is below the allowable maximum. This outcome is the result of an allocation of GFA across both parcels results in varying FSR across each parcel.

- *The development on the 345 Princes Highway parcel complies with the maximum FSR of 3.25:1 at 249.3sm less than the allowable.*

- *The development on the 114-116 Hattersley Street parcel exceeds the maximum FSR of 3.25:1 by 196sm.*

The Panel has no objection to this reallocation of GFA across the two parcels, despite the fact they are technically not adjoining lots. The proponent will need to submit the appropriate variation request to confirm acceptance to Council.

Council Comment:

The DRP raises no objection to the FSR breach and Council has discussed this non-compliance later in this report. Notwithstanding the FSR breach, the proposed density of the scheme is within an acceptable limit and is acceptable in this instance. For more information, please refer to the section titled “*Note 1: Clause 4.4 – Floor Space Ratio*” under the Bayside LEP 2021 section later in this report.

Principle 4 - Sustainability

Panel Comment:

The application includes relevant BASIX certificates. The design provides for adequate solar and cross ventilation requirements and provides additional sustainability initiatives to meet the Design Excellence requirements. These include:

- *Reduced car parking is proposed due to proximity to the station.*
- *Providing bicycle and motorcycle parking spaces to reduce reliance on car travel.*
- *Substituting gas infrastructure for electrical appliances within units.*
- *Providing car parking spaces with electric vehicle (EV) charging capability towards achieve the Green Building Council recommendation.*
- *Providing charging facilities for E-Bikes and Scooters: Installing charging stations for electric bikes and scooters as an alternative transport mode choice.*

The Panel supports all these initiatives.

Additional PV Panels should be considered for the roof, space permitting, due to the redesign presented as a result of discussions with Sydney Airport.

Council Comment:

The applicant has increased the provision of photovoltaic panels on the roof of both buildings, given the reduction in height required by the Sydney Airport Corporation Ltd. In this regard, the applicant has complied with the recommendations of the DRP and the proposal benefits from increased energy efficiency.

The proposal includes measures that will reduce energy consumption and improve the cost effectiveness of the proposed dwellings both initially and during the life of the project. Accordingly, the proposal has been improved in respect to sustainability and is acceptable in this regard.

Principle 5 – Landscape

Panel Comment:

The landscape along the Princes Highway is consistent with Council streetscape requirements. Trees in this location should be planted at a sufficient size, and with lower branches trimmed, to allow for adequate sightlines between the building and the public way.

*Given that the Communal Open Space (COS) in the building courtyard is generally shaded beyond the minimum solar access requirements, **consideration should be given to substituting the proposed canopy trees with palm trees or other columnar species.** This will allow greater ambient sky light to reach the courtyard COS and provide a reference to the articulation of the architectural treatment of the courtyard.*

Seating groupings should be revised to provide greater variety in space definition including larger and smaller gathering areas with potential seating groups allowing face to face seating.

The planting and general arrangement to the central courtyard could be improved. *The proposed trees are dense in character and with restricted light to the courtyard a more transparent canopy would benefit the overall amenity and environmental character of the space. A vegetative form such as palm trees (Cabbage Palm, Livistona australis or similar) would provide an appropriate amenity that will complement the built form.*

A rearrangement of the planters so as to provide a variety of spaces with seating that provides opportunities for social interaction at a range of levels is possible. Seating that has internal angles of 30-70 degrees for example provides opportunities for groups and individual socialization would benefit the space.

To the through site link, the open character that is proposed is of benefit to the site and consistent with CPTED guidelines. A broader vestibule/foyer (see Amenity) will complement the link with some design development of seating opportunities that respect the overall framework of the space with supplementary seating to the southern edge. It may also mean that part of the Lobby and some of the through-site link could be counted to COS metrics, which the Panel understands is below ADG guidance.

Council Comment:

All the above recommendations of the panel have been implemented in the latest amended landscape plans for the site. The proposed canopy trees have been substituted with palm trees and other similar species in the level 1 common open space area which will increase the penetration of light between the two buildings. Similarly, the seating arrangement has been improved with some seating encouraging people to gather and allows face to face seating.

The general arrangement of planting and seating areas within the central courtyard has been improved with increase usage likely, better levels of landscaping (i.e., groundcover, shrubs, small trees and taller palms all within an improved planter bed arrangement). In this regard, the changes make a considerable improvement to the podium level of the development and contribute to the use and enjoyment of the common open space areas.

Notwithstanding the above, conditions have been imposed in relation to soil depths and landscape planting for the scheme. The revised plans were referred to Council's Landscape Architect who has raised no objections to the proposal subject to the imposition of conditions of consent. Accordingly, the proposal complies with the panel and Council's requirements in respect to landscaping and is acceptable in this regard.

Principle 6 – Amenity

Panel Comment:

Street frontages follow DCP recommendations and generally provide for active frontages where required. The street interface along the Princes Highway has been improved by providing access points through the landscape strip to the public footpath to activate the retail frontage.

The interface and ground level configuration of 114 Hattersley Street is also acceptable, with the vehicular and pedestrian access ways sufficiently defined and separated despite the small site. As noted above, **further refinement of the 114-116 Hattersley Street parcel could reduce egress stairs and corridors at ground level, thereby increasing capacity for larger lobbies and/or retail space.**

The through-site link has a legible layout with 6m width and generally clear sightlines. Landscape has been included in the 'open to sky' portion. **Residential lobbies for the 345 Princes Highway parcel should be combined and enlarged.** This would provide a single address point, an opportunity for an awning cover or setback porch at this point, and an opportunity for indoor communal space. Directly corresponding the entry with the void above would result in a dramatic means to entering the building, while increasing its legibility and way finding capacity.

The Panel supports the visual link between the lobby and the COS on Level 1. **This should be retained in the further development of the lobby.**

ADG separation recommendations have been followed and the drawings now clearly demonstrate this in plan. The use of two level duplex units is supported by the Panel.

Floor to floor heights should be increased to ensure that recommended ceiling heights can be achieved with the latest recommendations from the NCC. Some reduction in the height of the through site link may help provide space for this to be incorporated.

Solar access to 361 Princes Highway falls below the minimum recommended by the ADG. The proponent has provided a justification that notes a severe imposition on development should this recommendation be enforced. It appears that while some units at 361 Princes Highway are affected; a greater number of complying units are being provided in the precinct overall through the development to compensate for the loss of light on the affected units.

The Panel supports the provision of utility rooms to typical apartments. However, the location of some of these spaces (such as in 102A and above) results in habitable spaces without natural air and light; **it may be better to co-locate the utility rooms with entries (such as in 102B and above), where they could open to galleries and allow for cross ventilation.**

Bathroom doors in Units 105B and 104C (and above) open directly onto adjacent dining spaces – which is unacceptable; it is therefore recommended that bathrooms and laundry cupboards are flipped to remove this unacceptable interface. Bathroom doors also open onto dining spaces in Units 601B - and 605B and Units 602C – 605C; swapping the kitchen with the dining space may be a simple way to resolve this issue.

Council Comment:

The egress stairs for the ground level at Nos. 114-116 have been consolidated as far as possible whilst still meeting the building code to increase lobby spaces. Similarly, the lobbies of No. 345 at ground level have been combined to improve lobby space. The void over the lobby has been retained to link the common open space on level 1.

The proposal has slab to slab heights of 3.1m and 3.2m while level 7 has a height of 3m as it comprises the upper floor of two storey units. While the proposal does not strictly comply with 3.15m, the applicant has confirmed that the proposal has adequate clearance for all fire safety, ventilation and emergency services required to service each floor. Given the overall height limitation placed on the site by SACL and that the applicant has confirmed the building can include all necessary services, the proposal is not unreasonable in this regard.

The changes specified by the Panel to provide utility rooms at the front with cross ventilation has been provided to narrow units where possible. This change has been made to the plans and represents an improvement to the scheme. However, request to swap the kitchen and dining space was not complied with as they are of different orientations and overall unit dimensions and shapes would require amendment for all floors. As such, this minor change was not taken up by the applicant. Notwithstanding this, the plans resolve almost all of the above matters raised by the DRP successfully resulting in an improved amenity for the dwellings within both towers.

Based on the above, the proposal is a significant improvement over the plans originally lodged with the application, generally complies with the recommendations of the panel and is acceptable in respect to amenity.

Principle 7 - Safety

Panel Comment:

The configuration of the Ground Floor layout for the 114 Hattersley Street parcel has been resolved and now provides a legible separation between pedestrian and vehicular uses.

The extent of blank and service frontage has been reduced across both parcels.

The through-site link provides a legible connection between public ways and generally has clear sight lines. The proponent has noted compliance with DCP controls regarding 'open to air' requirements for through site links.

Council Comment:

The proposal has been improved in respect to safety and security within the development. In this regard, the proposal includes a design which provides quality public and private spaces with clearly defined areas that are fit for their intended purpose. The proposal has been improved with a more usable through site link for public use and is acceptable in respect to safety.

Principle 8 - Housing Diversity and Social Interaction

Panel Comment:

No issue. A good range of unit types are provided.

Council Comment:

The proposal has been designed to integrate both the affordable housing component along with the residential apartments. The proposal is consistent with the requirements of the SEPP and will include housing diversity and has been designed to encourage social interaction through the use of the ground floor lobby and common open space areas. The proposal is consistent with this principle and is acceptable in this regard.

Principle 9 – Aesthetics

Panel Comment:

The Panel supports the general approach to aesthetics as demonstrated through the precedent study illustrating a minimalist palette of robust materials. The built form articulation appears well resolved and the Panel supports the approach of a modulated built form. Colour should be tested further to ensure that there is adequate distinction between the upper and lower portions of the building.

Council Comment:

The application has been significantly improved in respect to its aesthetics and external appearance. The request of the DRP to increase the distinction between the upper and lower portions of the building has been resolved with the great difference in colour separation. The latest materials and finishes submitted clearly shows the distinction which is supported by Council. As such, the revised proposal complies with the requirements of the DRP. Accordingly, the proposal satisfies the requirements of the DRP and is acceptable in respect to aesthetics.

c. The Apartment Design Guide

The proposal has been assessed against the relevant criteria of the ADG as follows;

Table 5: The Apartment Design Guide:

CLAUSE	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.	Direct access to ground floor of the Through Site Lin and Level access to ground floor level of building which steps up 0.6 to 0.7m for each.	Yes
	Courtyard units to have direct street entry, where appropriate.	Commercial units on ground floor.	N/A
	Front fences / walls along street frontage to be visually permeable and limited to 1m	Activated street frontages with no fencing along both street frontages.	N/A
	Mailboxes located in lobbies or integrated into front fence	Mailboxes integrated into front and side fence for 345 Princes Highway and adjacent to lobby entry for 114-116 Hattersley Street.	Yes
	On sloping sites protrusion of car parking above ground level to be minimised by using split levels to step underground car parking	Basement below ground level, not visible from public domain	Yes
3D - Communal Open Space	25% (633m ²)	700m ² or 27.6% of the site (911.5m ² or 36% claimed)	Yes
	50% (350sq/m) of principle useable area to receive 2 hours solar access in midwinter 9am - 3pm	>50% of communal open space receives >2 hours solar access in midwinter	Yes
3E - Deep Soil Zone	7% (177.506sq/m) Minimum Dimensions 3m	9.7% (248m ²) - complies with 7% or 177.5m ²	Yes
3F - Visual Privacy	<u>Up to 12m (4 storeys)</u> Hab. Rooms / Balconies – 6m Non Hab. Rooms – 3m	<u>Internal Building Separation at 345 Princes Highway</u> Separation Level 1	Yes

CLAUSE	DESIGN CRITERIA	COMMENTS	COMPLIES
	<p>Up to 25m (5-8 Storeys) Hab. Rooms / Balconies – 9m</p> <p>Non Hab. Rooms – 4.5m</p>	<ul style="list-style-type: none"> • 16.1m Separation Level 2 to Level 7 • 16.78m Separation Level 8 • 16.78 with privacy screen Separation Level 9 • 16.28m <p><u>Front setback to Princes Highway</u></p> <ul style="list-style-type: none"> • 6m <p>Front setback to <u>Hattersley Street</u></p> <ul style="list-style-type: none"> • Nil (active frontage) <p><u>Northern and Southern Side Setbacks</u></p> <ul style="list-style-type: none"> • Ground – 6m through site link on south side. • Levels 1 to 8 - Nil <p><u>114-116 Hattersley Street</u> Rear setback</p> <ul style="list-style-type: none"> • 9m • 9m after kink in rear boundary • 3.43m for a length of 6.5m for the OSD and ramp at ground only. <p><u>Northern and Southern Side Setbacks</u></p> <ul style="list-style-type: none"> • Nil 	
3G – Pedestrian Access and Entries	Multiple entries provided to activate street edge	Commercial units on the ground floor of each street frontage have multiple entries and activates the street frontage with direct level access.	Yes
	Building access clearly visible from public domain and communal spaces	Clear and recognisable building access points	Yes
	Steps / ramps integrated into building and landscape design	Level accessible entry provided; ramps internalised.	Yes
	Electronic access to manage access	Secure electronic access to be provided.	Yes
3H – Vehicular Access	Car park access integrated with building facade.	Car park access provided, integrated into façade of approved development for each building.	Yes
	Car park entries behind building line	Behind the building line	Yes
	Car park entry / access located on secondary street / lane where available	N/A	N/A

CLAUSE	DESIGN CRITERIA	COMMENTS	COMPLIES
	Garbage collection, loading and servicing areas screened	Waste storage areas internalised and screened from public domain in both buildings. The loading zone is on site for collection at No. 345 while kerbside collection is proposed for Nos. 114-116. Conditions shall be imposed in this regard.	Yes
	Pedestrian / vehicle access separated and distinguishable.	Clearly identifiable and delineated pedestrian / vehicular access.	Yes
3J - Bicycle and Car Parking	Maximum DCP rate utilised Residential – Max 86 spaces Visitor – Max 9 spaces	92 residential 12 Visitor in Through Site Link	Yes
4A – Solar and Daylight Access	Living rooms + POS of at least 70% (60 of 86) of apartments receive min 2hrs direct sunlight b/w 9am and 3 pm mid-winter	81% (70 of 86)	Yes
	Max 15% (13 of 86) apartments receive no direct sunlight b/w 9am and 3pm mid-winter	1.1% (1 of 86)	Yes
4B – Natural Ventilation	Min 60% (52 of 60) of apartments are naturally cross ventilated in the first nine storeys of the building.	76% (65 of 86)	Yes
	Depth of cross-over / cross-through 18m max., measured glass line to glass line.	10.0m maximum building depth	Yes
4C – Ceiling Heights	<u>Residential Floor To Floor</u> 3.1m	3.1m DRP requested 3.15m – L5 is 3.2m	Yes
	<u>Floor to Ceiling</u> Habitable – 2.7m Non Habitable - 2.4m	2.4m non habitable 2.7m habitable	Yes
4D – Apartment Size and Layout	1 bed – 50sq/m	50.4sq/m	Yes
	2 bed / 2 bath – 75sq/m	77sq/m – 99sq/m	Yes
	3 bed / 2 bath – 95sq/m	96sq/m – 104sq/m	Yes
4E – Private Open Space and Balconies	1 bed – 8sq/m 2m min depth	8.2sq/m – 15.0sq/m	Yes
	2 bed – 10sq/m / 2m min depth	10.1sq/m – 14.8sq/m	Yes – except for unit 6.01C with 9m2 condition to be imposed to be 10m2
	3 bed – 12sq/m / 2.4m min depth	12.1sq/m – 18.4sq/m	Yes
	Ground level /Podium - min 15m ² / min depth 3m.	43.1sq/m – 73.2sq/m	Yes
4F – Common Circulation and Spaces	Max apartments off a circulation core on a single level is eight.	4 / 6 / 4 on L2 to L 5 / L6 to L7 and L8 to L9 3 / 2 on L1 to L6 / L7 to L9	Yes Yes
4G – Storage <i>50% is located within apartment</i>	1 bed - 6 cubic metres	Sufficient storage provided internally with supplementary at basement level.	Yes
	2 bed - 8 cubic metres		
	3 bed - 10 cubic metres		

CLAUSE	DESIGN CRITERIA	COMMENTS	COMPLIES
4H – Acoustic Privacy	Noise sources i.e. driveways, service areas, plant rooms, communal open spaces located at least 3m away from bedrooms	Service areas / rooms located away from residential / habitable areas	Yes
4K – Apartment Mix	Variety of apartment types provided	Variety of unit sizes and layouts provided	Yes
	Flexible apartment configurations to support diverse household types and stages of life	Range of flexible apartment options provided	Yes
	Larger apartment types located on ground / roof level where there is potential for more open space and corners where more building frontage is available	Larger units located at corner locations with generous private outdoor spaces	Yes

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

Chapter 2: State and Regional Development

In accordance with Schedule 6 subclause 2 of the SEPP, as the proposed development has a capital investment value of greater than \$30 million, it is referred to the Sydney Eastern City Regional Planning Panel for determination. The proposal is consistent with this Policy.

State Environmental Planning Policy (Resilience and Hazards) 2021

Chapter 4: Remediation of Land

The provisions of Chapter 4 of *State Environmental Planning Policy (Resilience and Hazards) 2021 ('the Resilience and Hazards SEPP')* have been considered in the assessment of the development application. Section 4.6 of Resilience and Hazards SEPP requires consent authorities to consider whether the land is contaminated, and if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out. In order to consider this, a Preliminary Site Investigation ('PSI') has been prepared for the site.

The PSI combined both the original investigation reports submitted for both properties that make up the site and made corrections with critical background information and reference to the amended architectural plans which now clarify the updated site surveys and plans. Generally, the summary key findings indicate the site was suitable for the proposed development.

The previous use of the site for Class 3 dangerous goods (flammable liquids) was considered to be lowered when the building at No. 345 was demolished and removed in 1985. The risk of contamination from the storage use was low given the site's history. There are no records of dangerous goods by SafeWork NSW at No. 114-116. There is no evidence of past or present underground storage tanks for either property.

The updated PSI/DSI provides an acceptable justification in respect to contaminants on the site. The updated report completed additional ground water testing which was the previous basis for refusing developments on the site. The contaminants were below acceptable levels taking into account adjusting for hardness concentrations.

Council's Environmental Scientist agrees with the findings of the updated PSI/DSI report that the site can be made suitable for the proposed residential development subject to conditions of consent. Furthermore, that further assessment and/or remediation and validation is not required. The report satisfactorily meets the additional information previously requested in June 2024 pertaining the contaminated land assessment.

Based on the above, the proposal is consistent with the requirements of the SEPP (Resilience and Hazards) 2021, subject to the imposition of the relevant conditions of development consent. These conditions relate to any new information during construction regarding contamination, asbestos, importation of fill and dewatering water quality requirements.

State Environmental Planning Policy (Transport and Infrastructure) 2021

2.119 - Impact of Road Noise or Vibration on Non Road Development

The provisions of this clause state that the consent authority must not grant consent to the development for residential use unless it is satisfied that appropriate measures will be taken to ensure that the following LAeq levels are not exceeded upon a site where residential uses are proposed and a site adjoins a road with an annual average daily traffic volume of more than 40,000 vehicles (based on the traffic volume data published on the website of the RMS) and which the consent authority considers is likely to be adversely affected by road noise or vibration.

(a) in any bedroom in the building 35 dB(A) at any time between 10 pm and 7 am,

(b) anywhere else in the building (other than a garage, kitchen, bathroom or hallway) 40 dB(A) at any time.

The subject site, by virtue of the property at 345 Princes Highway, has frontage to the Princes Highway, which is a classified road, despite vehicular access being obtained to and from Hattersley Street.

Notwithstanding, and in order to ensure residential dwellings are appropriately ameliorated from any potential adverse traffic noise / vibration arising from the classified road, the provisions of this clause have been considered.

The proposal was accompanied by an Acoustic Report, prepared by Anavs – Acoustic Noise and Vibration Solutions Pty Ltd and dated 12 December 2023 which considered the potential impact of rail and road noise / vibration upon the proposed development. The report concludes that the development will satisfy the noise level requirements as outlined in the SEPP, should the recommendations in the report be incorporated into construction i.e. acoustic treatment and enclosures of plant, external glazing to comprise a combination of clear double glazing and single glazing in aluminium frames. Accordingly, the recommendations have been incorporated as conditions in the draft Notice of Determination.

2.122 – Traffic Generating Development

The proposal is deemed to be traffic generating development, given it provides off street parking for 50 or more vehicles i.e. 140 car spaces for 86 dwellings for both lots, and the site has frontage to a classified road, namely the Princes Highway. However, the site has direct vehicular access to and from Hattersley Street which not a classified road.

In accordance with clause 2.122(4) of the SEPP, TfNSW is required to be notified of the proposed development and any submissions provided by TfNSW are to be considered. In this regard, the proposed development was referred to TfNSW who did not raise any objections to the development within 21 days after notice was given. TfNSW stated their support for the application subject to the imposition of six (6) conditions of development consent. These conditions have been included in the draft Notice of Determination.

With respect of traffic generation, the submitted Traffic Report concludes that the proposed development would likely generate one (1) additional vehicle trip every 2.3 minutes during the morning peak periods and every 2.9 minutes during the evening peak hour periods. This development will result in minor traffic impacts that can be readily accommodated within the surrounding road network. As such the development is considered supportable from a traffic planning perspective with no external improvements to the road network required.

The above is concurred by Councils Development Engineer and the proposed development is therefore not anticipated to have a detrimental impact upon the existing operation of the road network and is consistent with the provisions of the SEPP.

2.48 - Works within the vicinity of electricity infrastructure

The application is subject to section 2.48 of the SEPP as the development proposes works within the vicinity of undergrounded electricity infrastructure, along the rear frontage of the site within Hattersley Street.

In accordance with this section 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.

Accordingly, the proposal was sent to Ausgrid. The authority has responded granting approval for the development subject to conditions of consent, which have been imposed on the draft Notice of Determination. The application is consistent with the provisions of the SEPP and is acceptable in this regard.

Bayside Local Environmental Plan 2021

The relevant local environmental plan applying to the site is the *Bayside Local Environmental Plan 2021* ('the LEP'). The relevant aims of the LEP include the following:

- (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,*

The proposal is consistent with these aims as the proposal will increase the residential density of the precinct with design excellence and encourage a range of housing with access to public transport in an efficient and sustainable design.

Zoning and Permissibility (Part 2)

The site is located within the Mixed Use 1 Zone (MU1) pursuant to Section 2.3 of the LEP (see Figure 6 below). The proposal is a mixed use development and is permissible in the MU1 Mixed Use zone with Council consent. The proposal is consistent with the zone objectives.

According to the definitions in Section 4 (contained in the Dictionary), the proposal satisfies the definition of a mixed use development or *shop top housing* which is a permissible use with consent in the Land Use Table in Section 2.3. The proposal is also permissible within the MU1 zone as *affordable housing* under clause 15C (3)(b) of the SEPP (Housing) 2021.



Figure 8: Zoning extract of the MU1 zone of the site (in red) from the BLEP 2021

The zone objectives include the following (pursuant to the Land Use Table in Section 2.3):

- 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 proposal is consistent with these zone objectives for the following reasons:

- It includes a range of housing with an active street frontage.

- It includes an appropriate design that will minimise conflict.
- It encourages non residential uses on the ground floor.
- The built form and land uses will be commensurate with the zone.

General Controls and Development Standards (Part 2, 4, 5 and 6)

The LEP also contains controls relating to development standards, miscellaneous provisions and local provisions. The controls relevant to the proposal are considered in **Table 6** below. The proposal does not comply with the development standard relating to floor space ratio (FSR) in Clause 16 of SEPP (Housing) 2021. Accordingly, a Section 4.6 request has been provided with the application for the exceedance of the maximum floor space ratio (FSR) standard.

Table 6: Consideration of the LEP Controls

Control	Requirement	Proposal	Comply
Height of buildings (CI 4.3(2))	28 metres SEPP (Housing) permits 30% bonus or 36.4m	34.1m (RL 46.2) and 34.0m (RL 45.6 roof) 114 Hattersley Street: RL 46.2 – NGL 12.1 = 34.1m (lift overrun) 345 Princes Highway: RL 45.6 – NGL 11.6 = 34.0m (lift overrun)	Yes Yes Yes
FSR (CI 4.4(2))	2.5:1 (6,339.5m ²) SEPP (Housing) permits 30% bonus or 3.25:1 (8,241.35m ²)	114 Hattersley St: 3.612:1 (GFA of 2,202.5m ²) 345 Princes Hwy: 3.090:1 (GFA of 5,950.9m ²) Total FSR: 3.22:1 114-116 Hattersley St has an FSR of 3.612:1 which represents a variation of 220.65m ² or 11.0%. A clause 4.6 variation has been submitted.	No – See Note 1 below (No – 114-116 Hattersley Street and Yes – 345 Princes Highway)
Exception to Development Standards (CI 4.6)	To provide an appropriate degree of flexibility in applying certain development standards to particular development, To achieve better outcomes for and from development by allowing flexibility in particular circumstances.	Arguments presented below in 4.6.	Yes – refer to discussion below

Flood Planning (5.21)	The development is to address the flooding constraints of the site and minimise impacts on the site and adjoining properties.	The application was referred to Council's Development Engineer who advised that the proposed building can comply with the flood planning requirements. This can be addressed through the imposition of conditions of consent and additional information submitted prior to the release of the Construction Certificate.	Yes – (Deferred commencement conditions imposed in respect to flood management and mitigation measures and profile that can comply with Council's DCP). - See Note 2 below.
Earthworks (CI 6.2)	Ensure earthworks will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land.	The proposal involves extensive excavation within the site to accommodate basement levels.	Yes Impacts of proposed earthworks have been considered
Acid sulphate soils (CI 6.1)	Works within 500 metres of adjacent Class 1, 2, 3 or 4 ASS and that is below 5m AHD and by which the water table is likely to be lowered below 1 metre Australian Height Datum on adjacent Class 1, 2, 3 or 4 land.	Site is not within 500m of Class 1 to 4 Acid sulfate soils. It has been confirmed by EI Australia that an Acid Sulfate Soils Management Plan is not required as the proposal is unlikely to lower the water table within Class 5 land.	Yes
Stormwater and WSUD (CI 6.3)	Avoid / minimise adverse impact of urban stormwater	Appropriately designed and located On Site Detention proposed to mitigate and manage stormwater. WSUD incorporated into development i.e. rainwater to be used for car washing, toilet flushing, irrigation etc	Yes
Airspace Operations (CI 6.7)	To protect airspace around airports. 15.24AHD	SACL raise no objection to development to a maximum height of 45.45m AHD	Yes

Active Street Frontage (Cl.6.9)	Active Street Frontage to Hattersley Street	The proposal provides an active street frontage to Hattersley Street from both lots and complies with this requirement.	Yes
Design Excellence (6.10)	Deliver the highest standard of architectural, urban and landscape design.	The proposal has been redesigned to achieve Design Excellence. Please refer to discussion in SEPP 65 section of this report.	Yes – See Note 3 below
Essential Services (6.11)	Essential services are or will be available	Existing sewer, water, electricity and gas connections are available.	Yes

The proposal is considered to be generally consistent with the Bayside LEP 2021.

Note 1: Section 4.4 – Floor Space Ratio

Section 4.6 Exceptions to Development Standards

The Development Standard to be varied and extent of the variation

The floor space ratio (FSR) standard to be varied is clause 16(1) of SEPP (Housing) 2021 which relates to a benefit of 30% of the FSR control (or 0.75 increase) should the development include affordable housing. The proposal includes affordable housing and benefits from an additional 30% FSR or increase from 2.5:1 to 3.25:1 under the SEPP.

The proposed shop top housing at 114-116 Hattersley St will have a gross floor area (GFA) of 2,202.5m² which equates to an FSR of 3.612:1. This includes a contravention of 11.13% or 220.65m² for this property.

The applicant has submitted a detailed justification to the proposed variation of the FSR standard in accordance with Section 4.6 of RLEP 2011. A summary of the key rationale provided by the applicant includes:

- The proposal is consistent with the objective of the clause being varied in the provision of affordable housing.
- The proposal is consistent with the objectives of the MU1 Mixed Use zone under the Bayside LEP 2021.
- The site is within a nominated growth area, is compatible with the objectives and commensurate with the surrounding development.
- The FSR does not result in any conflict with the land uses in the precinct in the MU1 zone and is compatible with development envisaged for this zone.
- The proposal is largely compliant, and this is a strong indicator that the development is “consistent” with respect to built form, yield, expected density and intensity of use.
- The variation to the control is designed responsibly and contributes to the desired future character of the precinct.
- The variation to the control will be largely imperceptible when viewed from the Princes Highway or Hattersley Street in the context of existing and future development.

- The intensity of the use has been carefully considered against the environmental capacity of the land and represents a high architectural, social, economic, urban environmental and landscape design for the site.
- There will be no unreasonable adverse environmental effects on the use or enjoyment of adjoining properties or the public domain that result from the FSR non-compliance.
- The scale and bulk of each building is complementary to neighbouring development, and their resulting envelopes are a product of the new controls that now apply to the Banksia East Precinct.
- The site comprises two lots and the larger lot (No. 345 Princes Hwy) is below the maximum permitted FSR while the smaller lot (Nos. 114-116 Hattersley St) exceeds the maximum FSR control. Reducing the latter to comply would create an inferior planning outcome and be contrary to the purpose and objectives of clause 4.6 of the BLEP 2021.
- The two sites are related to each other and the good design of the development reinforces this relationship being a result of many iterations that result in a cohesive urban form linking to both sites. The FSR breach is not significant while the entire development across both sites comply with the FSR control.
- The design has been improved with feedback from the DRP and Council being carefully massed with appropriate colours finishes and materials. The design provides a pedestrian link between both street frontages and is an appropriate architectural response consistent with the desired future character of the area.
- Strict compliance with the FSR control for Nos. 114-116 Hattersley Street would not improve the amenity and would reduce the integrity of the design between the two sites without any reduction in bulk or scale. The proposal is therefore consistent with the anticipated built form under the current planning controls.
- The proposal will assist in the uplift of both housing and employment on the site.
- The proposal is economically and environmentally sustainable and achieves the aims of the SEPP (Housing) 2021 in respect to apartment design.

Preconditions to be satisfied

Section 4.6(4) of the Bayside LEP 2021 establishes preconditions that must be satisfied before a consent authority can exercise the power to grant development consent for development that contravenes a development standard. Section 4.6(2) provides this permissive power to grant development consent for a development that contravenes the development standard is subject to conditions.

The two preconditions include:

1. Tests to be satisfied pursuant to S 4.6(4)(a) – this includes matters under S 4.6(3)(a) and (b) in relation to whether the proposal is unreasonable and unnecessary in the circumstances of the case and whether there are sufficient environmental planning grounds to justify contravening the development standard and whether the proposal is in the public interest (S 4.6(a)(ii)); and
2. Tests to be satisfied pursuant to S 4.6(b) – concurrence of the Planning Secretary.

These matters are considered below for the proposed development having regard to the applicant's Section 4.6 contravention request.

Planner's Comment:

The applicant's rationale is agreed with, and the proposal is found to satisfy the tests under Section 4.6 of Bayside LEP 2021. The proposed increase in FSR may breach the maximum

by 11.13% or 220.65m² for the property, however, this is not visually discernable within the proposed building. In this regard, the development is largely the same bulk and scale and similar in intensity to other examples of buildings approved in the area.

The applicant has provided some arguments that justify the contravention of the standard. These include appropriate amenity outcomes, enhanced design of bulk and aesthetics that contribute to the area, that the non-compliance is barely visible given the building complies with the remaining controls applying to the site and that the environmental capacity of the land is not exceeded. The arguments provided that strict compliance with the standard would result in a less satisfactory outcome for the site, reduced environmental capacity and make no discernible difference in respect to impacts considered for the site.

The magnitude of the FSR variation is not considered to result in a size or scale of development that is incompatible with the desired future character of the locality. When both buildings are considered in the scheme, the development complies with the FSR control.

The proposal is satisfactory with regards to the setback requirements in the ADG and Council's DCP which set the envelope controls for the site, and which ensure that adequate landscape planting is provided within each setback. Based on the statements above, the arguments put forward in the applicant's written request confirm the proposal achieves the objectives of the standard notwithstanding the non-compliance. Accordingly, compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.

The applicant has made worthwhile points in relation to the variation to the FSR standard and the proposal is found to be consistent with the objectives of this control.

Based on the above, strict compliance with the FSR control is considered to be unreasonable and unnecessary in the circumstances of the case. The applicant has also demonstrated that there are sufficient environmental grounds to support varying the standard and the variation is in the public interest. The applicant's written statement is therefore found to adequately address the requirements of Section 4.6 and consideration may be given to the requirements of Section 4.6(4).

Accordingly, the information submitted by the applicant provides sufficient justification in supporting the non-compliant FSR and has addressed the matters that are stated within Section 4.6(3) and should be supported.

Note 2: Flood Management

The subject site is constrained as a result of a flooding affectation. Accordingly, the applicant has submitted revised plans and flood management plan to address this matter. The application was referred to Council's Development Engineer who advised that the proposal may require minor changes prior to the release of the Construction Certificate. These changes are set out in conditions of development consent and the proposal can comply with Council requirements in this regard.

Note 3: Section 6.10 - Design Excellence

The objective of this section is to deliver the highest standard of architectural, urban and landscape design. As per the provisions of this clause, development consent must not be granted, unless the consent authority considers that the development exhibits design excellence. Pursuant to subclause 5(a), development consent must not be granted unless a design excellence panel reviews the development, and the consent authority takes into account the findings of the panel.

The proposed development was considered by Councils Design Excellence Panel who confirmed on 2 May 2024 post submission of final revised plans that the application achieved compliance with the Design Excellence provisions of the Bayside LEP 2021. The proposal was assessed in respect to clause 6.10 of the LEP and found to comply with the requirements of this clause.

Based on the above, the proposal complies with the requirements of clause 6.10 and is satisfactory in this regard.

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

There are no known proposed instruments which have been the subject of public consultation under the EP&A Act 1979 which are relevant to the proposal.

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

The following Development Control Plan is relevant to this application:

Bayside Development Control Plan 2022 ('the DCP')

3.15 – Views

The subject site is relatively flat and does not contain any significant or iconic views. In this regard, there are minor views to the north of similar high rise residential developments along the Princes Highway and in other directions over the immediately adjoining properties. In this regard, there are no major view corridors that will be impacted by the proposal. The land further to the east and west on the opposite side of the Princes Highway are relatively flat and contains a mixture of commercial and mixed use developments not unlike the existing building on the site and the proposal.

The proposal will include two x ten (10) storey mixed use buildings which may prevent some overlooking from future developments on the residential properties to the east and west. However, these views are not considered significant and are by no means iconic. The proposal will be not unlike the building envelope anticipated by the planning controls applying to the site. In this regard, the proposed development is not likely to detrimentally affect any existing view corridors whilst providing extensive views from the upper levels of the proposed residential units to the north and south.

The proposal will allow increased views from the site from the proposed dwellings without preventing views to the north from the adjoining properties to the south along the Princes Highway. As such, the siting of the proposed building is not unreasonable and is not likely to result in any significant or unreasonable adverse impacts on the surrounding views presently enjoyed by adjacent residents.

3.5 – Transport, Parking and Access

The proposal includes 18 surplus car parking spaces within the proposed building at No. 345 Princes Highway with a deficit of 4 retail spaces and 1 car share space. In this regard, the proposal includes more than adequate on site car parking capable of satisfying the needs of future occupants of both buildings on the site. The proposal complies with the design and access requirements of Council's DCP and AS2890.1 and is not likely to result in any significant adverse impacts on road safety or the free flow of traffic within both street frontages.

The application was referred to Council's Development Engineer who raised no concerns in respect to traffic, parking and access subject to the imposition of conditions of development consent. The conditions relate to access, dimensions, traffic and directional signage, line-markings, and the like.

The Hattersley Street building has a deficit of visitor spaces. However, given the size of the building and limitations of the site the applicant advised it was impractical to provide all of these spaces on the site rather than the building at No. 345 Princes Highway. Notwithstanding this, the applicant maintains it is impractical to allocate the spaces between the two buildings as they are physically separate and are likely to be managed separately. Furthermore, the two buildings may be constructed at different times and the site is in close proximity to public transport.

The applicant has addressed the matters raised by the BTDAC and provided sufficient on site car parking capable of satisfying the needs of the future occupiers of the development. Notwithstanding the shortfall in visitor spaces within the Hattersley Street building, the proposal is acceptable in respect to traffic, parking and access and subject to conditions, is acceptable in this regard.

3.7 Landscaping, Private Open Space and Biodiversity

The proposal will provide a landscaped area of 863.8m² or 34.1% and complies with the minimum requirement of 10% for mixed use developments under this clause of the DCP. The proposal complies with the communal open space (30.2%) and deep soil (9.7%) area requirements as specified previously under the Apartment Design Guide. The proposal contains common open space areas on the podium (level 1) at No. 345 and ground floor rear setback at Nos. 114-116 that will provide sufficient landscaped areas for the future occupants of the development. In this regard, the proposal contains deep soil areas capable of accommodating trees and significant landscape elements on the site to soften the proposed development.

The landscaping on the podium level includes a turf lawn and playground areas with planter beds adjacent to the common open area with barbeque facilities. Level 6 of the building will include landscape planters along the front and rear elevations of each building to soften the development.

The application was referred to Council's Landscape Architect who raised no objections to the proposal subject to the imposition of conditions of development consent. The conditions related to the planting of trees within each frontage, details of planter beds for trees to street gardens and the public domain, general landscape conditions and submission of landscape details with the Construction Certificate.

The proposed mixed use development contains private open space areas on the balcony to each of the residential apartments that comply with the requirements of and as discussed in the assessment of SEPP Housing previously in this report.

3.12 - Waste Minimisation and Site Facilities

Waste storage areas are provided on the ground and basement 1 level for the buildings which are internalised and screened from public domain. The loading zone is on site for collection for the building at No. 345 Princes Highway while kerbside collection is proposed for the building at Nos. 114-116. The application was referred to Council's Waste Management Officers who advised that the scheme would need to comply with Council's Technical Specification – Waste Management 2022, a condition shall be imposed in this regard. Conditions shall also be imposed in respect to Council indemnity and collection processes. Based on the above, the proposal is acceptable in respect to waste collection.

3.14 Noise, Wind, Vibration and Air Quality

The application was accompanied by a Wind Report prepared by WindTech, dated 8 February 2024. The consultant stipulated that in order to ensure tolerable wind conditions are achieved for all trafficable outdoor areas within and around the site, some windbreak mitigation treatments are to be implemented on the site. In this regard, landscaping and foliage, impermeable balcony screens and intertenancy walls can be used along with an increase in balustrade heights for example on the upper floor level 10.

With the inclusion of the recommendations within the final design of the development, the Wind Consultant advised that the overall effect of the proposal on the local wind microclimate with the wind mitigation treatments recommended, are predicted "to be not significant". As such, the areas around the development will be acceptable for their intended uses.

The proposal has been conditioned to ensure the above recommendations are implemented on site. Based on the above, the proposal complies with the requirements of this clause.

An acoustic report was submitted with the application which addresses interior noise levels. The report concluded that the proposal would meet the required noise reduction levels based on the aircraft and road noise for the proposed development. A condition has been imposed on the draft Notice of Determination in this regard.

5.2.4.1 Streetscape, Local Character and Quality of Design.

The proposal has been designed to address the local character as detailed in Chapter 7 in relation to the Arncliffe and Banksia Precinct. (This is addressed in more detail later in this report). The proposal has been designed with the street wall parallel to the street boundary alignment. The two buildings include well designed and legible entry lobbies and loggias. The expanse of walls are broken up with appropriate fenestration, overhangs, blade wall, balconies and architectural features responding to the design excellence criteria applying to the precinct. The two buildings present separately to the street via the pedestrian accessway for the property at No. 361 Princes Highway with an architectural expression that does not result in excessive bulk or scale even though the two buildings comprise the similar materials and finishes. The facades include sun shading devices, privacy screens and landscape planting to soften the built form.

Based on the above, the proposal complies with the requirements of section 5.2.4.1 of Council's DCP 2022 in respect to streetscape.

5.2.4.5 Solar Access and Overshadowing

Bayside DCP 2022 requires that adjoining properties that the ADG does not apply to should receive a minimum of 2 hours of direct sunlight to habitable areas (family room, kitchen areas) and at least 50% of the primary private open space between 9am and 3pm in mid-winter.

The shadow diagrams submitted with the application show that the shadows cast by the proposed development will fall to the south west in the morning and sweep through to the south east in the afternoon during the winter months. In this regard, the shadows will fall over the adjoining property at No. 361 Princes Highway which contains a three storey residential flat building located to the south of No. 345 Princes Highway and east of Nos. 114-116 Hattersley Street. This apartment building will retain access to natural light at the front of the building for at least 1.5 hours in the morning in mid-winter. For the remainder of the day the development will cast shadows over the rear portion of this adjoining property. In this regard, the adjoining property will not receive a minimum of 2 hours of direct sunlight to

the habitable rooms and at least 50% of the primary private open space areas between 9am and 3pm in mid-winter.

The applicant has stated in the SEE (page 67) that the likely overshadowing impact from a fully compliant development would be almost identical even when such a proposal complies with the anticipated envelope controls applying to the land. The degree of overshadowing is largely a result of the orientation of the site and is therefore unavoidable. The only scenario that would have minimal impact on the property at No. 361 Princes Highway is if it is amalgamated with the site and forms part of the development. As discussed elsewhere in this report, efforts to consolidate the site were exhausted without success.

The SEE confirms that the degree of non compliance with the FSR control does not result in any unreasonable building height or overshadowing impacts. Further, the changes required to minimise the overshadowing impacts would be considered unreasonable and result in the loss of highly affordable housing in this location and likely compromise the Design Excellence for the overall development.

The extent of overshadowing is not a result of poor design and it has been confirmed by the DRP that the design exhibits design excellence.

Given the above, the proposal is not unreasonable with respect of the objectives and requirements of this clause and adjoining residential properties in respect to solar access and overshadowing.

5.2.4.7 – Visual and Acoustic Privacy

The proposal includes two detached mixed use developments which comply with the setback requirements of the ADG and Council's DCP. Given the compliant building setbacks on all elevations and appropriate building separation the proposal will have minimal visual and acoustic privacy impacts, consistent with high density residential development. The communal open space area on the podium and ground floor level has compliant separation which will limit the degree of overlooking and encourage looking inward rather than outward or down at the development on the adjoining properties and opposite the site.

While some overlooking may occur from the balconies of the proposed units in each building, particularly the upper levels, the proposed setbacks and landscaping elements are considered sufficient to reduce overlooking and privacy impacts to the sides and rear to any significant degree.

Given the above, the proposal is satisfactory with respect to visual and acoustic privacy.

The proposal comprises a total of 86 residential dwellings within a high-density residential built form. In this regard, the proposal is not likely to generate any significant additional noise impacts on the adjoining properties over and above what would normally be associated with a high-density residential development on the site. The proposal is not unlike neighbouring developments in respect to the high-density residential environment within the precinct.

Further to the above, an acoustic report prepared by Acoustic Noise and Vibration Solutions Pty Ltd dated 12 December 2023 considered aircraft noise, traffic noise and mechanical plant along with floors and wall insulation within the development in order to ensure the acoustic amenity of future occupants within the development is maintained. The proposal has been conditioned to ensure compliance with the requirements of the acoustic report and the Building Code of Australia.

Given the above, the proposed development is satisfactory with regards to acoustic privacy.

5.2.5 – Shop Top Housing and Mixed Use

The proposal complies with the active street frontage controls under the Bayside LEP 2021. The ground floor windows of the proposal will include clear glazing, and this has been addressed through the imposition of a condition of development consent. Further, this will retain a clear visual connection between the ground floor lobbies and the street.

The proposal complies with the ADG and relevant sections of 5.2.4 of Council's DCP 2022. C5 in Council's DCP states that the overhead wires and telecommunication services be relocated underground as part of the development. In this regard, a condition has been imposed in this regard.

Accordingly, the proposal as conditioned, complies with the above requirements of Council's DCP 2022 and is acceptable in this regard.

7.4 – Arncliffe and Banksia Precinct

The site is located within the Arncliffe and Banksia Precinct. In this regard, the following points are made:

- The DCP encourages increased pedestrian connections 6m wide through to Hattersley Street to increase pedestrian permeability.
- The proposal includes a through site link and complies with this requirement. The proposal complies with the design requirements of section 7.4.3.4 in relation to the through site link.
- The proposal complies with the 6m landscape setback requirement to the Princes Highway and nil setback to Hattersley Street with awnings provided.
- The proposal provides an active street frontage to both frontages and complies with the requirements of Council's DCP 2022 in this regard.

Based on the above, the proposal complies with the requirements of this section of Council's DCP 2022 and is acceptable in this regard.

Contributions Plans

The following contributions plans are relevant pursuant to Section 7.18 of the EP&A Act and have been considered in the recommended conditions (notwithstanding Contributions plans are not DCPs they are required to be considered):

- *Section 7.11 - Arncliffe and Banksia Local Infrastructure Contribution Plan 2020*

This Contributions Plan is applicable to the development and has been considered in respect to the proposed dwellings and commercial tenancies. The levy is based on the proposed development and requires payment of a contribution of \$1,793,162.69 to Council. Recommended conditions have been included in the draft development consent in relation to the amounts levied under this plan.

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

There have been no planning agreements entered into under Section 7.4 of the EP&A Act 1979 (as amended) and there are no draft planning agreements being proposed for the site.

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

Section 61 of the 2021 EP&A Regulation contains matters that must be taken into consideration by a consent authority in determining a development application, with the following matters being relevant to the proposal:

- If demolition of a building proposed - provisions of AS 2601;

Section 62 (consideration of fire safety) and Section 64 (consent authority may require upgrade of buildings) of the 2021 EP&A Regulation are not relevant to the proposal. The proposal will involve the construction of a new mixed-use building which will be required to comply with the requirements of the NCC. A condition shall be imposed in the draft Notice of Determination in this regard.

The provisions of the 2021 EP&A Regulation have been considered and are addressed in the recommended draft conditions.

3.2 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 and the Key Issues section below.

The consideration of impacts on the natural and built environments includes the following:

- Context and setting – The proposal is considered to be generally consistent with the context of the site, in that the proposed mixed use development is appropriate as a result of the regional and local context and access to adjacent public transport for the site. The proposal has been designed with a suitable external appearance and character that is sympathetic with the existing locality and streetscape. The scale, mass, built form and character will add to the existing styles in the street and are consistent with the desired future character and commensurate with the surrounding development. The proposal will not dominate or challenge the existing building fabric and is commensurate with the high density setting of the precinct.
- Access and traffic – The proposal complies with the minimum provision of on site car parking spaces for the proposed development. The design of the basement parking areas and lift arrangements facilitate and ensure vehicles can enter, utilise parking spaces and exit the site in a forward direction. Access and manoeuvrability to the parking and loading areas on site as proposed is acceptable. The scheme was amended to comply with the requirements of the Bayside Traffic Development Advisory Committee. The site is near the Banksia Railway Station. The proposal was accompanied by a Traffic and Parking Report and has been assessed by Council's Development Engineers. The proposal was considered and is not likely to result in any significant adverse amenity impacts in respect to road safety or the free flow of traffic within the surrounding road network.

As such, the proposal complies with the requirements of clause 3.5 of Council's DCP 2022 and is acceptable in this regard.

- Public Domain – As conditioned, the proposal is not likely to result in any adverse impacts on the public domain. In this regard, the proposal will contribute to the precinct by introducing a form and function that is consistent with the zone of the land and the objectives of the Banksia precinct. The proposal includes a site through link which is

appropriately designed and will contribute to the public domain with increased legibility and permeability for pedestrians. The proposal will contribute to the public domain through the provision of well landscaped front setbacks along the Princes highway. The proposal presents well to the street and will be legible with good pedestrian access to each mixed use building.

- Utilities – the site currently has public utilities available. However, an increase in public utilities may be required for the increase in residential density on the site. Accordingly, a condition has been imposed on the draft consent requiring the provisions of clause 7.1 of the Bayside LEP 2021 be satisfied.
- Water/air/soils impacts - The site has a history of commercial, industrial and residential use and a PSI and DSI were submitted with the application. The proposal was referred to Council's Environmental Scientist who raised no objections to the proposal subject to the imposition of conditions relating to the decontamination of the site. In addition, a Waste Management Plan was submitted with the application.
- Flora and fauna impacts - the proposal will include the provision of additional landscape planting while the site currently does not contain any trees or natural vegetation. The site does not contain any threatened species or ecological communities that will be impacted by the proposed development.
- Natural environment – The proposal will not involve any significant changes to the natural contours of the site and will provide compensatory plantings and well landscaped open space areas within all setbacks. The proposal will make a worthy contribution to the natural environment.
- Noise and vibration – the proposal will involve the excavation of the site in readiness for the proposed basement car parking levels. In this regard, the proposal will involve construction impacts which may affect the adjoining properties. This has been addressed through the imposition of conditions of development consent. The application was referred to Council's Development Engineer who raised no objections to the proposal subject to the imposition of conditions.
- Natural hazards – the site is affected by flooding and has been designed with finished floor levels and a driveway crest to comply with minimum flood planning levels. However, Council's Development Engineer has assessed the architectural plans, stormwater plans and flood levels and has found the plans do not correlate and have contradictions. In this regard, the latest stormwater plans show that the development can be built but require amendment in order to comply with the requirements in Council's DCP relating to stormwater and flooding. The flooding hazard has been addressed by the applicant however the plans do not adequately resolve the flooding issue. Despite this, the proposed stormwater plans can be revised to (including appropriate measures and comply with the GTAs from Water NSW). Accordingly, subject to the imposition of the conditions (including the deferred commencement conditions) the proposal can comply with Council's requirements and is acceptable in this regard.
- Safety, security and crime prevention – The proposal has employed CPTED Principles to increase security and pedestrian safety. The applicant has improved the design in this regard with advice from both Council and the Design Review Panel. Conditions have been imposed to increase safety and security measures used in the proposed development.

- Social impact – the resulting development will add to the health and safety of the community in the provision of well landscaped private and communal open space for the residential development, provide a sense of place, communal open space areas on the first floor and increased social interactions between the occupiers of the new development and the surrounding community.
- Economic impact – the proposal will involve employment generation during the construction of the buildings along with economic benefits to the community with the provision of both residential apartments, affordable housing and retail areas in the long term for the precinct.
- Site design and internal design – the proposed development is arranged and set out appropriately on the site to minimise any potential impacts on the adjoining properties. The proposal complies with the setback and landscaping requirements and is largely commensurate with the future desired character of the precinct. In this regard, the internal design and site layout has been improved several times and is appropriate for the site and no objections are raised in this regard.
- Construction – The potential impacts from the construction process have been adequately mitigated with the imposition of the draft conditions of development consent. The proposed demolition and construction works are restricted to specific hours on the site to minimise any significant disturbance to the residents on the adjoining and adjacent properties. Conditions have been imposed to ensure modern construction techniques are used to minimise the disturbance of land on the adjoining properties.
- Cumulative impacts – The proposal is not likely to result in any adverse cumulative impacts and has been designed with appropriate setbacks and building separation. The proposal is generally consistent with the planning controls applying to the land (apart from a minor FSR breach which is minimal) and is not likely to result in any adverse cumulative impacts on the site or adjoining properties.

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

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

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

These submissions are considered in Section 4.3 of this report.

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

The proposed development is in the interest of the public given the proposal will increase the supply of high-density housing and commercial floor space in the precinct and satisfies the

Design Excellence provisions of the Bayside LEP 2021. The proposed mixed use development will meet the needs of the community and contribute to the provision of housing both residential and affordable with a generally compliant design and minimal adverse amenity impacts on the surrounding residential precinct. The impacts of the scheme have been offset with the imposition of conditions of development consent and the proposal is consistent with the planning controls applying to the site apart from a minor breach of the FSR control. The proposed use is permissible within the MU1 Mixed Use Development zone and will provide both economic and social benefits throughout construction and for the term of the life of the development.

The proposal is consistent with the *Greater Sydney Region Plan: A Metropolis of Three Cities* and will utilise the principles of Ecologically Sustainable Development. The proposal will include solar photovoltaic panels on the roof and is sustainable in respect to energy generation and consumption.

The proposal will facilitate the provision of residential and affordable housing and commercial space on the site and is consistent with the principles of Ecologically sustainable development. In this regard, the proposal will make a positive contribution to the site and is in the public interest.

4. REFERRALS AND SUBMISSIONS

4.1 Agency Referrals and Concurrence

The development application has been referred to various agencies for comment/concurrence and referral as required by the EP&A Act and outlined below in Table 7.

There are no outstanding issues arising from these concurrence and referral requirements subject to the imposition of the recommended conditions of consent being imposed.

Table 7: Concurrence and Referrals to agencies

Agency	Concurrence/ referral trigger	Comments (Issue, resolution, conditions)	Resolved
Concurrence Requirements (s4.13 of EP&A Act)			
Environment Agency Head (Environment, Energy & Science Group within DPIE)	S7.12(2) - <i>Biodiversity Conservation Act 2016</i>	The proposal is likely to significantly affect threatened species and accordingly, the proposal has provided a biodiversity development assessment report. Concurrence is not required.	N/A
Rail authority for the rail corridor	Section 2.98(3) - <i>State Environmental Planning Policy (Transport and Infrastructure) 2021</i>	The proposal does not involve the excavation of ground to a depth of at least 2m below ground level (existing) on land within, below or above a rail corridor. Concurrence is not required.	N/A

Sydney Airport Corporation Ltd (SACL)	Civil Aviation (Buildings Control) Regulations – Height striction to 15.24m	The application was referred to SACL who on 6 February 2025 recommended approval subject to conditions being imposed on the development consent.	Yes (condition)
Referral/Consultation Agencies			
RFS	S4.14 – EP&A Act Development on bushfire prone land	N/A	N/A
Electricity supply authority - Ausgrid	Section 2.48 – <i>State Environmental Planning Policy (Transport and Infrastructure) 2021</i> Development near electrical infrastructure	The application was referred to Ausgrid who raised no objection to the proposal subject to the imposition of conditions of development consent.	Yes
Rail authority	Section 2.98 – <i>State Environmental Planning Policy (Transport and Infrastructure) 2021</i> - Development land that is in or adjacent to a rail corridor.	The application was referred to TfNSW (Sydney Trains) who responded on 3 May 2024 and recommended approval with the imposition of Deferred Commencement conditions as per Attachment B of their letter.	Yes
Transport for NSW	Section 2.121 – <i>State Environmental Planning Policy (Transport and Infrastructure) 2021</i> - Development that is deemed to be traffic generating development in Schedule 3.	The application was referred to TfNSW who responded on 30 April 2024 and recommended approval under Section 138 of the Roads Act 1993 with the imposition of 6 standard conditions on the immediate development consent issued for the site.	Yes
Design Review Panel	CI 28(2)(a) – SEPP 65 Advice of the Design Review Panel ('DRP')	The advice of the DRP has been considered in the proposal and is further discussed in the SEPP 65 assessment and the Key Issues section of this report.	Yes
Sydney Water	The proposal will involve the addition of 86 residential apartments. Accordingly, the DA was referred to Sydney Water.	The application was referred to Sydney Water who on 10 May 2024 recommended approval subject to conditions being imposed on the development consent.	Yes
Integrated Development (S 4.46 of the EP&A Act)			
RFS	S100B - <i>Rural Fires Act 1997</i> bush fire safety of subdivision of land that could lawfully be used for residential or rural residential purposes or development of land	N/A	N/A

	for special fire protection purposes		
Natural Resources Access Regulator	S89-91 – <i>Water Management Act 2000</i> water use approval, water management work approval or activity approval under Part 3 of Chapter 3	The application was referred to Water NSW who on 27 May 2024 responded with approval subject to conditions (GTAs) being imposed in the development consent.	Yes

4.2 Council Officer Referrals

The development application has been referred to various Council officers for technical review as outlined **Table 8**.

Table 8: Consideration of Council Referrals

Officer	Comments	Resolved
Engineering	<p>Council's Development Engineer reviewed the submitted flood management plan and stormwater plan and determined that amendments are required to comply with Council's DCP in respect to flooding and stormwater.</p> <p>Council's Development Engineers found the remaining matters to be acceptable and raised no objections to the proposal subject to conditions. The conditions imposed relate to a range of matters including parking, access, services, construction site management, tanking of the basement levels, flood management, dilapidation and geotechnical matters, and so on. Flood management matters are required to be resolved prior to the release of the Construction Certificate.</p>	Yes (conditions)
Traffic	<p>Council's Traffic Engineering Officer reviewed the proposal and did not raise any concerns in relation to the anticipated traffic generation, access within the site and car parking provision subject to the imposition of conditions of development consent. This is apart from the visitor spaces being provided at No. 345 Princes Highway with no visitor spaces at Nos. 114-116 Hattersley Street.</p> <p>The application was referred to the Bayside Traffic Development Advisory Committee on 10 April 2024. Refer to the next section in this table below.</p>	Yes (conditions)
Trees	Council's Tree Management Officer raised no objections to the removal and replacement of the eleven trees from the site and along the Hattersley Street frontage. In this regard, the loss of the trees shall be offset by the provision of thirty-three (33) replacement trees by way of conditions. If there is insufficient space on the site, they can be planted on public land and Council's DCP includes monetary contributions in	Yes (conditions)

Officer	Comments	Resolved
	this regard. This has been addressed through conditions of development consent.	
Building Surveying	The application will involve demolition and the construction of new buildings in accordance with the requirements in the Building Code of Australia (BCA). A condition of development consent has been imposed in this regard.	Yes (conditions)
Environmental Scientist	The application was referred to Council's Environmental Scientist who raised no objections to the proposal subject to the imposition of conditions of development consent. The application was accompanied by a PSI and DSI for the site.	Yes (conditions)
Landscape Architect	The scheme has been improved in respect to landscaping and complies with the requirements of Council's DCP 2022. The application was referred to Council's Landscape Architect who raised no objections to the proposal subject to the imposition of conditions of development consent.	Yes (conditions)
Waste Management Officer	The application was referred to Council's Waste Management Officers who requested the proposal comply with Council's Technical Specification – Waste Management 2022. In this regard, conditions are to be imposed to comply with the Technical Specification and otherwise operate in accordance with the Waste Management Plan submitted with the application. Subject to conditions, the proposal can comply with Council's requirements. These include a Council indemnity, compliance with the Technical Specification and collection matters.	Yes (conditions)
BTDAC - Bayside Traffic Development Advisory Committee - 10 April 2024	<p>The BTDAC raised no objections to the proposal and required several conditions to be imposed. The committee recommended the following:</p> <ol style="list-style-type: none"> 1 That the proposed 8m long "no stopping" to support the truck reversing into the site is not supported. 2 That the development be revised to comply with Bayside Technical Specification Traffic, Parking and Access section 3.3.3 which requires service vehicles to enter and exit the site in a forward direction given Hattersley Street will be a retail street with significant pedestrian activity. 3 That the existing narrow carriageway width of Hattersley Street is insufficient to support the proposal as shown in the current swept paths submitted. A wider vehicular carriageway needs to be provided along the frontage of the site. This can be achieved by converting the existing kerb to rollover kerb and shifting the on-street parking spaces west to increase the carriageway width (similar to Railway Street on the western side of Banksia Station). 	Yes (conditions)

Officer	Comments	Resolved
	<p>4 That the swept paths be provided demonstrating a B85 vehicle passing a B99 vehicle on entry to the site from the Hattersley Street road carriageway.</p> <p>Response 1: The application has been amended to include a compliant loading dock within each building. Trucks do not need to reverse into the site and the driveways comply with the access requirements of Council's DCP and relevant AS.</p> <p>Response 2: The proposal has been amended and now complies with the Bayside Technical Specification in relation traffic, parking and access.</p> <p>Response 3: The vehicular carriageway will be widened by Council at a future date. Between now and then a rollover kerb and shifting the on street car parking spaces will suffice to allow vehicular access to and from the site.</p> <p>Response 4: Swept path diagrams for accessing the site from Hattersley Street have been submitted to Council. These diagrams were referred to Council's Development Engineer who raised no objections to them subject to the imposition of conditions.</p>	
Development Contributions	The application was assessed by Council's Contributions Planner and this has been addressed earlier in this report.	Yes (conditions)

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

4.3 Community Consultation

The adjoining owners were notified of the proposal in accordance with the Bayside DCP 2022 from 10 April 2024 until 10 May 2024. A total of five (5) unique submissions, comprising numerous objections to the scheme were received by Council. A sign was also placed on the site and the plans and information were able to be viewed on Council's website.

The issues raised in these submissions are considered in the **Table 7 below**.

Table 3: Community Submissions

Issue	Council Comments
<p>Flooding and stormwater</p> <p>Submissions raised concern the development will adversely impact flooding within the locality.</p>	<p>The application proposes an appropriate stormwater management network which will capture and control discharge of stormwater including a pump out system to a different street frontage for each building. Stormwater modelling has been submitted to demonstrate the proposed stormwater</p>

Issue	Council Comments
	<p>management chain, including discharge to the street, and will not have negative impacts on downstream properties in peak storm events.</p> <p>Council's Development Engineer has reviewed the flood impact assessment report and the design of the proposal and raises no objections to the proposed flood management and stormwater management arrangements, subject to the imposition of conditions. The conditions shall require the submission of additional flooding information prior to the release of the Construction Certificate.</p> <p>Outcome: This issue has been satisfactorily addressed subject to the imposition of relevant recommended conditions of consent (Schedule 1).</p>
<p>Overshadowing</p> <p>Loss of directly sunlight and solar access with the building height – drying clothes, our courtyard plants, the mature Eucalypts at the back of our property, etc. Overshadowing impacts.</p> <p>We have not been provided details regarding security matters for our property such as the materials and height of the proposed fences.</p>	<p>Planning consideration: Yes</p> <p>The proposal has been designed to comply with the building setback and height controls applying to the site. Despite this, the proposal will result in additional overshadowing onto the property at No.361 Princes Highway which results in less than the 2 hours of natural daylight between 9am and 3pm during mid-winter.</p> <p>The reduction of solar access is unavoidable, and this has been addressed previously in this report. For more information, please refer to the section titled 5.2.4.5 Solar Access and Overshadowing.</p>
<p>Land Isolation</p> <p>We will be built out of the development market which is our right as owners. We must have driveway access to our property from Hattersley Street as this would not be permitted from the highway. This proposal will prevent the redevelopment of our property and reduce its value to nothing.</p> <p>The developers did not approach us, but a real estate agent did. This person asked me how much I want for my unit.</p> <p>We the owners have indicated that we will consider a legitimate, reasonable offer from the developer to purchase our property. The developer should buy us out.</p>	<p>Planning consideration: Yes</p> <p>The applicant has agreed to the creation of an easement over the proposed development that will ensure future vehicular access to the adjoining property from Hattersley Street. This will retain the value and development potential of the adjoining property.</p> <p>The easement will make provision for future vehicular access from Hattersley Street via the site to the adjoining property on each of the three basement parking levels along the southern boundary of No. 345 Princes Highway. The wall will include structural allowance for the future connection to the adjoining property.</p> <p>The applicant has indicated that previous attempts to acquire the adjoining property were carried out and were not fruitful. In this regard, the adjoining owners were contacted and confirmed they did not provide any response to the requests of the applicant. In this regard, the applicant has exercised the steps required under the Planning Principals outlined by the Land Environment Court of NSW.</p> <p>During the assessment process, further efforts were expended by the applicant to acquire the adjoining property, however these efforts have not yielded any success.</p>

Issue	Council Comments
	<p>Outcome: The applicant has acted consistent with the planning principals of the LEC NSW and accepted placement of an easement over the site to ensure future access to the adjoining property. This has been achieved through the imposition of a condition of development consent.</p>
<p>Parking</p> <p>Hattersley Street contains insufficient parking for commuters (unlike Rockdale and Arncliffe Stations). Parking is sought after and in high demand.</p> <p>We have been suffering for years with insufficient on-site car parking and the businesses operating in Hattersley Street add to the strain of parking within Hattersley Street. This proposal will reduce on street parking to nil making it difficult for the existing residents in the street.</p> <p>Insufficient on site car parking proposed in the development for the number of residents as most households have more than 1 car.</p>	<p>Planning consideration: Yes</p> <p>There is a high demand for kerb side parking within Hattersley Street. While new residential developments will increase this demand, the properties are zoned for this increase. Hattersley Street contains a perpendicular car park between the kerb and the railway line at the southern end of the street.</p> <p>The proposal will provide a total of 140 car parking spaces within the three basement levels below each of the two buildings to service the proposed development. This car parking provision complies with the requirements of the Apartment Design Guide (ADG) and SEPP (Housing) 2021.</p> <p>Of the 140 car parking spaces, the proposal provides 16 visitor spaces, 108 residential spaces, 115 retail spaces and 1 dedicated car wash bay. The proposal contains sufficient on site car parking to cater for the likely demand. The visitor parking will assist in reducing the demand for on street car parking.</p> <p>While some apartments have one parking space only, two spaces are provided for larger units, and the site is located directly opposite the railway line. As such, the proposal complies with the on site car parking requirements and is acceptable in this regard.</p> <p>The application was referred to Council's Development Engineer who advised that the surrounding street network is capable of accommodating the increase in traffic likely to be generated by the development with minimal adverse impacts on traffic congestion during the peak periods.</p> <p>Outcome: This issue has been satisfactorily addressed subject to the imposition of relevant recommended conditions of consent (Schedule 1).</p>
<p>Traffic</p> <p>Such a large development will cause considerable traffic impact with vehicular access from the Princes Highway. Another set of traffic lights will cause more delays.</p>	<p>Planning consideration: Yes</p> <p>The proposal does not have direct vehicular access to and from the Princes Highway. It contains two driveway crossings, leading one to each proposed building having direct vehicular access to and from Hattersley Street. The traffic generated by the development will access the Princes Highway from the southern end of Hattersley Street and Taylor Avenue. In this regard, the proposal will not require the provision of an additional set of traffic lights.</p> <p>The application was referred to Council's Development Engineer who raised no objections to the proposal subject to the imposition of conditions of development consent.</p>

Issue	Council Comments
<p>Amenity Impacts</p> <p>We are currently suffering from the construction on the adjoining property to the south for a year and a half. This includes noise and restricted access.</p> <p>We do not want any scaffolding on our property as it would block our access to our building and is a safety issue.</p> <p>Loss of privacy and natural ventilation</p> <p>This site is affected by ground water (which was leaking from the site and adjoining building under construction recently) and three basement levels will exacerbate this.</p> <p>Structural integrity – the proposed massive buildings to the side and rear will affect our older building.</p>	<p>Planning consideration: Yes</p> <p>The construction process is temporary and will be managed on site by a qualified builder and foreman. In this regard, the draft Notice of Determination will include conditions to limit construction hours and regulate the site to minimise noise and amenity impacts throughout the construction process. In this regard, the likely noise impacts throughout construction are temporary but unavoidable and will be managed appropriately.</p> <p>Residents affected by the development outside the approved construction hours may notify Council who will follow up the matter with the relevant site manager.</p> <p>Given the nature of shop top housing on the site has nil setbacks in accordance with Council's DCP 2022, the directly adjoining lots may be used for access when constructing on the site. This is unavoidable and will be a matter considered by and consented to between adjacent land owners.</p> <p>Loss of privacy has been addressed previously in this report. For more information, please refer to the section in Council's DCP 2022 titled 5.2.4.7 – Visual and Acoustic Privacy.</p> <p>During the construction process the site will be managed by the foreman and Private Certifier. Should water be leaking from the site during this time, please contact the Private Certifier in writing to resolve the matter. Conditions have been imposed in respect to managing the site throughout the construction process.</p> <p>Current building methods and technologies include adequate measures to control the site throughout the construction process and ensure little or damage occurs to the adjoining properties. In this regard, conditions have been imposed in the draft consent to manage site conditions and ensure current building practices are undertaken appropriately.</p> <p>Outcome: This issue has been satisfactorily addressed given the above and subject to the imposition of relevant recommended conditions of consent (Schedule 1).</p>
<p>Through Site Link</p> <p>The new walkway was meant to be 10m wide (through site link) as discussed with a previous application and this has not been provided in the current scheme.</p> <p>We do not consent to the pedestrian access path between the two properties being closed off during construction as it provides pedestrian access for us</p>	<p>Planning consideration: Yes</p> <p>The proposal will include the provision of a through site link for pedestrians to allow access to Hattersley Street from the Princes Highway. This will have a width between 5.8m along the Princes Highway and 7.5m at Hattersley Street.</p> <p>The Public Domain Plan (PDP) encourages the provision of a through site link in the vicinity of the site. (Princes Highway Area 1). However, the section 4.2 of the PDP stipulates a minimum 3m wide pedestrian pathway, preferably articulated whilst maintaining direct sight lines between ends of the link. The proposal complies with this requirement.</p>

Issue	Council Comments
to Hattersley Street. This is an emergency exit path and blocking it will be a major safety concern.	<p>Council's DCP 2022 requires through site links with a minimum width of 6m for several precincts including Hattersley Street and the Rockdale Town Centre. The proposal appears to satisfy this requirement.</p> <p>It is acknowledged that the narrow pedestrian path to the rear of No. 361 Princes Highway is the only rear access from the 6 apartments fronting the highway to Hattersley Street. Further, this narrow access handle is part of the property at No. 361 Princes Highway and owners consent is required for the applicant to use this access handle during construction. The owners of No. 361 have the right to not provide permission to close off the pathway should they choose, and this is a civil matter between adjoining owners.</p>
<p>Streetscape</p> <p>The building height of 10 storeys would be out of character with the surrounding neighbourhood.</p>	<p>Planning consideration: Yes</p> <p>The proposal will include the construction of two mixed use buildings. Streetscape has been addressed previously in this report. For more information, please refer to the section titled 5.2.4.1 – Streetscape, Local Character and Quality of Design.</p>

5. KEY ISSUES

The following key issues are relevant to the assessment of this application having considered the relevant planning controls and the proposal in detail:

5.1 Affordable Housing

The proposal will include 13 residential units (or 15% of the total of 86 units) as affordable housing. All of the 13 affordable units will be spread out within both buildings while the other will be entirely residential apartments. As such, the proposal benefits from the provisions of the SEPP (Housing) 2021 relating to additional FSR (clause 17). In this regard, the affordable housing has been appropriately designed and is not unlike the other proposed residential flat buildings. As such, the proposal complies with the requirements of the SEPP and a condition has been imposed in relation to the ongoing use of the affordable housing units for a minimum of 15 years in accordance with the requirements of the SEPP.

Resolution: The issue of affordable housing has been resolved through an appropriate building design and the recommended conditions of development consent.

5.2 Floor Space Ratio

The proposal will include a variation of 220.65m² or 11% to the maximum FSR control applying to the site under the SEPP (Housing) 2021. This has been addressed previously in this report. For more information, please refer to the section of this report titled "Clause 4.6 – Exceptions to Development Standards."

6. 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 can be supported.

The key issues, as outlined in in Section 5 of this report, have been satisfactorily resolved in the revised scheme or addressed through the imposition of draft conditions of development consent at Attachment A. The subject site is suitable for the proposed development, subject to the recommended conditions. Further, the proposal is compatible with the surrounding locality and consistent with the desired future character of the precinct.

Accordingly, the proposal will make a positive contribution to the precinct, increase the provision of residential and affordable accommodation and add to the diversity of styles in the street. Based on the above, the application is recommended for approval subject to conditions.

7. RECOMMENDATION

That the Development Application DA No 2024/68 for the demolition of the existing structures and construction of two (2) ten (10) storey mixed use development, comprising eighty-six (86) residential units, eight (8) ground floor commercial units, three (3) levels of basement parking, and associated landscaping at 114-116 Hattersley Street and 345 Princes Highway Banksia NSW 2216 be APPROVED pursuant to Section 4.16(1)(a) of the *Environmental Planning and Assessment Act 1979* subject to the draft conditions of consent attached to this report at Attachment A.

The following attachments are provided:

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