

COUNCIL ASSESSMENT REPORT

SYDNEY EASTERN CITY PLANNING PANEL

PANEL REFERENCE & DA NUMBER	PPSSEC-316 DA-2024/56 PAN-413901
PROPOSAL	Concept Development Application – Consolidation of sixteen (16) allotments with the eastern part of the Chalmers Crescent cul-de-sac turning bulb roadway, demolition of existing structures, tree removal, construction of a commercial development comprising of five (5) x eight (8) storey towers above a parking podium of four split levels, and associated landscaping
ADDRESS	No's 7-9, 14-16, 18-21 Chalmers Crescent (Lots 11-26 inclusive DP 29697) and the eastern part of Chalmers Crescent containing the cul-de-sac turning bulb (Lot 1 DP 1260420).
APPLICANT	The Trustee for F Mayer Imports Superannuation Plan
OWNER	The Trustee for F Mayer Imports Superannuation Plan
DA LODGEMENT DATE	15 April 2024
APPLICATION TYPE	Concept Development Application
REGIONALLY SIGNIFICANT CRITERIA	Clause 2.19, Schedule 6 of <i>State Environmental Planning Policy (Planning Systems) 2021</i> states that any development with an estimated development cost over \$30,000,000 is classified as Regionally Significant Development.
CIV	\$ 224,054,576.00 (excluding GST)
CLAUSE 4.6 REQUESTS	<i>Clause 4.3 Height of Buildings</i> – Bayside Local Environmental Plan 2021 <i>Clause 4.4 Floor Space Ratio</i> – Bayside Local Environmental Plan 2021
KEY SEPPs/LEPs	<ul style="list-style-type: none"> State Environmental Planning Policy (Planning Systems) 2021 State Environmental Planning Policy (Sustainable Buildings) 2022 State Environmental Planning Policy (Resilience and Hazard) 2021

	<ul style="list-style-type: none"> • State Environmental Planning Policy (Transport and Infrastructure) 2021 • State Environmental Planning Policy (Biodiversity and Conservation) 2021 • Bayside Local Environmental Plan 2021 • Bayside Development Control Plan 2022.
TOTAL & UNIQUE SUBMISSIONS ISSUES SUBMISSIONS	One (1)
DOCUMENTS SUBMITTED FOR CONSIDERATION	<ul style="list-style-type: none"> • Building Envelope Plans prepared by Crone Architects consisting of 19 drawings – Issue D - dated 01/08/25 • Clause 4.6 Objection Statement – Height of Buildings • Clause 4.6 Objection Statement – Floor Space Ratio • Landscape Plans prepared by Taylor Brammer Landscape Architects consisting of 9 Drawings – Revision 2 – dated 03/08/25 • Design Review Panel Minutes
RECOMMENDATION	Refusal
DRAFT CONDITIONS TO APPLICANT	N/A
SCHEDULED MEETING DATE	25 September 2025
PREPARED BY	Robert Toohey - Senior Development Assessment Planner (Contract role). Marta Gonzalez-Valdes – Coordinator Development Assessment
DATE OF REPORT	11 September 2025

1. **EXECUTIVE SUMMARY**

Council received Concept Development Application No. 2024/56 on 15 April, 2024. The application; in respect of No's 7-9, 14-16 & 18-21 Chalmers Crescent and part of the eastern end of the Chalmers Crescent roadway proposes the demolition of existing structures, tree removal, construction of a commercial development comprising of five (5) x eight (8) storey towers above a parking podium of four split levels, and associated landscaping.

The Application is required to be referred to the Sydney Eastern City Planning Panel (SECPP) pursuant to Schedule 6 of State Environmental Planning Policy (State and Regional Development) 2021 as the Capital Investment Value of the development at \$224,054,576.00 exceeds \$30,000,000. The SECPP has received Council Assessment Briefing Reports regarding the status of the application on two (2) occasions being 11 July, 2024 and 26 June, 2025.

On 16 March, 2017 the SECPP issued approval (DA No. 15/91) for a Stage 1 Masterplan in respect of the subject site which allowed for the construction of four (4) x eight (8) storey commercial towers above a podium containing three (3) levels of carparking for 490 vehicles.

One of the conditions of the Development Consent required the purchase of the eastern portion (cul-de-sac turning bulb) of the Chalmers Crescent roadway from Bayside Council for inclusion with the overall site for the development to proceed.

It is noted that the approved Gross Floor Area of 37,805m² for the Stage 1 Masterplan consent issued in 2017 complied with the Maximum permissible Floor Space Ratio of 3:1 applicable to the site. Whereas, the current Concept Development Application (DA-2024/56) proposes a FSR of 3.86:1 which equates to an additional 10,836m² or 28.7% above the current maximum permissible FSR of 3:1. Development Consent No. DA-15/91 for the Stage 1 Masterplan (relating to the same group of properties as the current application) issued in 2017 lapsed on 16 March, 2022.

Council has formally issued four (4) separate requests for further information letters in relation to the proposed development. However, from the Applicant's most recent submission on 4 August, 2025 amended plans/ additional information is yet to be received for three (3) significant items. Rather the Applicant has provided timeframes for submitting the additional information required.

Details of the three key (3) outstanding items and the Applicant's comments are provided below:

- **Traffic/ Traffic Committee / Transport for NSW**

The Applicant advised that revised Traffic Reports/ Impact Assessments would be available for referral to TfNSW & Council by 8 September 2025. This information has not been received. Council notes that it is likely that TfNSW may require up to 4 weeks to review the new data whilst Council would need to refer the new data to the Bayside Traffic Advisory Development Committee. Therefore, feedback on the revised traffic data is unlikely to be available until mid -late October 2025.

- **Proposed Variation of Floor Space Ratio**

The Applicant is aware of the need to submit a revised Clause 4.6 Objection Statement to seek a contravention to the Maximum permissible Floor Space Ratio of 3:1 up to 3.86:1 to include some data from the revised traffic reports which were though to be available by 8 September, 2025 at the earliest. As outlined above, comments on the revised traffic reports/ impact statements are unlikely to be available prior to the end of October, 2025. Therefore, a revised Clause 4.6 Objection statement incorporating the relevant traffic data would likely not be available until late October, 2025.

- **Stormwater Management**

The Applicant has advised that ground testing to determine ground absorption coefficients and laboratory testing needs to be undertaken. Therefore, an amended stormwater concept plan is being prepared by their stormwater drainage consultants (WSP Consulting) which was expected to be lodged by 8 September 2025. This information is still outstanding.

The subject application was placed on Public Notification for the period 13 – 27 May, 2024. One (1) written submission (letter of objection) was received which raised the following issues:

- Concern regarding the traffic generation from the construction phase of the proposed development and the ongoing traffic management of the local road networks now and into the future.
- Further modelling is required of the possible traffic impacts and the performance of

key road intersections and the ability of the overall local road network to function adequately.

The comments raised by the author of the submission reflect the concerns raised by Council's Traffic Engineers, the Bayside Traffic Development Advisory Committee and Transport for NSW regarding the proposed development.

An assessment of the application, based on the information submitted up to and including 4 August, 2025, has been undertaken in accordance with the relevant requirements of the Environmental Planning & Assessment Act, 1979 and is recommended for refusal based on the reasons contained in the recommendation below.

2. RECOMMENDATION

That the Sydney Eastern City Planning Panel, exercising the functions of Council as the consent authority pursuant to Section 4.16 and Section 4.17 of the Environmental Planning and Assessment Act, 1979, **REFUSE** DA-2024/56 Concept Development Application – which proposes consolidation of sixteen allotments (16) with the eastern part of the Chalmers Crescent cul-de-sac roadway, demolition of existing structures, tree removal, construction of a commercial development comprising of five (5) x eight (8) storey towers above a parking podium of four split levels, and associated landscaping at **No's 7-9, 14-16, 18-21 CHALMERS CRESCENT, MASCOT** for the following reasons:

- a) Pursuant to the provisions of Sections 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development has failed to satisfy the provisions of Section 2.122 Traffic Generating Development of State Environmental Planning Policy (Transport and Infrastructure) 2021 as follows:
 - i) The Traffic Impact Statements/ Reports submitted with the application are considered by Transport for NSW (TfNSW) to be inadequate and do not sufficiently quantify the impacts of the proposed development on the capacity and adequacy of the local road network and the performance of key road intersections. The Applicant has been advised of the additional information required to be submitted to TfNSW to enable further review of the proposed development.
- b) Pursuant to the provisions of Sections 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the aims of the Bayside Local Environmental Plan 2021 with regard to:
 - i) Objective (d) to encourage sustainable economic growth and development in Bayside. The Applicant has failed to demonstrate that the demand exists for the additional 10,836m² of Gross Floor Area (ie FSR 3.86:1) proposed beyond the Maximum Floor Space of 3:1.
- c) Pursuant to the provisions of Sections 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the provisions of Clause 4.3(2) of Bayside Local Environmental Plan 2021, specifically;
 - i) The proposal fails to demonstrate the need to increase the proposed maximum Building Height from 44m to 46m a variation of 2m (4.5%) as a reduction in the overall proposed FSR from 3.86:1 closer to a FSR of 3:1 would still allow for the five (5) x eight (8) storey towers to be slender in design but lower in height thereby

precluding the need to increase the overall proposed height above the Maximum permissible of 44m.

- d) Pursuant to the provisions of Sections 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the provisions of Clause 4.4(2) Bayside Local Environmental Plan 2021, specifically;
 - i) The proposal fails to demonstrate that the additional 10,836 m² producing a Floor Space Ratio of 3.86:1 above the maximum permissible is justified. Furthermore, the current Clause 4.6 Objection Statement is inadequate and does not include specific details regarding the traffic and transport impacts of the proposed development and the effects that the additional 10,836m² of Gross Floor Area will have on the immediate locality.
- e) Pursuant to the provisions of Sections 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the provisions of Clause 6.1 Acid Sulfate Soils of the Bayside Local Environmental Plan 2021, specifically;
 - i) The site is subject to Class 1 and Class 2 Acid Sulfate Soils (ASS) and based on the results of a preliminary ASS investigation, samples were found to exceed the sulfur trail action criteria for presence of ASS conditions. An ASS Management Plan (ASSMP) is required and implemented during works. An ASSMP has not been submitted.
- f) Pursuant to the provisions of Sections 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the provisions of Clause 6.3 Stormwater and water sensitive design of the Bayside Local Environmental Plan 2021, specifically;
 - i) Inadequate details have been provided which demonstrates that the proposed method of Stormwater Management can be achieved via an “absorption system”. Furthermore, a revised Stormwater Management plan for the proposed development has not been submitted.
- g) Pursuant to the provisions of Sections 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the provisions of Clause 6.10 Design excellence of Bayside Local Environmental Plan 2021, specifically:
 - i) The application was not supported by the Bayside Design Review Panel who advised that key issues which prevented the proposal from achieving Design Excellence included:
 - a. Inadequate contextual analysis
 - b. Lack of integration with surroundings
 - c. Extent of the continuous podium
 - d. Extent of above ground parking
 - e. No significant Connection to Country strategy response
 - f. Excess Gross Floor Area without justification or compensating public benefit.
- h) Pursuant to the provisions of Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposed development does not meet the objectives and controls Part 3.9 – Stormwater Management and Water Sensitive Urban Design of the Bayside Development Control Plan 2022.

- i) Pursuant to the provisions of Section 4.15(1)(b) and Section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979, insufficient information has been provided by the applicant to allow a proper and thorough assessment of the impacts of the proposed development and the suitability of the site for the development regarding likely traffic impacts and stormwater management.
- j) Pursuant to the provisions of Section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979, insufficient information has been provided by the proponent to enable a proper and thorough assessment of the impacts of the proposed development and the suitability of the site for the development in its current form.
- k) Pursuant to the provisions of Section 4.15(1)(d) of the Environmental Planning and Assessment Act 1979 Council in considering the issues raised in the one (1) public submission received acknowledges the potential adverse traffic generation/management aspects of the proposed development and that additional traffic modelling is required regarding the performance of key road intersections and the ability of the overall local road network to function adequately.
- l) Pursuant to the provisions of Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979, and in consideration of the lack of adequate information lodged, the likely impacts and submissions made, the proposed development is not in the public interest.

3. THE SITE AND LOCALITY

3.1 The Site

The subject site known as No's 7-9, 14-16 & 18-21 Chalmers Crescent, Mascot consists of sixteen (16) allotments, as listed below, in a reverse L shaped configuration which wraps around the cul-de-sac turning bulb at the eastern end of Chalmers Crescent, Mascot.

7 Chalmers Crescent, Mascot

- Lot 26 DP 29697
- Lot 25 DP 29697
- Lot 24 DP 29697
- Lot 23 DP 29697
- Lot 22 DP 29697
- Lot 21 DP 29697

9 Chalmers Crescent, Mascot

- Lot 20 DP 29697
- Lot 19 DP 29697

14 Chalmers Crescent, Mascot

- Lot 11 DP 29697

16 Chalmers Crescent, Mascot

- Lot 12 DP 29697

18-21 Chalmers Crescent, Mascot

- Lot 13 DP 29697
- Lot 14 DP 29697
- Lot 15 DP 29697

- Lot 16 DP 29697
- Lot 17 DP 29797
- Lot 18 DP 29697

In response to a previous Stage 1 Masterplan approved in 2017 (for the same group of properties included in the current application) Council subdivided part of the Chalmers Crescent roadway to create the eastern cul-de-sac bulb end of Chalmers Crescent as a separate allotment (Lot 1 DP 1260420) with an area of 1,118m². The Applicant's current proposal is to consolidate the sixteen (16) allotments, all of which have frontage to Chalmers Crescent, with a total area of 11,485m² with Lot 1 DP 1260420 which contains the cul-de-sac turning bulb at the eastern end of Chalmers Crescent which will produce an overall site area of 12,603m² for the consolidated parcel. Refer to Figure 1 below.

The subject property extends approximately 50m deep from both the northern and sides of Chalmers Crescent. The overall frontage of the consolidated parcel to Chalmers Crescent as it wraps around the cul-de-sac turning bulb is 199.9 m.

The subject site contains a variety of older style factory and warehouse style brick buildings of a low scale two storey nature which have minimal setbacks from Chalmers Crescent

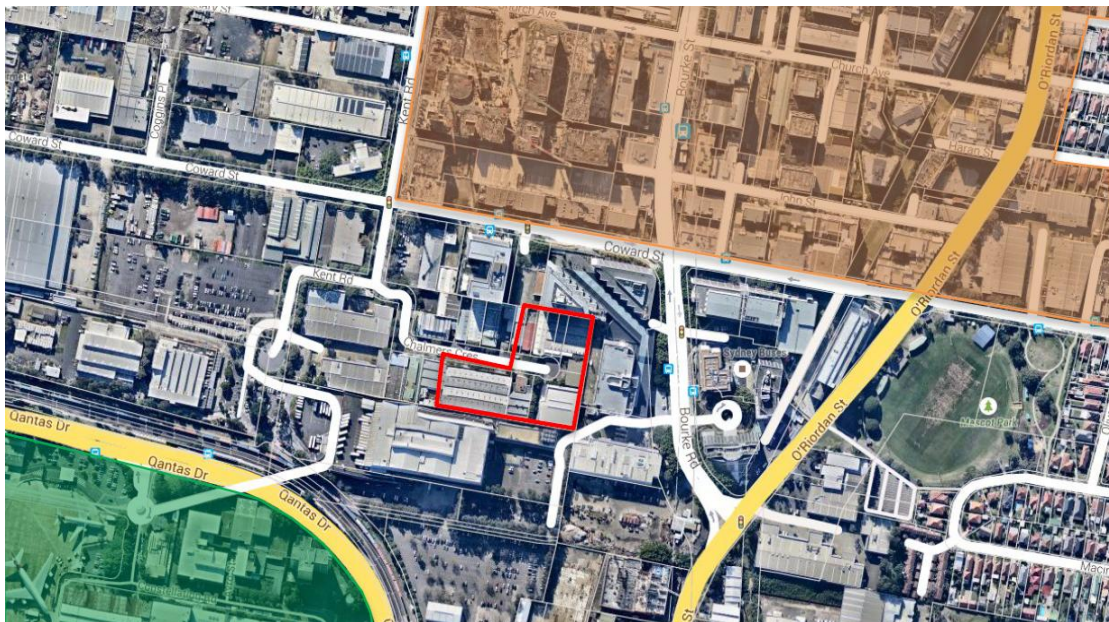


Figure 1 _ Aerial photograph with the subject site enclosed by a red border

3.2 The Locality

Development surrounding the site comprises industrial warehouses with some recent approvals issued for commercial/ office developments in Chalmers Crescent. The surrounding locality has undergone significant change particularly in the vicinity of the Mascot Railway Station following its nomination as an urban activation precinct and up-zoning under the previous Botany Bay LEP 2013.

The site is in proximity to the Qantas catering area contained in buildings directly adjoining Sydney Airport. The site is located within 800 metres of Mascot Station and therefore is located within the Mascot Station Precinct key area for assessment of Design Excellence. The site is located within the 25-30 ANEF Contour.

4. THE PROPOSAL AND BACKGROUND

4.1 The Proposal

The Concept Development Application proposes the demolition of existing warehouses and factory buildings and the construction of five (5) x eight (8) storey towers for commercial/ office purposes above a parking podium for 608 vehicles spread over four split levels.

It is proposed that the ground floor level of the development fronting Chalmers Crescent will activate the street frontage through the provision of outdoor seating for cafes near building entrances and glazing which accounts for 67% of the site's total frontage to Chalmers Crescent.

Figure No's 2 and 3 below depict photomontages of the development wrapping around the eastern end of Chalmers Crescent as originally proposed.



Figure 2 – Photomontage of the proposed development looking southeast across Chalmers Crescent as originally submitted.



Figure 3 – Photomontage of the proposed development as originally submitted looking east along Chalmers Crescent towards the cul-de-sac turning bulb.

As originally submitted the plans for the proposed development contained too much detail for the purposes of a “schematic” Concept Development Application. The most recent design for the proposed development contains “scaled back” architectural and landscaping plans which are “envelope drawings” geared towards providing details of built form, massing, setbacks, street activation, landscaping and carparking provision. These plans contain a reduced amount of detail to more closely align with the presentation requirements for a Concept Development Application as opposed to more detailed plans associated with Development Applications relating to individual stages of an overall concept plan.

The most recent “building envelope” drawings (Issue D dated 01/08/25) received by Council on 4 August 2025 are shown below:

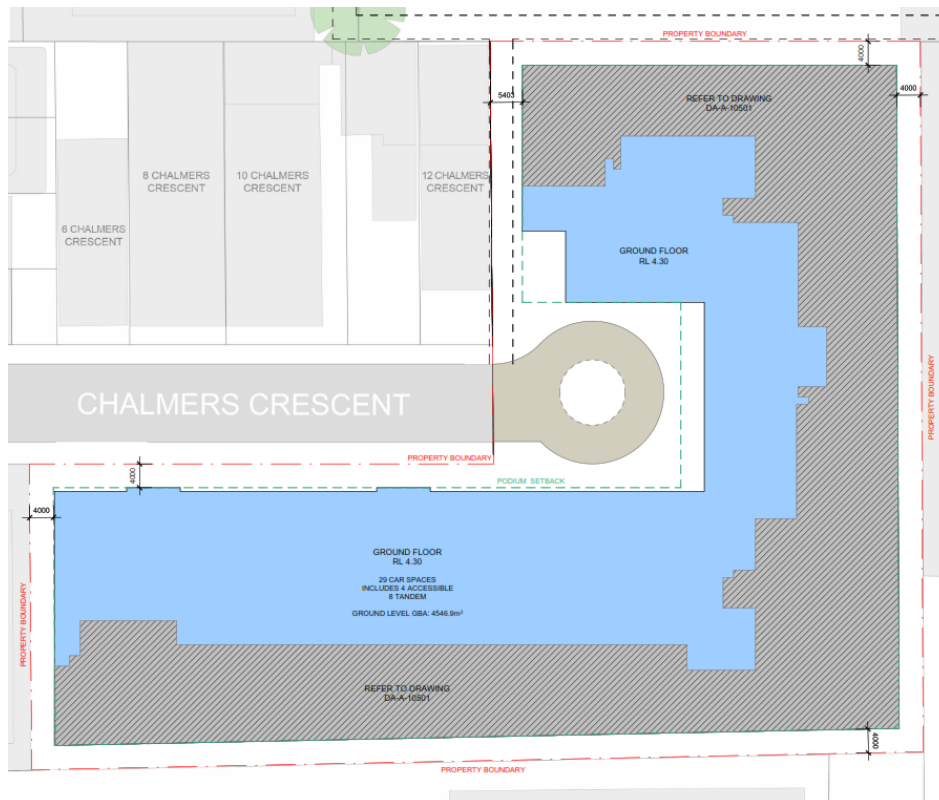


Figure 4 – Proposed Ground Floor Level Plan

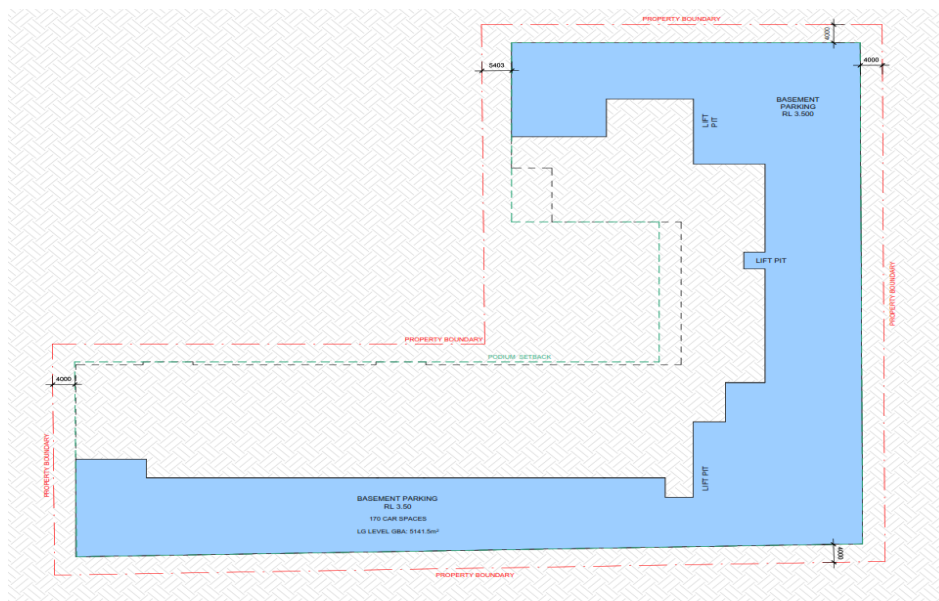


Figure 5 – Proposed Lower Ground Level

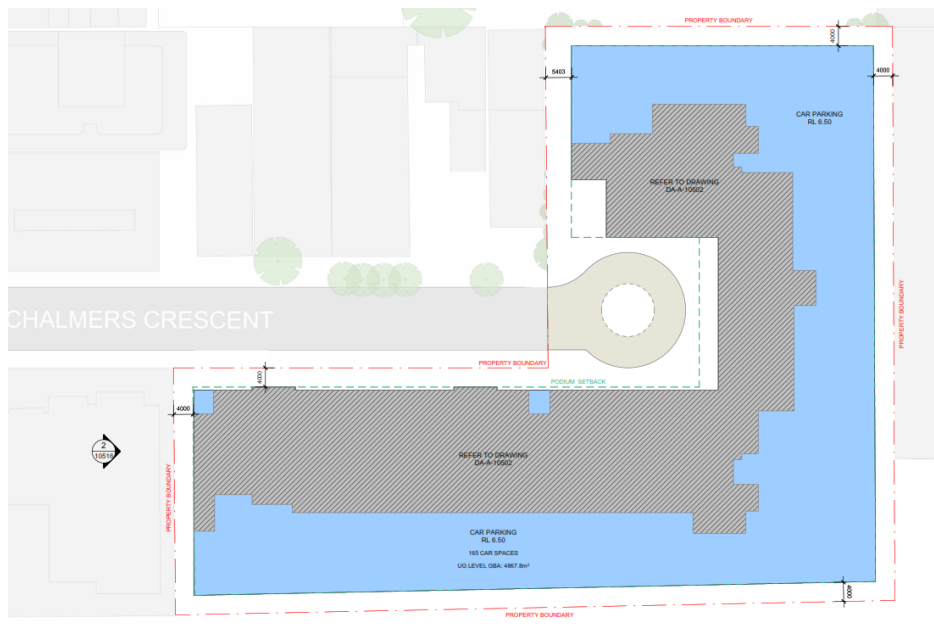


Figure 6 – Proposed Upper Ground Level

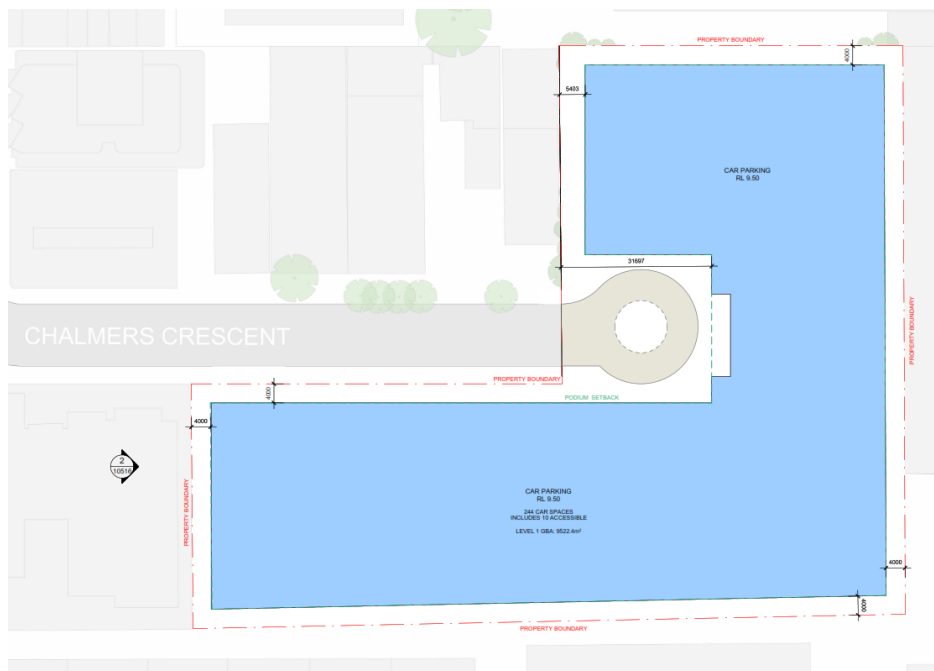


Figure 7 – Proposed Level 1



Figure 8 – Proposed Level 2 Podium

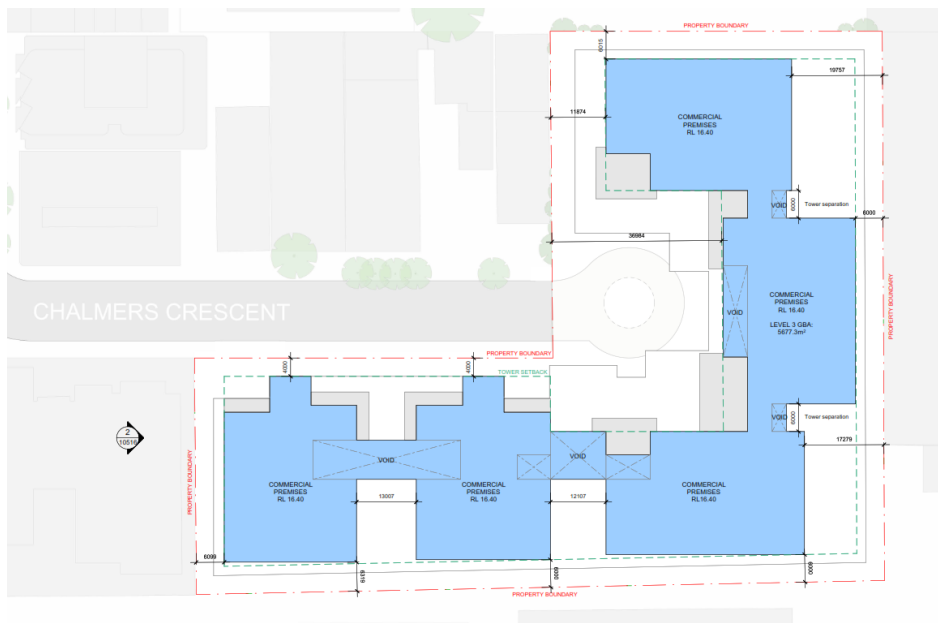


Figure 9 – Proposed Level 3



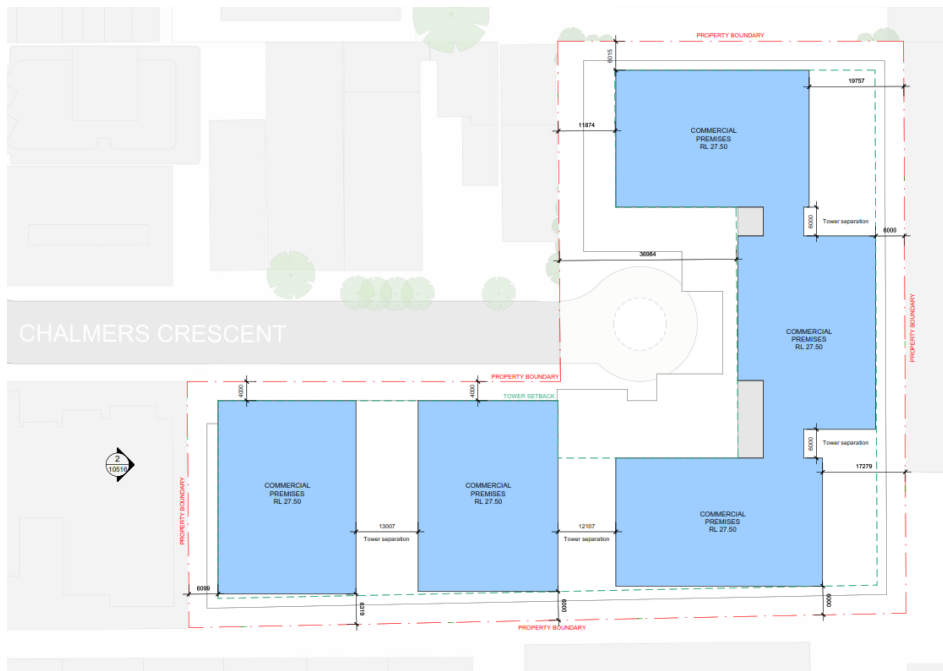


Figure 12 – Proposed Level 6



Figure 13 – Proposed Level 7



Figure 16 – Proposed Level 10

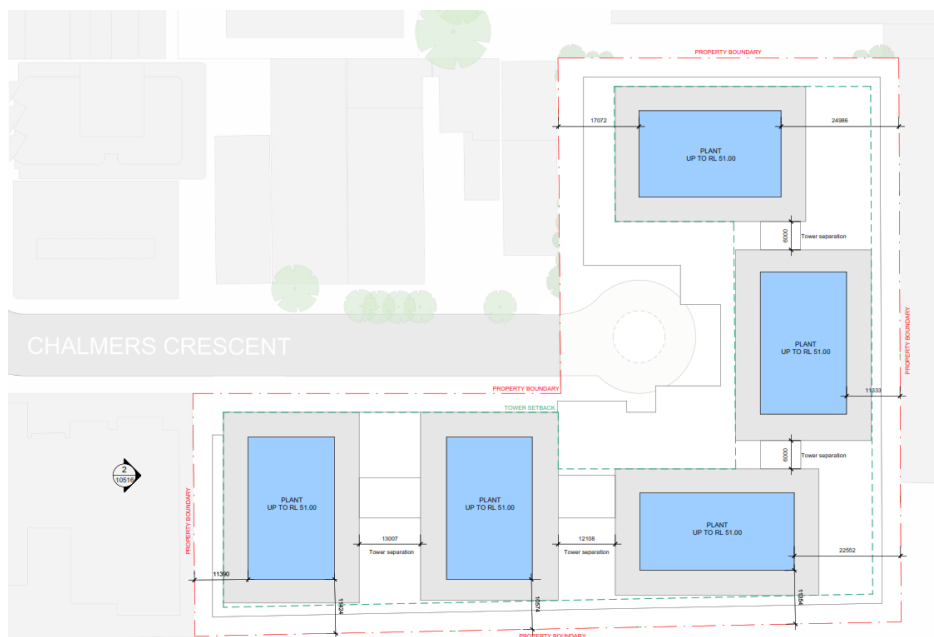
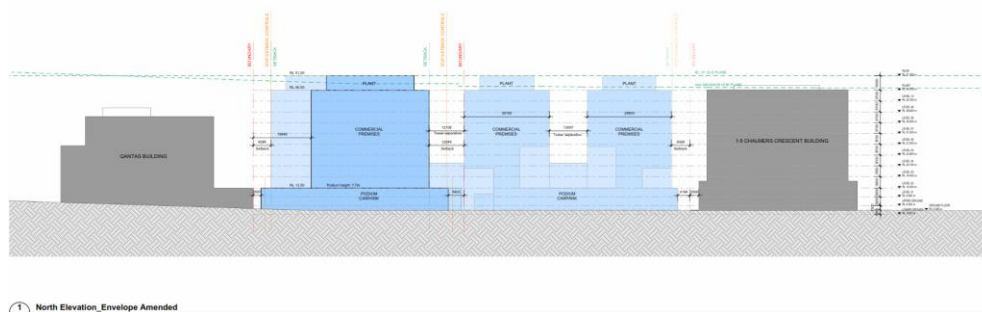


Figure 17 – Proposed Roof Plan



1 North Elevation_Envelope Amended
SCALE: 1:100

Figure 18 – North Elevation

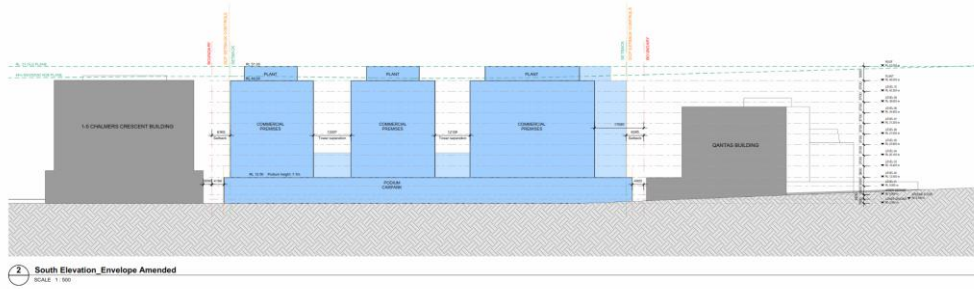


Figure 19 – South Elevation

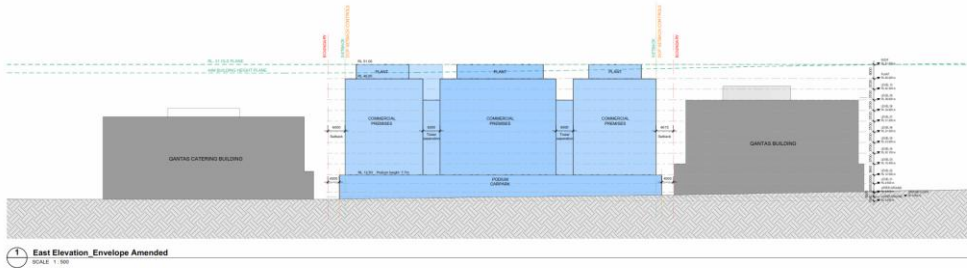


Figure 20 – East Elevation

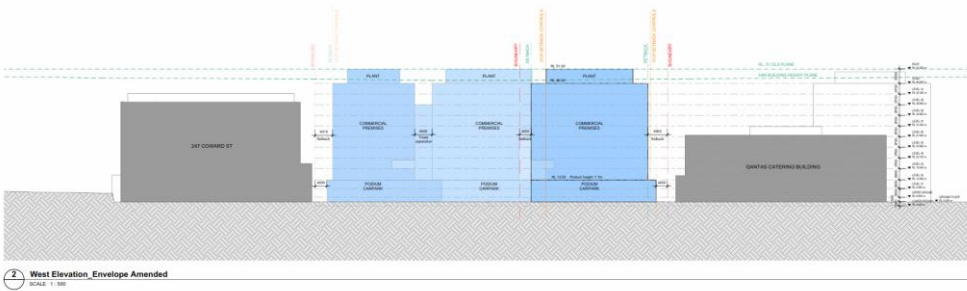


Figure 21 – West Elevation

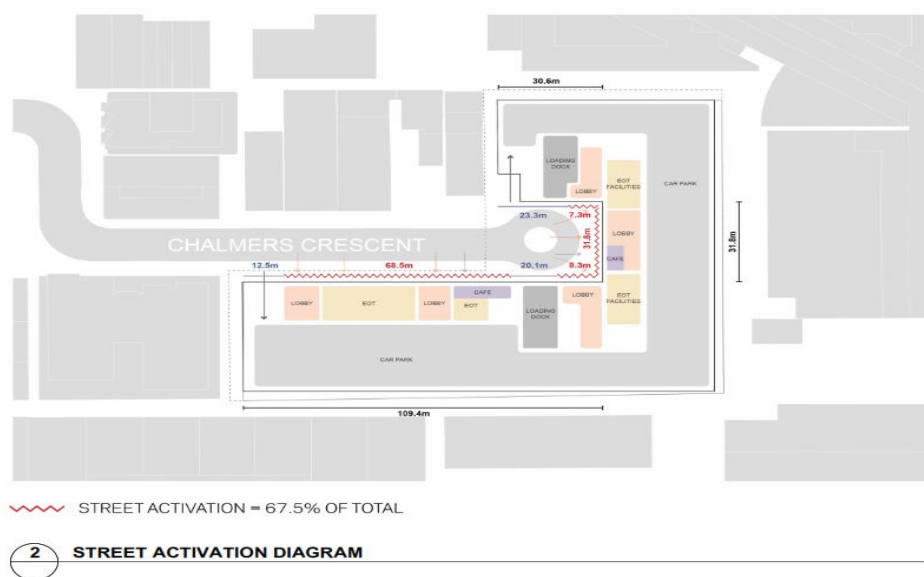


Figure 22 – Ground Floor Street Activation

A summary of the key elements of the proposed development is contained in Table 1 shown below:

Table 1: Development Data

Control	Proposal
Site area	12,603m ²
Max Permissible FSR	3:1
Max permissible GFA	37,809m ²
Proposed GFA	48,645m ²
Additional GFA proposed	10,836m ² (i.e. 28.7% above the maximum permissible)
Proposed FSR	3.86:1
Maximum Building Height	44m
Proposed Building Height	46m
Additional Building Height proposed	2m (ie 4.5% above the maximum permissible)
Carparking Spaces	608

4.2 Site History

The Sydney Eastern City Planning Panel issued approval (DA-15/91) on 16 March, 2017 for a Stage 1 Masterplan for the subject site to allow for the construction of four (4) x eight (8) storey commercial towers above a podium containing three (3) levels of carparking for 490 vehicles. One of the conditions of the Development Consent required the purchase of the eastern portion (cul-de-sac turning bulb) of the Chalmers Crescent roadway from Bayside Council for inclusion with the overall site for the development to proceed.

It is noted that the approved Gross Floor Area of 37,805m² for the Stage 1 Masterplan development complied with the Maximum permissible Floor Space Ratio of 3:1 applicable to the site. Whereas the current Concept Development Application (DA-2024/56) proposes a FSR of 3.86:1 which equates to an additional 10,836m² or 28.7% above the current maximum permissible FSR of 3:1.

Development Consent No. DA-15/91 for the Stage 1 Masterplan (relating to the same group of properties as the current application) issued in 2017 lapsed on 16 March 2022.

Since 2017 Council has progressed the subdivision of part of the eastern end of the Chalmers Crescent roadway containing the cul-de-sac turning bulb resulting in the creation of Lot 1 DP 1260420 to cater for possible incorporation with the subject site. However, negotiations are still underway between the Applicant and Council regarding the final purchase of the part of the Chalmers Crescent roadway.

4.3 Background

The current Development Application (DA-2024/56) was lodged on **15 April 2024**. A chronology of the development application since lodgement is outlined below in **Table 2**.

Table 2: Chronology of the DA

Date	Event
15 April 2024	Development Application submitted to Council
8 May 2024	Application referred to external agencies
13 May 2024	Referral response received from Sydney Airport Corporation. No object subject to conditions.
13 May – 27 May, 2024	The Application was placed on Public Notification for 14 days. One (1) letter of objection was received by Council which raised issues regarding adequacy/ capacity of the local road network and the need for revised modelling for the performance of key traffic intersections within the immediate locality.
20 May 2024	Referral response received from Ausgrid. No objections subject to conditions of consent.
29 May, 2024	Referral response received from Transport for NSW (TfNSW). Additional information was requested to assess the proposal including a detailed transport impact assessment consistent with the TfNSW Guide to Traffic Generating Developments, Version 2.2, October 2022. Furthermore, the additional information sought by TfNSW was to include traffic modelling and assessment for the subject site, the cumulative impacts upon the local road network and the resultant impacts upon the capacity/ performance of certain nominated road intersections within the immediate vicinity of the subject site.
30 May, 2024	Referral response received from Sydney Water. No objections subject to recommended conditions of consent.
6 June, 2024	The application was considered by the Bayside Design Review Panel (DRP) – (1 st time).
11 July 2024	A Council Assessment Briefing Report regarding the status of the application was considered by the Sydney Eastern City Planning Panel.
31 July, 2024	1 st Request For Information (RFI) letter was issued to the Applicant. The letter identified key aspects of the proposal which required additional information and these included the following: <ul style="list-style-type: none"> • Further justification to exceed the maximum GFA by 10,836m² (ie 28.7%)

	<ul style="list-style-type: none"> • Revised traffic impact assessments, modelling and data to address concerns raised by Council's Traffic team, the Bayside Traffic Development Advisory Committee and Transport for NSW. • Revised Stormwater Management details regarding the proposed "absorption system" • Submission of a Detailed Site Investigation (DSI) regarding possible contamination issues. • A response to the issues raised by the Bayside Design Review Panel (DRP).
11 September 2024	<p>The Applicant submitted a response to Council's RFI letter dated 31 July, 2024. Key responses included:</p> <ul style="list-style-type: none"> • In terms of the additional FSR the Applicant advised that <i>"we have held off starting traffic data collection in the knowledge that the opening of the Sydney Gateway road project may significantly impact on the immediate locality of the site. As soon as we have agreement to the terms of the study from Council and TfNSW we will carry out the study"</i>. • With regard to Traffic Management the Applicant stated that <i>"Traffic concerns will be addressed in the Traffic report under preparation by WSP"</i> (ie their consultants). • The Applicant also stated that an "absorption system" is only one method of draining the site and that the issue of stormwater disposal can be deferred to Stage 2 Development Applications for the actual construction of the five (5) x eight (8) storey towers.
24 September 2024	<p>The application was again considered by the Bayside DRP – (2nd time).</p>
24 December 2024	<p>2nd RFI issued to the Applicant. The key issues identified as requiring additional information still included FSR, Traffic/ Traffic Committee/ TfNSW and Stormwater Management.</p> <p>In terms of FSR and Traffic impacts Council acknowledged that these issues will remain unresolved until the outstanding traffic study is submitted.</p> <p>With regard to Stormwater Management Council reminded the Applicant to further explore a design for an "absorption system". Otherwise an OSD system will be necessary which will require a significant extension and upgrade to stormwater infrastructure from Kent Road to the site which will form part of the Developer's obligations.</p>

13 February 2025	The Applicant submitted a response to Council's RFI letter dated 24 December, 2024 which included a detailed Traffic Impact Statement prepared by WSP Consulting dated February, 2025. In terms of Stormwater drainage the Applicant maintained that a detailed investigation could be carried out at the Development Applications for Stage 2.
11 March 2025	Revised Clause 4.6 Objection Statements lodged in respect of the variations being sought to the Maximum permissible Building Height and the Maximum Permissible Floor Space Ratio.
12 March 2025	<p>The Bayside Traffic Development Advisory Committee considered a further report on the subject application which included a review of the Applicant's Traffic Impact Assessment report prepared by WSP Consulting dated February, 2025 and resolved the following:</p> <ol style="list-style-type: none"> <i>1. That the development is not supported on traffic grounds due to the inability of the surrounding road network to accommodate the scale of the development sought. Multiple intersections operate unsatisfactorily with excessive and unreasonable queues.</i> <i>2. That the turning head be designed to accommodate the swept path turning movements of HRVs in addition to MRVs.</i>
13 March 2025	<p>TfNSW advised that they do not support the application in its current form and in order to reconsider the application additional information is required. TfNSW also identified that <i>no transport or traffic measures are proposed by the Applicant to reduce the safety and network efficiency impact of the proposed development on the surrounding transport network.</i></p> <p>Furthermore, <i>"TfNSW recommends that the Applicant investigate and propose appropriate transport mitigation measures to reduce the delay and associated safety impact of the proposed development on the classified road network to address TfNSW comments ...It is also recommended that the Applicant appropriately assess the impact on the nearby transport network"</i></p>
27 March 2025	3 rd RFI issued to the Applicant listing a range of issues including deficiencies in traffic aspects as highlighted by the Bayside Traffic Advisory Development Committee and TfNSW. Council also acknowledged that additional information submitted by WSP Consulting dated 4 February, 2025 that concluded <i>"no</i>

	<p><i>additional upgrade of Council's system is required"</i> had been referred to Council's Development Engineers for comment.</p> <p>The Applicant provided a response to Council's RFI letter and stated that <i>"Traffic and transport response to TfNSW will take 4-6 weeks – that takes it to mid May. This is very dependent on TfNSW speed of response with regard to data requests about capacity of Mascot Railway Station"</i>.</p>
7 April 2025	The Applicant submitted amended plans/ additional information.
15 April 2025	The Application was reviewed by the Bayside DRP – (3 rd time)
8 May 2025	<p>4th RFI issued to the Applicant listing 10 items which required amended plans/ additional information/ clarification as follows:</p> <ol style="list-style-type: none"> 1. Current Plans to be assessed 2. Additional information required on plans 3. Design Excellence/ Design Review Panel 4. Proposed variation of Floor Space Ratio 5. Connectivity/ Through Site Pedestrian Link 6. Traffic/ Traffic Committee/ TfNSW 7. Stormwater Management 8. Tree Management 9. Proposed Sale of part of Chalmers Crescent 10. Designing with Country – First Nations.
28 May 2025	<p>Interim response received from the Applicant commenting on some of the 10 items which required amended plans/ additional information. Key responses included:</p> <ul style="list-style-type: none"> • <i>"WSP Consultants have been tasked with responding to the RFI from TfNSW. They advise that we should allow eight weeks for this reply taking us to the middle of July. Then it will be up to TfNSW to respond"</i>. • With regard to the proposed variation of FSR the Applicant explained that they will await the further traffic impact statements/ studies and the response from TfNSW before modifying the current Clause 4.6 Objection statement. • The Applicant also maintained that further site testing and a definitive stormwater solution were still not required at the Concept Stage and that Council's Development Engineers were seeking a level of detail not necessary at the Concept DA stage.

3 June, 2025	Council reminded the Applicant to submit a response to all of the the items listed in Council's RFI letter dated 8 May, 2025 by no later than Wednesday 11 June, 2025.
11 June 2025	A written response was received from the Applicant which contained responses to all of the items listed in Council's RFI letter dated 8 May, 2025.
26 June 2025	A further Council Assessment Briefing Report regarding the status of the application was considered by the Sydney Eastern City Planning Panel. Key comments raised by the Panel included a request for the Applicant and Council staff to meet to discuss outstanding information with a further briefing to be considered by the Panel in early August, 2025.
10 July, 2025	As per the SECPP's suggestion a meeting was held at Council involving the Applicant's project team and Council staff. All of the 10 items requiring amended plans/ additional information (as listed in the Briefing Report to the Panel's meeting on 26 June, 2025) were discussed.
21 July 2025	A summary of the meeting outcomes and actions required was issued and the Applicant was requested to submit amended plans/ additional information by 4 August, 2025.
4 August, 2025	<p>The Applicant submitted amended plans/ additional information addressing some of the issues. Overall, Council now has sufficient information to finalise an assessment on seven (7) of the ten (10) outstanding items as listed below:</p> <ul style="list-style-type: none"> • Current plans on which the assessment has been based. • Additional information required regarding carparking layouts. • Design Excellence/ Design Review Panel • Connectivity/ Through Site Pedestrian Link • Tree Management • Proposed Sale of part of Chalmers Crescent • Designing with Country First Nations <p>However, the Applicant did not submit any amended plans/ additional information for the remaining three (3) significant outstanding items as listed below, rather the Applicant outlined timeframes for submitting the additional information required.</p> <p>Details of the three (3) outstanding items and the Applicant's comments are provided below:</p> <ul style="list-style-type: none"> • <u>Traffic/ Traffic Committee / Transport for NSW</u>

	<p>The Applicant advised that revised Traffic Reports/ Impact Assessments will be available for referral to TfNSW & Council by 8 September, 2025. Council notes that it is likely that TfNSW may require up to 4 weeks to review the new data whilst Council would need to refer the new data to the Bayside Traffic Advisory Development Committee. Therefore, feedback on the revised traffic data is unlikely to be available until mid -late October, 2025.</p> <ul style="list-style-type: none"> <u>Proposed Variation of Floor Space Ratio</u> The Applicant is aware of the need to submit a revised Clause 4.6 Objection Statement in order to seek a variation of the Maximum permissible Floor Space Ratio of 3:1 which applies to the subject site. However, they have advised that they will be including some data from the revised traffic reports in their revised Clause 4.6 Objection Statement which will not be available until 8 September, 2025 at the earliest. As outlined above comments on the revised traffic reports/ impact statements are unlikely to be available prior to the end of October, 2025. Therefore, a revised Clause 4.6 Objection statement incorporating the relevant traffic data would likely not be available until late October, 2025. <u>Stormwater Management</u> The Applicant has advised that ground testing to determine ground absorption co-efficients and laboratory testing needs to be undertaken. Therefore, an amended stormwater concept plan is being prepared by their stormwater drainage consultants (WSP Consulting) which is likely to be lodged by 8 September, 2025.
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5. STATUTORY CONSIDERATIONS

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

- (a) *the provisions of any environmental planning instrument, proposed instrument, development control plan, planning agreement and the regulations*
 - (i) *any environmental planning instrument, and*
 - (ii) *any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent*

- authority (unless the Planning Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and
- (iii) any development control plan, and
- (iiia) any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4, and
- (iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph),
- that apply to the land to which the development application relates,
- (b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,
- (c) the suitability of the site for the development,
- (d) any submissions made in accordance with this Act or the regulations,
- (e) the public interest.

Section 4.15(1)(a)(i) – The Provisions of any Environmental Planning Instrument

The following Environmental Planning Instruments are relevant to this application:

- *State Environmental Planning Policy (Biodiversity and Conservation) 2021*
- *State Environmental Planning Policy (Sustainable Buildings) 2022*
- *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 related to the Environmental Planning Instruments listed above are outlined in **Table 3** below and discussed in more detail where necessary.

Table 3: Summary of Applicable Environmental Planning Instruments

EPI	Matters for Consideration	Comply (Y/N)
State Environmental Planning Policy (Biodiversity & Conservation) 2021	The Application has been assessed under Chapter 2 Vegetation in non-rural areas of the Biodiversity and Conservation SEPP and found to be acceptable. Refer to the more detailed discussion below following this Table.	Yes
State Environmental Planning Policy (Sustainable Buildings) 2022	The application has been assessed under the provisions of the Sustainable Buildings SEPP and found to be acceptable. Refer to the more detailed discussion below following this Table.	Yes
State Environmental Planning Policy (Planning Systems) 2021	The proposed development has a Capital Investment Value \$224,054,576 (excluding GST) which exceeds a CIV of \$30,000,000 and as such is classified as “Regionally Significant Development” under the provisions of the Planning Systems SEPP. Accordingly, the Sydney Eastern City Planning Panel (SECPP) will be the Consent Authority	Yes

	for this application. The requirements of the Planning Systems SEPP with regard to the pathway for “Regionally Significant Development” have been complied with. Refer to the more detailed discussion below following this Table.	
State Environmental Planning Policy (Resilience & Hazards) 2021	<p>The provisions of Chapter 4 – Remediation of Land of this SEPP are applicable to the proposed Concept Development Application.</p> <p>Council's Contaminated Land Officer supports the application and has advised as follows:</p> <p><i>I concur with the assessment completed in the 'Contamination Advice - Concept DA 2024/56 - Response to Bayside City Council RFI'. Investigations completed so far are satisfactory for a Concept DA. The site can be made suitable for the proposed commercial development, subject to the completion of a DSI. The DSI should be prepared following demolition of site structures to adequately characterise the site. I have no objection to the proposal subject to compliance with the following conditions.</i></p> <p>Refer to the more detailed discussion below following this Table.</p>	Yes
State Environmental Planning Policy (Transport and Infrastructure) 2021	<p>Pursuant to the provisions of Section 2.122 and Schedule 3 of the Transport and Infrastructure SEPP the proposed development with a Gross Floor Area (GFA) of 48,645m2 constitutes “commercial premises” in excess of 10,000m2 in GFA and as such requires referral to Transport for NSW (TfNSW).</p> <p>This application has been referred to TfNSW on two separate applications and they are seeking additional information from the Applicant. Therefore, traffic impacts/ aspects associated with the proposed development are yet to be resolved. Refer to the more detailed discussion below following this Table.</p>	No
Bayside Local Environmental Plan 2021	<p>The Applicant seeks to vary the “development standards” for the maximum permissible Building Height and the maximum permissible Floor Space ratio. In this regard the Applicant has submitted two Clause 4.6 Objection Statements, however, the one relating to varying the FSR is incomplete as the Applicant is waiting to receive additional traffic data to form part of their justification for varying the FSR. Therefore, the assessment of both of the Clause 4.6 Objection Statements cannot be completed at this time. Other aspects of Bayside LEP 2021 requiring consideration include Design Excellence and Stormwater design. Refer to the more detailed discussion below following this Table.</p>	No

State Environmental Planning Policy (Biodiversity and Conservation) 2021

Chapter 2 Vegetation in non-rural areas

This chapter applies to non-rural areas of the state, including the Bayside Local Government Area. The aims are to (a) *protect the biodiversity values of trees and other vegetation in non-rural areas of the State*, and (b) *preserve the amenity of non-rural areas of the State through the preservation of trees and other vegetation*. This chapter is triggered due to the request to remove twenty – eight (28) trees.

The application was accompanied by an Arboricultural Impact Assessment Report prepared by Urban Arbor dated 3 February, 2025. Council's Tree Management Officer (TMO) reviewed the report, conducted a site inspection and concluded that the proposed development was seeking removal of all 33 trees associated with the site as listed below:

Located within the subject site along the southern boundary

- 4 x *Alnus jorullensis* (Evergreen Alder)
- 6 x *Callistemon viminalis* (Weeping Bottlebrush)
- 8 x *Auranticarpa rhombifolia* (Diamond-leaf Pittosporum)
- 4 x *Waterhousea floribunda* (Weeping Lilli Pilli)
- 6 x Unidentified species located within an inaccessible area adjacent the eastern boundary
- 1 X *Callistemon viminalis* (Weeping Bottlebrush)

Public Domain

- 2 X *Eucalyptus spp*

Located within the subject site adjacent to the Chalmers Street frontage

- 2 x *Eucalyptus microcorys* (Tallowwood)

Of the 33 trees listed above Council's TMO recommended retention of the two (2) Tallowwood trees as they had an approximate height of 22m and they could be integrated with the overall design of the proposed development.

During the meeting held on 10 July, 2025 involving the Applicant's project team and Council staff to discuss outstanding issues the Applicant's Landscape Consultant referred to an additional plan (yet to be submitted to Council) containing information on mature/ advanced plantings and a tree replenishment plan including a feature tree in the Chalmers Crescent cul-de-sac turning bulb in a 400 litre tub.

The additional information referred to above was subsequently lodged with Council on 4 August 2025. Council's TMO reviewed the new information and advised that they supported the revised proposal (inclusive of the removal of the 2 x Tallowwoods) subject to conditions of consent. One of the conditions includes Tree Offset Controls whereby to offset the loss of 33 live trees the Applicant is required to replace the trees at a 3:1 replacement ratio, therefore a total of ninety-nine (99) new trees shall be planted to offset the canopy loss for environmental reasons.

State Environmental Planning Policy (Sustainable Buildings) 2022

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

Provisions for non-residential (ie commercial) buildings are contained in Chapter 3 of this SEPP. Agreements for compliance with the National Australian Built Energy Rating Systems (NABERS) are required to be submitted at the Development Application stage.

More detailed provisions in the form of a Section J report are also required at the Development Application stage as they outline energy efficiency requirements for commercial buildings in Australia ensuring compliance with the National Construction Code (NCC) standards.

The primary purpose of a Section J report is to optimise energy use in buildings for heating, cooling, ventilation, lighting and other services. Such allows for the reduction of overall energy consumption and greenhouse gas emissions thereby promoting sustainable construction practices.

Given that a Concept Development Application has been lodged for the proposed development the more detailed reports associated with NABERS agreements and Section J Reports referred to above are not required at this stage.

Nonetheless, the Applicant has submitted a Sustainability Strategy for the proposed development prepared by WSP Consulting which talks about the broader concepts of renewable energy and various targets for energy, Green Star and water. This document is considered adequate at this point in time given the conceptual nature of the current Development Application.

State Environmental Planning Policy (Planning Systems) 2021

Chapter 2: State and Regional Development

The proposed development has a Capital Investment Value of \$224,054,576.00 (excluding GST). Schedule 6 of SEPP (Planning Systems) 2021 requires that any development with a CIV of greater than \$30,000,000 be referred to the Sydney Eastern City Planning Panel (SECPP) for determination. Accordingly, the SECPP has considered two Council Assessment Briefing Reports regarding the status of the proposed development and is the consent authority for any determination of the subject Concept Development Application.

State Environmental Planning Policy (Resilience and Hazards) 2021

Chapter 4: Remediation of Land

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

Specifically, that Clause states:

- (1) *A consent authority must not consent to the carrying out of any development on land unless—*
 - (a) *it has considered whether the land is contaminated, and*
 - (b) *if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and*
 - (c) *if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.*
- (2) *Before determining an application for consent to carry out development that would involve a change of use on any of the land specified in subsection (4), the consent*

authority must consider a report specifying the findings of a preliminary investigation of the land concerned carried out in accordance with the contaminated land planning guidelines.

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

The application was referred to Council's Contaminated Land Officer (CLO) who advised that:

There is insufficient information provided to determine whether the site and the development are suitable from a contaminated land perspective, additional investigation will be required. As per Chapter 4 of the Resilience and Hazards SEPP and given the site findings, this DA must complete a Detailed Site Investigation (DSI) to determine that the site is suitable for the proposed development, or whether remediation is required.

The DSI must make a clear conclusion about site suitability without being subject to the completion of significant investigations that would negate the site suitability conclusion. Following completion of the DSI, if remediation is required to make the site suitable, a Remedial Action Plan (RAP) must be prepared and submitted to Council with the DSI.

The need for the additional information as requested by Council's CLO was conveyed to the Applicant in Council's first Request For Information (RFI) letter dated 31 July, 2024.

The Applicant on 11 September 2024 in response to Council's RFI letter issued on 31 July, 2024 advised that they believed that the report (Preliminary Stage 2 Environmental Site Assessment) prepared by Environmental Investigation Services dated 30 November, 2018 that was submitted with the Concept Development Application was sufficient to establish that the site was suitable for the development.

Council's CLO further reviewed the documents originally submitted with the application and identified that there were several assessment gaps in the reports and that these matters needed to be addressed in a DSI. Accordingly, the need for the preparation of a DSI was reiterated to the Applicant in Council's second RFI issued on 24 December 2024.

On 17 February, 2025 the Applicant submitted an additional report prepared by WSP Consulting dated 13 February, 2025 entitled "*Contamination Advice – Concept DA 2024/56 – Response to Bayside City Council RFI*". The Conclusions and Recommendations of the additional report prepared by WSP Consulting included the following:

Based on the documents reviewed and site walk over inspection WSP agrees that a full DSI is required prior to site redevelopment and that the DSI should be completed in accordance with current guidance endorsed under Section 105 of the Contaminated Land Management Act 1997, including, but not limited NSW EPA (2020a & 2022) and NEPC (2013).

Similarly, based on WSP's review of the EIS (2018) initial soil screening results, PASS/ASS may require management as part of the proposed site redevelopment works.

WSP, however, considers that for the required DSI to provide meaningful contamination information, which adequately supplements the Preliminary ESA, the DSI works should be

scheduled post vacation of the properties and ideally post demolition of existing buildings and structures to ground slab level. It is clear from WSP's review of available documents and the site inspection that large areas of the property are inaccessible due to current buildings/ structures and lessee activities.

Following the DSI, if contamination is identified an RAP could be prepared to describe how the site can be made suitable for the intended use. A site specific ASSMP (acid sulfate soil management plan) could also then be prepared in accordance with ASSMAC (1998)⁷.

WSP Consulting in relation to possible contamination issues concluded their findings with the following comments:

The ESA findings identify the requirement for further contamination assessment (DSI) and remediation/ management. WSP considers that the works completed to date are adequate to establish that the property can be made suitable, after remediation for the purpose for which the development is proposed.

For the reasons stated above, WSP considers that it would be preferable, and most likely to facilitate the best environmental outcomes, if Council defers the requirements to complete a DSI and ASSMP to a future DA for the actual development works, preferably in such a way that the requirements for the DSI, including further ASS assessment (if warranted), can be completed as conditions of Development Consent to occur post completion of demolition activities.

Council's CLO reviewed the additional report submitted by WSP Consulting dated 13 February 2025 and provided the following comments:

I concur with the assessment completed in the 'Contamination Advice - Concept DA 2024/56 - Response to Bayside City Council RFI'. Investigations completed so far are satisfactory for a Concept DA. The site can be made suitable for the proposed commercial development, subject to the completion of a DSI. The DSI should be prepared following demolition of site structures to adequately characterise the site. I have no objection to the proposal subject to compliance with the following conditions.

The conditions of consent recommended by Council's CLO should be included in any approval to be issued for the proposed Concept Development Application.

State Environmental Planning Policy (Transport and Infrastructure) 2021

Pursuant to the provisions of Section 2.122 and Schedule 3 of the Transport and Infrastructure SEPP the proposed development with a Gross Floor Area (GFA) of 48,645m² constitutes "commercial premises" more than 10,000m² in GFA and as such requires referral to Transport for NSW (TfNSW).

This application has been referred to TfNSW on two separate applications and they are seeking additional information from the Applicant. Therefore, traffic impacts aspects associated with the proposed development are yet to be resolved.

The most recent advice issued by TfNSW issued on 13 March 2025 is attached to this report and shown below:

Reference is made to Council's referral regarding the abovementioned Development Application (DA) which was referred to Transport for NSW (TfNSW) for comment in accordance with Section 2.122 of the State Environmental Planning Policy (Transport and Infrastructure) 2021 and in accordance with EP&A Regulation 2021, s38 (Amendment of development application).

*TfNSW has reviewed the material submitted and does not support the DA in its current form due to the reasons listed in **TAB A**. To reconsider the DA, TfNSW requires additional information as detailed in **Tab B**. Refer to attachments to this report.*

It is acknowledged that the Traffic Impact Assessment (TIA) prepared by WSP dated 10 February 2025 submitted with the DA recommends the transport impact of the proposed development at the Project site be reassessed.

It has also been identified by TfNSW that no transport or traffic amelioration measures are proposed by the Applicant to reduce the safety and network efficiency impact of the proposed development on the surrounding transport network.

*As such, TfNSW recommends that the Applicant investigate and propose appropriate transport mitigation measures to reduce the delay and associated safety impact of the proposed development on the classified road network to address TfNSW comments in **TAB A**. It is also recommended that the Applicant appropriately assess the impact on the nearby transport network.*

*Following receipt of updated information that addresses the comments in **TAB A** and the additional information required provided in **Tab B**, TfNSW will review the material and respond accordingly.*

TAB A

TfNSW offers the following comments in respect of public and active transport:

1. *The previous TfNSW letter provided to Council dated 29 May 2024 stated that "the Proponent also needs to assess/investigate the following:*
 - a. *The impacts of the proposed development on the capacity and adequacy of active transport and public transport facilities in the vicinity of the site and measures to ensure a satisfactory outcome for people walking to and from nearby public transport.*
 - b. *Measures to minimise private vehicle use and maximise use of active and public transport to/from the proposed development, including consideration of travel demand management measures and appropriate levels of on- site parking."*

The information requested above has not been provided in the material submitted.

2. *To provide a sense of scale of the proposed development, the following is provided for consideration:*

- a. Based on an area of 48,645m² GFA and an estimated 20m² GFA per person, the proposed development may potentially cater for up to approximately 2,430 people on-site at any one time (or more depending on the site configuration and tenancies).
 - b. If there are 608 car parking spaces on-site, then that could potentially cater for 668 people, assuming a ratio of 1.1 people per car.
 - c. A total of approximately 1,762 people would likely utilise buses, trains and active transport to access the site.
 - d. One reference to active transport within the TIA notes “footpaths along side streets including Kent Road and Chalmers Crescent present outstanding wear including cracks and uneven surfaces”.
3. No information has been provided to assess whether there is adequate capacity in the nearby public transport network or active transport network to cater for the anticipated number of people accessing the proposed development.
 4. It is noted that the Statement of Environmental Effects prepared by City Planning Works dated 21 February 2024 (SEE) states that “a green travel plan will be prepared at the DA stage. However, much of the content of a green travel plan is mandatory under the provisions of the DCP.”
 5. The previous TfNSW letter provided to Council dated 29 May 2024 stated “a preliminary Green Travel Plan (**GTP**) is to be submitted for review as part of any future Development Application. The NSW Government provides a range of resources to help in the development of a GTP at www.mysydney.nsw.gov.au/travelchoices/tgm#support”

TfNSW offers the following comments in respect of road-based transport:

1. The traffic assessment that concludes recommending that additional assessment is required is noted.
2. Based on the conclusions of the TIA, a preliminary review of the SIDRA models by TfNSW has identified that there were some large outflows between intersections. For example, between I-03 and I-01 there is an outflow of 322 vehicles during the existing PM peak hour. Large inflows and outflows should be explained as part of any future modelling reports.

Based on the foregoing, TfNSW is amenable to a revised transport assessment as recommended by the TIA and provides the following comments in response to the TIA’s conclusions as summarised in **Table 1**.

Table 1: Summary of TIA Conclusions and TfNSW Response

TIA Conclusions	TfNSW Comment
“A reduced traffic generation rate could be applied across the study area, given its proximity to extensive public transport options including rail and bus services”	While this is considered satisfactory in-principle, this needs to consider the number of car parking spaces provided on-site and how that relates to traffic generation rates within the TfNSW Guide to Transport Impact Assessment (2024) or

	<i>other similar sites.</i>
<i>"The Project site is anticipated to operate 24 hours a day with multiple staff shifts, meaning workforce arrivals and departures will likely occur outside the typical 9 AM to 5 PM working hours. This factor should be considered when assessing travel behaviour, parking demand, and potential traffic impacts beyond traditional peak hours."</i>	<i>Evidence needs to be provided to justify a departure from the typical traffic generation rates contained within the TfNSW Guide to Transport Impact Assessment.</i>
<i>"The additional GFA of the Project site, exceeding an FSR of 3.0:1 and consistent with other approvals, is not expected to have a measurable or significant impact on the traffic modelling results."</i>	<i>Although the FSR may be similar, the critical factor will be the number of car parking spaces provided and how these car parking spaces will be used.</i>
<i>"Conducting surveys of existing traffic movements at nearby commercial developments could provide more accurate trip generation rates for the study area. For example, Site 5 (1-5 Chalmers Crescent, Mascot), which has been recently completed and is 70% occupied according to its website (https://onechalmers.com.au/), was projected to generate 148 and 106 vehicle movements during the AM and PM peak hours, respectively, based on standard TfNSW rates. However, a recent traffic survey at the site recorded approximately 80 and 70 vehicle movements during these periods, highlighting that actual traffic generation is lower than expected, even with 70% occupancy. This discrepancy underscores the need to re-evaluate trip generation assumptions and engage further with Bayside Council and TfNSW."</i>	<i>TfNSW is amenable to accepting adjusted traffic generation rates for the proposed development with satisfactory evidence and reasoning.</i>

Tab B – Additional Information Required

1. Active and Public Transport

- a) *The Applicant is to provide additional evidence regarding the maximum number of people anticipated to be accommodated on-site at any one time, their likely travel to and from the site and whether there is sufficient capacity in each transport network to cater for them and whether mitigation measures are required. Questions to consider include, but are not limited to:*

- i. *Are the footpaths of adequate width to cater for the additional people that may walk to the proposed development to and from the nearby public transport facilities?*
- ii. *Are there sufficient facilities to allow people to ride to the proposed development?*
- iii. *Are the bus stops and bus routes of adequate capacity?*
- iv. *Is there sufficient capacity on the trains at Mascot Station during peak times to cater for the proposed additional people that will access the proposed development?*
- v. *Is there an opportunity to create a through-site link via the adjoining property to the north, direct to Coward Street or the east to Bourke Road?*

2. Road-Based Transport

- a) *A project to remove the left turn slip lane from Bourke Road to Coward Street is proposed. As such, all future development modelling scenarios must include this slip lane removal.*
- b) *The impact of the proposed development appears to be obscured by the background growth on the road network and other projects nearby. Considering this, TfNSW recommends the following additional modelling scenarios be undertaken to better ascertain the impact of the proposed development and how it relates to the amount of background growth on wider road network:*
 - i. *Existing (including slip lane removal) + Development.*
 - ii. *Existing (including slip lane removal)+ 2036 base STFM.*
 - iii. *Existing (including slip lane removal)+ 2036 base STFM + development.*
 - iv. *Existing (including slip lane removal)+ 2036 base STFM + development + mitigation measures (for example, removal of parking at peak times, extension of a turn bay etc).*
 - v. *Existing (including slip lane removal)+ 2036 base + approved nearby developments above that in the Strategic Model.*
 - vi. *Existing (including slip lane removal)+ 2036 base + approved nearby developments above that in the Strategic Model + mitigation measures (for example, removal of parking at peak times, extension of a turn bay etc).*

Please note that for scenarios v. and vi. above, additional information has been sought from the TfNSW Advanced Analytics and Insights team to confirm whether there has been any “double counting” of traffic movements for approved developments that are already included with the STFM output plots and whether the impact of the new western Sydney airport has been considered. This information will be provided to Council as soon as it is available.

Appropriate evidence and justification is to be provided for the traffic generation rates used as well as the inbound and outbound distribution of traffic movements (refer to the TfNSW comments in Table 1). It is noted that the standard office traffic distribution rates in the AM peak hour are likely closer to 90%/10% compared to 80%/20% relied upon in this assessment. In this regard, appropriate evidence/justification is required.

3. Green Travel Plan (GTP)

- a) *A GTP is to be submitted for review before the DA’s determination. This will need to address the comments in Point 1 above. The NSW Government provides a range of*

resources to help in the development of a GTP at www.mysydney.nsw.gov.au/travelchoices/tdm#support.

Council in its request for further information letter to the Applicant dated 13 March 2025 informed the Applicant of the need to provide additional traffic related information as per the advice shown above from TfNSW. The Applicant on the same day advised Council that a *“Traffic and transport response to TfNSW will take 4-6 weeks – that takes it to mid-May. This is very dependent on TfNSW speed of response with regard to data requests about capacity of Mascot Railway Station”*.

On 4 August 2025 the Applicant advised Council that revised Traffic Reports/ Impact Assessments will be available for referral to TfNSW and Council by 8 September, 2025. This information has not been received.

Council notes that it is likely that TfNSW may require up to four (4) weeks to review the new data whilst Council would need to refer the new data to the Bayside Traffic Advisory Development Committee. Therefore, feedback on the revised traffic data would be unlikely to be available until mid-late October 2025.

Bayside Local Environmental Plan 2021

Zoning

The subject site is zoned E3 Productivity Support under the provisions of Bayside Local Environmental Plan 2021. Refer to Figure 26 below.



Figure 23 depicts the subject site, which is defined by the red border around the perimeter of the site, which is zoned E3 Productivity Support under the provisions of Bayside LEP 2021

The proposed use of the development will be for the purposes of commercial office space and is “characterised” as “commercial premises” which includes “office premises” as defined below:

office premises means a building or place used for the purposes of administrative, clerical, technical, professional or similar activities that do not include dealing with members of the public at the building or place on a direct and regular basis, except where such dealing is a minor activity (by appointment) that is ancillary to the main purpose for which the building or place is used.

The use of the proposed five (5) x eight (8) storey towers for “commercial premises” is a permissible use with consent in the E3 Productivity Support zone.

The proposed development also incorporates cafes and restaurants at the ground floor/ street level. These elements of the proposal are “characterised” as “food and drink premises” as defined below:

food and drink premises means premises that are used for the preparation and retail sale of food or drink (or both) for immediate consumption on or off the premises, and includes any of the following-

- (a) a restaurant or café,
- (b) take away food and drink premises
- (c) a pub,
- (d) a small bar.

Under the provisions of Bayside LEP 2021 “food and drink premises” are also a permissible use with consent in the E3 Productivity Support zone.

Other Provisions of Bayside LEP 2021

Aims of the Plan

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

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

- (aa) to protect and promote the use and development of land for arts and cultural activity, including music and other performance arts,
- (a) to protect, conserve and enhance Aboriginal cultural heritage and the environmental, cultural, scenic, built and landscape heritage of Bayside,
- (b) to provide high quality open space areas and recreational facilities,
- (c) to reduce community risk and improve resilience to, and from, urban and natural hazards,
- (d) to encourage sustainable economic growth and development in Bayside,
- (e) to create a liveable urban place through the application of design excellence in all elements of the built environment and public domain,
- (f) to encourage diversity in housing to meet the needs of, and enhance amenity for, Bayside residents,
- (g) to encourage walking, cycling and use of public transport through appropriate intensification of development densities surrounding transport nodes,

- (h) *to encourage development that demonstrates efficient and sustainable use of energy and resources in accordance with ecologically sustainable development principles,*
- (i) *to enhance and protect the functions and roles of the international trade gateways of Sydney Airport and Port Botany,*
- (j) *to increase urban tree canopy cover and enable the protection and enhancement of green corridor connections,*
- (k) *to promote and enhance the amenity of Botany Bay's foreshores and Bayside's waterways.*

The concept proposal of providing a commercial/ office development consisting of five (5) x eight (8) storey towers is considered to align with the objectives of the Bayside LEP 2021. However, the extent of the impacts likely to be generated by the additional 10,836m² of GFA (ie 28.7%), specifically traffic impacts, are unknown at this stage and not considered in the applicant's detailed Clause 4.6 Objection Statement. Therefore, the proposal is inconsistent with the aims of the Bayside LEP 2021.

Zone Objectives and Land Use Tables

Section 2.3 refers to the objectives for each of the Land Use zones and Section 2.3 (2) states that *"the consent authority must have regard to the objectives for development in a zone when determining a development application in respect of land within the zone"*.

The objectives for the E3 Productivity Support zone under Bayside LEP 2021 are as follows:

- *To provide a range of facilities and services, light industries, warehouses and offices.*
- *To provide for land uses that are compatible with, but do not compete with, land uses in surrounding and local commercial centres.*
- *To maintain the economic viability of local and commercial centres by limiting certain retail and commercial activity.*
- *To provide for land uses that meet the needs of the community, businesses and industries but that are not suited to locations in other employment zones*
- *To provide opportunities for new and emerging light industries.*
- *To enable other land uses that provide facilities and services to meet the day to day needs of workers, to sell goods of a large size, weight or quantity or to sell manufactured goods on-site.*
- *To provide redevelopment that is likely to contribute to the locality, including by improving the visual character of the locality, improving access and parking, reducing land conflicts and increasing amenity for nearby residential development.*
- *To encourage uses in arts, technology, production and design sectors.*
- *To promote businesses along main roads and to encourage a mix of compatible uses.*

One of the key objectives of the E3 Productivity Support Zone is to provide redevelopment that is likely to contribute to the locality including improving access and parking. Based on the comments from Council's Traffic Engineers, the Bayside Traffic Development Advisory Committee and TfNSW the full traffic generation and impacts associated with the proposed development have not been quantified and that there is no evidence which suggests that the local road network will not be over-saturated with reduced parking and access.

Development Standards, Miscellaneous and Local Provisions

Bayside LEP 2021 also contains controls relating to development standards, miscellaneous provisions and local provisions. The controls relevant to the proposal are considered in **Table 4** below.

Table 4: Consideration of Bayside LEP 2021 Controls

Control	Requirement	Proposal	Comply
Height of buildings (CI 4.3(2))	Maximum Height of Buildings for the subject site is 44m.	The proposed development has a total height of 46m or 51.0 AHD which equates to a variation of 2m (4.5%). A Clause 4.6 Objection Statement to vary the development standard has been lodged by the Applicant.	No (Refer to the discussion under <i>Clause 4.6 – Exceptions to development standards</i> below)
Floor Space Ratio (CI 4.4(2))	Maximum Floor Space Ratio for the subject site is 3:1	The total site area is 12,603m ² . Based on a Maximum FSR of 3:1 the maximum Gross Floor Area (GFA) is therefore 37,809m ² . The proposed GFA is 48,645m ² which produces a FSR of 3.86:1. The additional GFA of 10,836m ² when compared to the maximum permissible GFA equates to a variation of 28.7% above the maximum permissible FSR of 3:1. A Clause 4.6 Objection Statement to vary the development standard has been lodged by the Applicant.	No (Refer to the discussion under <i>Clause 4.6 – Exceptions to development standards</i> below)
Acid sulphate soils (ASS) (CI 6.1)	Class 1 and 2	Some samples provided from boreholes (BH1 2.2-2.5m BGL and BH1 5.2-5.4m BGL) were found to exceed the sulfur trail action criteria for presence of ASS conditions. Based on these results, it was determined that soils below a depth of 2.0m BGL are considered to contain Potential ASS. As such, an ASS Management Plan (ASSMP) will be required and implemented during works as the depth of proposed excavations (approximately 3.0m BGL) will intercept Potential ASS.	No

		An ASSMP has not been submitted.	
Stormwater and water sensitive urban design (CI 6.3)	"Absorption" system proposed.	<p>Council's Development Engineers have consistently requested additional details such as "absorption" rates and stormwater details at this Concept DA stage to ensure that the proposed method of drainage is viable.</p> <p>The Applicant on 04/08/25 advised that ground testing to determine ground absorption co-efficients and laboratory testing will be undertaken. The Applicant explained further an amended stormwater concept plan will be submitted to Council by 08/09/25.</p>	No
Airspace operations (CI 6.7)	Obstacle Limitation Surface (OLS) height limit of 51.0m AHD	The application was referred to Sydney Airport Corporation (SAC) who advised that no objections were raised to the proposed height of 51.0m AHD. However, it was re-iterated by SAC that the height of 51.0m AHD was the limit for all structures inclusive of all lift over-runs, vents, chimneys, aerials, TV antennae, construction cranes etc.	Yes subject to future building design
Development in areas subject to aircraft noise (CI 6.8)	Additional noise attenuation measures apply to sites located within the 25-30 Aircraft Noise Exposure Forecast (ANEF) contour	<p>The site is located within the 25-30 ANEF contour. The proposal consists of commercial uses only which are "conditionally acceptable" within the 25-30 ANEF contour under Table 2.1 of the Australian Standard AS 2021 for aircraft noise.</p> <p>Acoustic Reports will be required for Development Applications lodged for Stage 2 of the proposed development.</p>	Yes subject to future building design

<p>Design Excellence (CI 6.10)</p>	<p>The subject site falls under Clause 6.10 Design Excellence provisions of Bayside LEP 2021 which state that development consent must not be granted for development to which this clause applies unless the consent authority considers that the development exhibits design excellence.</p>	<p>The application was referred to the Bayside Design Review Panel on three separate occasions being 6 June 2024, 24 September 2024 & 15 April 2025. The DRP consistently maintained across the three meetings that the proposal had numerous design deficiencies. The recommendation from the DRP from its most recent meeting on 15 April, 2025 stated that:</p> <ul style="list-style-type: none"> <i>The design cannot be supported in its current form for the reasons given above</i> <i>The Panel considers that the proposal cannot be amended to achieve design Excellence in accordance with Clause 6.10 of Bayside LEP 2021.</i> <p>Refer to the more detailed discussion on this matter following this table.</p>	<p>No</p>
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Clause 4.6 Exceptions to Development Standards

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

- *Section (3)(a)- compliance with the standard is unreasonable or unnecessary in the circumstances of the case, and*
- *Section (3)(b)- there are sufficient environmental planning grounds to justify the variation.*

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

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

- in order for there to be 'sufficient' environmental planning grounds to

justify a written request under section 4.6, the focus must be on the aspect or element of the development that contravenes the development standard and the environmental planning grounds advanced in the written request must justify contravening the development standard, not simply promote the benefits of carrying out the development as a whole; and

- there is no basis in Section 4.6 to establish a test that the non-compliant development should have a neutral or beneficial effect relative to a compliant development.

The Applicant's Clause 4.6 Statement to contravene the maximum Building Height

The applicant is seeking to contravene the Building Height development standard by 2m which equates to a 4.5% variation. A contravention request in accordance with Clause 4.6 of the LEP, seeking to justify the proposed contravention, has been prepared by City Planning Works dated 11 March 2025.

The applicant's Clause 4.6 contravention request argues that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and there are sufficient environmental planning grounds to support the non-compliant Building Height. Extracts from the Applicant's 4.6 Objection Statement regarding Clause 4.6(3)(a) and Clause 4.6(3)(b) are shown below along with the Assessing Officer's comments.

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

In terms of specific comments in relation to Clause 4.6(3)(a) the Applicant's Planning Consultant submits the following:

6. Can the consent authority be satisfied that compliance with the development standard is unnecessary or unreasonable because the objectives of the development standard are achieved notwithstanding non-compliance with the standard?

6.1 At paragraph [16] of Initial Action, Preston CJ states:

*As to the first matter required by cl 4.6(3)(a), I summarised the **common ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary** in *Wehbe v Pittwater Council* at [42]-[51]*

*And although the above referenced common ways were said in the context of an objection under SEPP 1 – Development Standards in *Wehbe*, they are still applicable to the purpose of an application under a clause 4.6 variation statement.*

Preston CJ further notes in [17] of Initial Action:

the first and most commonly invoked way to establish that compliance with the development standard is unreasonable or unnecessary, because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.

- 6.2 *The site is subject to an Obstacle Limitation Surface height limit of 51.0 AHD equivalent to a building height of 46m with which the proposal complies. The OLS height control is mandatory, allowing no variation except on a temporary basis for construction and then subject to Federal aviation authority permissions. The proposal does not exceed this height limit and is the same height as the current Masterplan which was approved by CASA. Given the proposal maintains the height of building originally approved by CASA and complies with the OLS standard, compliance with the development standard is unnecessary for the purposes of clause 4.6(3)(a) of the BLEP.*
- 6.3 *The proposal satisfies not only the relevant objectives of clause 4.3 for the HoB development standard, but the proposal also complies with the general aims of the BLEP and the objectives of zone E3, in which the site is located. If all the relevant objectives are met, the numerical development standard has no further work to do and is thus unnecessary.*
- 6.4 *Additionally, as all the relevant objectives are met, it is also unreasonable to apply the development standard in this case as the impact is negligible and arises only as a consequence of not being able to excavate the site due to foundation conditions. Compliance with the relevant standard is therefore unreasonable for the purposes of clause 4.6(3)(a) of the BLEP.*
- 6.5 *The bulk and scale of the proposal is in keeping with the emerging and future character of the area to the extent that the planning controls reflect such character. There are a number of examples of buildings of similar height (within 2m). Considering that the bulk and scale is largely consistent with surrounding new commercial development in the near vicinity, the proposal presents an acceptable design and demonstrates compliance with the first test under Wehbe, quoted above.*
- 6.6 *The circumstances giving rise to the small additional height in breach of the 44m control are a combination of building separation and the desire to reduce the bulk of the towers. For these reasons, strict application of the height standard would be both unreasonable and unnecessary. Setting back the element which breaches the HoB to the middle of each tower, away from the street facades, reduces the apparent height when seen from the street and thus reduces the impact of the non-compliance.*

The Applicant's Clause 4.6 Statement to contravene the maximum Floor Space Ratio

The Applicant has submitted a Clause 4.6 Objection Statement to contravene the Floor Space Ratio by an excessive amount of 10,836m² GFA for the subject site.

The Applicant in their Clause 4.6 Objection to contravene the development standard for the maximum Building Height maintains that the increase in the maximum Building Height is a direct product of trying to limit the footprint of the five (5) towers by trying to make them slenderer and provide increased separation between them. Accordingly, the Applicant explains that the "knock-on" effect of doing this requires a height variation of 2m.

The Applicant, however, fails to acknowledge that a reduction in Floor Space Ratio closer to the maximum permissible of 3:1 and a corresponding reduction in Gross Floor Area would obviate the need for the towers to be so tall with no need then to breach the maximum permissible Building Height.

Officer's comments on proposed contravention to building height and FSR

In this context it is considered that maintaining the development standard for the maximum Building Height of 44m is not unreasonable given that there are other alternatives for the Applicant to achieve compliance via a reduction in what is considered to be an excessive variation to the maximum permissible Floor Space Ratio for the subject site.

In the event that the Applicant wishes to further pursue the proposed variation of the maximum permissible Building Height they need to demonstrate that a reduction in the excessive amount of Gross Floor Area and a corresponding reduction in Building Height is not a viable alternative to exceeding the maximum permissible Building Height.

In view of the above, the Applicant's Clause 4.6 Objection Statement to contravening the development standards of maximum permissible Building Height and FSR is not considered to be well founded.

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

In terms of specific comments in relation to Clause 4.6(3)(a) the Applicant's Planning Consultant submits the following:

7 Are there sufficient environmental planning grounds to justify contravening the development standard?

- 7.1 *Pain J held in Four2Five vs Ashfield Council [2015] NSWLEC 90 that to satisfy clause 4.6(3)(b), a clause 4.6 request must do more than demonstrate that the development meets the objectives of the development standard and the zone – it must also demonstrate that there are other environmental planning grounds that justify contravening the development standard, preferably being grounds that are specific to the site.*
- 7.2 *Preston CJ noted in Initial Action, that in order for there to be 'sufficient' environmental planning grounds to justify a written request under clause 4.6, the aspect of the development that contravenes the development standard should be the focus (as opposed to the development as a whole) of any analysis.*
- 7.3 *Pursuant to clause 4.6(3)(b) of the BLEP, there are sufficient environmental planning grounds to justify the variation to the HoB because:*
- *The proposed design is generally compliant with the bulk, scale and maximum height allowed on site. As a result, the part of the proposal which breaches the HoB standard does not generate any significant or material adverse environmental impacts on adjoining sites. In fact, it cannot be seen from the public domain in Chalmers Crescent. The lack of material impact is an environmental ground sufficient to justify the very minor contravention (2m) of the development standard on the roof at the planter room and lift overrun.*

- *The majority of the street facades are below the 44m height control by a maximum*

of 1m. The variation is proposed predominantly to achieve an optimal architectural outcome for the building by having an additional storey that allows the tower footprints to be smaller/skinnier.

- The areas which exceed the height control, the rooftop plant rooms, do not contribute to gross floor area. It is established that the breach in height for the plant room and lift overrun is not for the purpose of achieving a greater yield.*
- The scale of the building is as anticipated by the planning controls and the proposed development has a consistent number of storeys with other nearby recently approved office buildings. Accordingly, the scale of the development in terms of its three-dimensional size will not be perceived as inappropriate or antipathetic in a streetscape and urban design context.*
- The general compliance of the proposed development with the applicable controls under the SEPPs and Bayside Development Control Plan (BDCP), ensures the potential adverse environmental impact of that part of the proposal which breaches the HoB standard is within the acceptable limits established by the planning controls.*
- With respect to impact on solar access, there are no residential uses affected by shadows from the proposal. In any case, shadows from the non-compliant rooftop part of the plantrooms sits within the shadows of the compliant towers and cause no additional impact.*
- The lack of any material or discernible adverse impact resulting from the minor non-compliance of the proposal with the height control must be counted as a positive environmental planning ground (Randwick v Micaul Holdings [2016] NSW LEC 7). Achieving strict compliance would not achieve an improved outcome for the development as it would diminish the architectural outcome of slimmer towers.*
- The proposed development will generate additional employment opportunities both during the construction phase and after completion, which should be an important factor in considering the variation request. Rejecting the proposal and requiring the removal of commercial floor space in this strategically located and thoughtfully designed project would result in a missed opportunity for the community and the city at large. The impact of the exceedance is minimal, primarily due to the non-habitable roof elements involved.*
- The areas which exceed the maximum permissible height control do not contain gross floor area and will not achieve a greater yield.*
- The design of the proposal exemplifies high standards of urban and architectural quality, showcasing design excellence despite the non-compliance. The design has been refined through a detailed site analysis, multiple design iterations, and careful consideration to ensure the best outcome. The character of the existing and planned streetscape in the area has played a key role in shaping the design, making the non-compliance a suitable and deliberate response to the surrounding*

context.

- *The topographic constraints make it unsupportable to have an underground basement as sand is located beyond 2.6m on the subject site. The breach is a result of the car park having to be located above ground to ensure the towers have a stable foundation in addition to maintaining the Botany aquifer.*

For the reasons stated earlier in the report, there are no environmental planning grounds to justify the contravention of the HoB standard.

7.4 *As demonstrated above, the proposed development has satisfied the matters required to be demonstrated in Clause 4.6(3) by providing a written request that argues:*

- *Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, by establishing that the objectives of the development standard are achieved notwithstanding the non-compliance of a small part of the proposal.*
- *The environmental planning grounds relied on are sufficient to justify the breach of the development standard. The relevant items in Clause 4.6(3) of the LEP have been adequately addressed above to enable the consent authority to form the requisite opinion of satisfaction.*

In Wehbe v Pittwater Council [2007] NSWLEC 827, Preston CJ established at least five potential tests for determining whether a development standard could be considered to be unreasonable or unnecessary.

These are examined below:

Five Tests		
Part	Test	Discussion
1	<i>The objectives of the standard are achieved notwithstanding non-compliance with the standard and the compliance with the standard is unreasonable or unnecessary.</i>	<i>This is the test upon which this submission relies. It is argued by the applicant that strict compliance with the HoB standard is both unreasonable and unnecessary.</i>
2	<i>The underlying objectives of the standard are not relevant and compliance is not necessary.</i>	<i>It is not suggested that the underlying objectives of clause 4.3 of the BLEP are not relevant.</i>
3	<i>The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable.</i>	<i>It is not suggested that the underlying objectives of clause 4.3 of the BLEP would be thwarted or defeated if compliance were required.</i>

4	<i>The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable.</i>	<i>No evidence has been found to demonstrate that Council has abandoned the HoB standard in the approvals given for commercial developments.</i>
5	<i>The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.</i>	<i>The subject site is appropriately zoned and the standards, subject to a degree of flexibility, are appropriate.</i>

Officer Comment

As outlined earlier in the discussion regarding the Applicant's Clause 4.6 Objection Statement it is considered that maintaining the development standard for the maximum Building Height of 44m is not unreasonable given that there are other alternatives for the Applicant to achieve compliance via a reduction in what is considered to be an excessive variation to the maximum permissible Floor Space Ratio for the subject site.

In the event that the Applicant wishes to further pursue the proposed variation of the maximum permissible Building Height they need to demonstrate that a reduction in the excessive amount of Gross Floor Area and a corresponding reduction in Building Height is not a viable alternative to exceeding the maximum permissible Building Height.

In view of the above, the Applicant's Clause 4.6 Objection Statement to varying the development standard to vary the maximum permissible Building Height is not considered to be well founded.

Clause 4.6 Objection Statement to vary the Maximum Floor Space Ratio

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

In terms of specific comments in relation to Clause 4.6(3)(a) the Applicant's Planning Consultant submits the following:

6. Can the consent authority be satisfied that compliance with the development standard is unnecessary or unreasonable because the objectives of the development standard are achieved notwithstanding non-compliance with the standard?

6.1 *At paragraph 16 of Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118, Preston CJ states:*

*As to the first matter required by cl 4.6(3)(a), I summarised the **common ways in which an applicant might demonstrate that compliance with a***

development standard is unreasonable or unnecessary in Wehbe v Pittwater Council at [42]-[51]

And although the above referenced common ways were said in the context of an objection under SEPP 1 – Development Standards in Wehbe, they are still applicable to the purpose of an application under a clause 4.6 variation statement.

Preston CJ further notes in [17] of Initial Action:

the first and most commonly invoked way to establish that compliance with the development standard is unreasonable or unnecessary, because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.

- 6.2 By its careful design, the proposal does not result in any significant or material adverse environmental impacts on adjoining sites. The project, as designed, demonstrates how it will comply with the first test under Wehbe, quoted above. By generally complying with the planning controls, the proposal accords with the character desired for the locality by the BLEP as much as is described in the BLEP and evidenced by recent approvals.*
- 6.3 The proposal satisfies not only the relevant objectives of clause 4.4 for the FSR development standard, but that the proposal also complies with the general aims of the BLEP and the objectives of zone E3, in which the site is located. In terms of streetscape and public domain objectives, it must be said that the proposal far exceeds any objectives for improvement.*
- 6.4 The application of the development standard is unnecessary because the proposal meets all the relevant FSR objectives in the BLEP in spite of the breach of the FSR standard by 10,836m². If all the relevant objectives are met, the numerical development standard has no further work to do and is thus unnecessary. Additionally, as all the relevant objectives are met, it is also unreasonable to apply the development standard in this case as the impact of the additional floorspace is very positive in economic terms in the locality. Compliance with the relevant standard is therefore both unreasonable and unnecessary for the purposes of Clause 4.6(3)(a) of the BLEP.*
- 6.5 The bulk and scale of the proposal is in keeping with the future character of the area to the extent that the planning controls reflect such character. The proposal is sufficiently large to positively influence the future of the locality. Considering that the bulk and scale is largely consistent with new commercial developments in its vicinity, the proposal presents an acceptable design and demonstrates compliance with the first test under Wehbe, quoted above.*
- 6.6 Reducing the FSR to achieve a compliant FSR would not deliver any*

measurable environmental or amenity benefits. The proposed scheme of five towers results in smaller tower floorplates which cater to the post-Covid built form of larger commercial developments which need to provide better quality office environments to lure workers.

OFFICER COMMENT

The subject site has an area of 12,603m² which based on a Maximum Floor Space Ratio (FSR) of 3:1 allows for a Gross Floor Area (GFA) of 37,809m².

However, an additional GFA of 10,836m² is proposed which will produce an overall total of 48,645m² GFA which results in a total FSR of 3.86:1 and equates to a variation of 28.7% above the maximum permissible FSR of 3:1.

Council in its first Request For Additional Information to the Applicant on 31 July 2024 stated the following in relation to the proposed variation to the FSR:

D. FSR

The proposal seeks to vary Section 4.4 – Floor Space Ratio (FSR) of Bayside Local Environmental Plan 2021. The proposal seeks to justify this request, noting that the proposal is “compatible” with previously approved FSR variations on sites within context of the site.

The proposal exceeds the maximum permitted density for the site by 10,836sqm (+28.7%). The proposed density variation sought is situated on a significantly larger site of which is clearly identifiable and is of significant intensification.

The density sought to be achieved is directly correlated with the potential future intensification of use of the site. At the present time, insufficient information i.e. traffic report, car parking considerations etc with respect of potential future uses has been provided and it cannot be ascertained as to whether the proposed surplus density sought is capable of being appropriately catered for on the site.

Accordingly, additional information is required which demonstrates that the additional density proposed is able to be provided in a manner which ensures nil adverse traffic impacts and compliance with relevant car parking provisions

It is noted that a revised Clause 4.6 Variation Statement (prepared by CPW, Version 3 dated 11 March, 2025) was submitted in support of the non-compliance with the maximum FSR under the Bayside LEP 2021. However, it did not contain any commentary, as requested by Council, regarding the acceptability or otherwise from the impacts of the additional 10,836m² of GFA upon traffic conditions in the locality nor whether the proposed surplus density sought is capable of being appropriately catered for on the site.

Furthermore, it is noted that the current Clause 4.6 Objection Statement lists a number of other sites within the surrounding locality whereby approvals were issued for comparable variations in FSR.

Council has reviewed three of these examples and advised the Applicant that it is not necessarily the numerical comparisons of FSR that is important in this instance but rather the quantum of additional GFA produced on these other sites and the cumulative effect of all the developments combined. The details of the three sites are as follows:

- **DA No. 2019/463**, No.2 Chalmers Crescent, Mascot (FSR approved 3.93:1, additional GFA of 1,155m², variation of 31%)
- **DA No. 2019/47**, No's 1-5 Chalmers Crescent, Mascot (FSR approved 3.79:1, additional GFA of 2,505m², variation 26.4%)
- **DA No. 2019/281**, No. 253 Coward Street, Mascot (FSR approved 3.86:1, additional GFA of 3,489m², variation 28.7%)

In view of the above it is re-iterated that the Clause 4.6 Objection Statement should be amended to include an analysis of the cumulative impacts of the additional variations of FSR in the locality and whether there is environmental capacity for the local area to absorb the extent of FSR variations approved/ being sought.

The Applicant was further advised that another element to be included in any revised Clause 4.6 Objection should also comment upon as to how the current proposal containing five towers and the associated additional GFA is more environmentally compatible compared to the previous approval (DA No. 15/191) of four towers which complied with the Maximum permissible FSR of 3:1.

It is further noted that the Applicant has advised that they will be submitting an amended Clause 4.6 Objection Statement which will include some data from the revised traffic reports which will not be available until 8 September, 2025 at the earliest. As outlined above comments on the revised traffic reports/ impact statements are unlikely to be available prior to the end of October, 2025. Therefore, a revised Clause 4.6 Objection statement incorporating the relevant traffic data would likely not be available until late October, 2025.

In view of the above Council is unable to further assess the current Clause 4.6 Objection Statement in relation to varying the development standard for the maximum Floor Space Ratio as it is presently incomplete.

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

7 Are there sufficient environmental planning grounds to justify contravening the development standard?

7.1 Pain J held in Four2Five vs Ashfield Council [2015] NSWLEC 90 that to satisfy clause 4.6(3)(b), a clause 4.6 request must do more than demonstrate that the development meets the objectives of the development standard and the zone – it must also demonstrate that there are other environmental planning ground that justify contravening the development standard, preferably being grounds that are specific to the site.

7.2 Preston CJ noted in Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118, that in order for there to be ‘sufficient’ environmental planning grounds to justify a written request under clause 4.6, the aspect of the development that contravenes the development standard should be the focus (as opposed to the development as a whole) of any analysis.

7.3 Pursuant to clause 4.6(3)(b) of the BLEP, the applicant argues there are sufficient environmental planning grounds to justify the variation to the FSR because:

- General compliance of the proposed development with the applicable controls under the SEPPs and Bayside Development Control Plan (**BDCP**), ensures the potential adverse environmental impact of that part of the proposal which breaches the FSR standard is within the acceptable limits established by the planning controls for developments in the E3 zone.
- No measurable or unreasonable visual impacts on the public domain result from the proposal. The contravention occurs, is not visible from the public domain and the bulk and scale of the built form does not dominate the streetscape when viewed from surrounding sites or the public domain. Further, the resulting built form does not result in any adverse visual amenity impacts greater than that of a fully compliant building envelope. In the absence of any identifiable visual impacts associated with the proposed contravention, the proposal is considered to represent a development outcome which far exceeds the desired future character of the area whilst making major improvements to the Chalmers Crescent streetscape.
- The scale of the building is as anticipated by the planning controls and the proposed development has a consistent number of storeys with other nearby recently approved office buildings. Accordingly, the scale of the development in terms of its three-dimensional size will not be perceived as inappropriate or antipathetic in a streetscape and urban design context.
- With respect to impact on solar access, no residential uses are affected by shadow from the proposal. The FSR breach does not contribute to unreasonable overshadowing or any other amenity impact.
- The proposed FSR variation will create additional employment floor space offering an environmental benefit, especially in this area where the Council aims to promote more employment space to offset the substantial increase in residential floor space in recent years. This additional employment floor space will enhance the viability of the centre and provide essential job-related space in a location conveniently close to Sydney Airport and various transport hubs.
- The site is located in close proximity to Mascot Train Station and a range of bus services. The additional floorspace proposed is supported by the existing local infrastructure and public transport networks.
- The proposed design provides high quality office spaces, flexible tenant layouts to encourage diverse occupants, in addition to achieving a sustainability rating equivalent to Greenstar level 5. The 28% increase in

FSR from the previously approved Masterplan is required in order to develop the site to its full potential and provide premium office spaces in the Mascot/ Sydney Airport precinct.

- *Council's original comments from their assessment report of DA2017/1253 at 40 Ricketty Street are relevant to the proposed design of the subject site:*

The proposal has maintained an appropriate visual character in that the building additions are stepped in from the boundaries to further minimise any impact associated with their addition and to provide consistency with the podium type treatments within the Mascot Town Centre which is the backdrop of this development and is consistent the transformation of the area.

- *The lack of any material or discernible adverse impact resulting from the non-compliance of the proposal with the FSR control must be counted as a positive environmental planning ground (Randwick v Micaul Holdings [2016] NSW LEC 7). Achieving strict compliance would not achieve an improved outcome for the development.*

The considerations above provide strong environmental grounds justifying the contravention of the FSR standard.

7.4 *As demonstrated above, the proposed development has satisfied the matters required to be demonstrated in Clause 4.6(3) by providing a written request that demonstrates:*

- *Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, by establishing that the objectives of the development standard are achieved notwithstanding the non-compliance of a small part of the proposal as a whole.*
- *The environmental planning grounds relied on are sufficient to justify the breach of the development standard. The relevant items in Clause 4.6(3) of the LEP have been adequately addressed above to enable the consent authority to form the requisite opinion of satisfaction.*

In Wehbe v Pittwater Council [2007] NSWLEC 827, Preston CJ established at least five potential tests for determining whether a development standard could be considered to be unreasonable or unnecessary.

Officer Comment

As outlined in the preceding discussion regarding the proposal to vary the development standard for the maximum Floor Space Ratio applicable to the subject site the Applicant has advised that they will be submitting an amended Clause 4.6 Objection Statement which will

include some data from the revised traffic reports which would not be available until 8 September 2025 at the earliest. As outlined above comments on the revised traffic reports/ impact statements are unlikely to be available prior to the end of October 2025. Therefore, a revised Clause 4.6 Objection statement incorporating the relevant traffic data will not be available until late October 2025.

In view of the above Council is unable to further assess the current Clause 4.6 Objection Statement in relation to varying the development standard for the maximum Floor Space Ratio as it is presently incomplete.

Clause 6.10 Design Excellence

The subject site falls under Clause 6.10 Design Excellence provisions of Bayside LEP 2021 which state that development consent must not be granted for development to which this clause applies unless the consent authority considers that the development exhibits design excellence.

Clause 6.10(4) lists a number of design elements that a consent authority must have regard to in considering whether a development exhibits design excellence.

Furthermore, Clause 6.10(5)(b) states that development consent must not be granted to development which this clause applies where the development is in respect of a building that is, or will be, higher than 40 metres or 12 storeys (or both) unless a competitive design process is held in relation to the development, and the consent authority takes into account the results of the competitive design process.

The following definitions are relevant to the above clauses:

Competitive design process means a design competition held in accordance with the Design Competition Guidelines published by the Department in September, 2023.

Design review panel means a panel of at least 3 persons established by the consent authority.

As the application is a Stage 1 Concept Development Application only, subject to future Development Applications for the tower components of the proposed development, a competitive design process will be required at future stages of the development.

In view of the above the proposed development was referred to the Bayside Design Review Panel (DRP) on three (3) separate occasions namely, 6 June 2024, 24 September 2024 and 15 April, 2025.

At the first meeting the DRP acknowledged that the proposal was for a Stage 1 application for a very large site in a rapidly evolving urban context and that the form and massing of the proposal rather than its architectural design, materials and detailing were the relevant aspects for the Panel to consider at this point.

The feedback from the DRP across the three (3) meetings consistently identified a number of key areas where improvements to the proposal were required and these are listed below:

- *The Proponent has not adequately justified the current massing arrangement through massing studies and broader urban design principles, which in turn impact on built form. This includes a robust analysis of elements such as the OLS, solar amenity, view lines to and from the site, building separation, site connectivity, built form coming to ground vs podium language. The Panel*

requests that these constraints be specifically addressed to assist with future discussions.

- As a result of inadequate contextual analysis, the proposed massing appears to reinforce the site's isolation rather than explore how it can be better connected to its context in the short and long term. While the Panel acknowledges that some connections across adjacent sites may not exist as yet, this project could allow them to occur should those sites be redeveloped. Given the lack of a connected medium grain street network in this specific locality, this is a reasonable expectation of such a large project.*
- Of chief concern is the continuous three storey podium which prevents existing and future at grade links across adjacent sites to local street networks; while the podium is similar to currently approved built form, this site is significantly larger and this application (which includes more than 25% GFA) provides a great opportunity to reassess the site in terms of connectivity, permeability and community engagement*
- Perhaps due to the site's current isolation, the Chalmers Crescent frontage is lined with services and parking and apart from five commercial lobbies, entirely inactive. This not only raises CPTED issues, it does not respond to the site's clear place making and commercial potential. With up to 3,000 workers in the current proposal, perhaps an additional 2,000 workers in the same street and many thousands of workers on adjacent sites, Chalmers Crescent could become a great lunchtime destination and provider of essential services (eg.childcare, gym, medical services etc.)*
- The proposal exceeds the allowable density for the site by 10,836sqm (+28.7%). The proposal's bulk and scale is further increased by all parking being provided above grade in a three storey podium, which results in additional height/bulk, an inactive streetscape and constrained existing and future visual and physical links to adjacent context. While the Panel acknowledges that adjacent developments have been approved at a similar density, these are smaller sites, and the proposal cannot be supported unless a clear public benefit is provided – which in its current form is clearly lacking.*
- As noted above, a Stage 1 proposal is mostly concerned with the arrangement of massing, impacts on adjacent built form and on adjacent properties. While it is too preliminary to assess environmental impacts, the proposed continuous three storey parking podium prevents existing and future at grade links to local street networks and greatly constrains breeze, landscape and view corridors - all of which reduce pedestrian comfort and a considered environmental response. In addition, the towers appear to be entirely glazed, thereby increasing reflectivity and heat gain.*
- Given that this proposal is seeking approval for building envelopes only, the "standard of architectural design, materials and detailing" refers only to indicative representations of what may or may not occur on the site if the building envelopes were to be approved. These representations indicate that ground level activation is extremely limited and appears not to address the broad requirements of an anticipated 5200 workers (on this site alone); instead a number of facilities are proposed at podium level, which the Panel does not support, as they are remote from the public domain, do not contribute to context or streetscape and fail to contribute to the local character.*
- As noted previously, the form and arrangement of the proposed built form – in*

particular the continuous podium which is approximately 140m long – blocks through site views and prohibits the creation of high quality ground level landscaped space, which would provide physical and visual relief amidst the sheer quantity of massing proposed.

As mentioned earlier in this report the Applicant submitted a revised set of “envelope drawings” which scaled back the level of detail to more align with that expected of a Concept Development Application.

These revised drawings were considered by the DRP at the third and final meeting on 15 April, 2025. Key comments raised by the Panel at that meeting are shown below:

The Proponent presented a simplified set of documents intended to reflect the status of the proposal as Stage 1 Application for massing, configuration and density only.

The Panel notes improvements to the scheme in the form of generally compliant setbacks, improved transparency along the Chalmers Street interfaces and a preliminary indication of potential site linkages to surroundings.

While these are welcomed, the proposal is essentially unchanged in terms of massing, scale and density and a number of fundamental issues remain.

Given that the proposal seeks approval on block forms only, the detailed interface to Chalmers Street cannot be guaranteed and, while a better outcome, is only indicative and not a commitment. The potential site linkages, likewise, are not convincing as these are largely shown on adjacent properties or within a minimum side setback. There is little in the way of a response in the built form strategy to address the amenity, safety or activation opportunities of these indicated linkages.

As noted above, from previous meetings, key issues remain:

- *Inadequate contextual analysis*
- *Lack of integration with surroundings*
- *Extent of the continuous podium*
- *Extent of above ground parking*
- *No significant Connection to Country strategy response*
- *Excess GFA without justification or compensating public benefit*

These issues need to be addressed in order to adequately assess the scheme’s achievement of Design Excellence.

The Panel suggests that a rigorous approach to the issue of excess GFA should start with an illustration of a complying scheme, and demonstrate the impacts, mitigating measures and potential benefits of a non-complying scheme as a comparison. A planning proposal may be a more effective vehicle to undertake this type of study.

Below is one of the DRP’s concluding comments in relation to the proposed plans considered at its meeting on 15 April, 2025.

The mass block form and continuous podium arrangement continues to leave only the setback areas for landscape and streetscape activation. Noting, large scale trees within the existing streetscape are not proposed for retention or drive any of the built form from a Designing with Country response.

The primary zone for activation to the streetscape is the available space between the proposed mass-built form edge and the internal edge of the roadway. This roadway’s primary function is for vehicular turning, arrival, exit, access and servicing of the

development.

The proposed streetscape is therefore largely made up of entry and exit locations along a continuous proposed mass-built form with no breaks, articulation, relief or variety being proposed at the ground level and therefore creates few spaces that hold visitors or provide spaces for large scale canopy trees for streetscape amenity.

The proposed paved roadway attempts to hold the end of the street, within the subject site, as a public domain active space. The reality of this space is that it will be vehicular dominated and leaves very little pedestrian space between the internal road and the proposed built form.

The mass-built form does not seem to respond to a potential future site through link proposed to the adjacent site to the north nor to the proposed connection to this link from within the subject site. The design response discussed in the meeting is currently to note that any landscape illustrated in the drawing set can be sacrificial and seemingly subject to future detailed consideration. As such, the relationship of mass-built form and streetscape interface is largely unresolved.

The recommendation from the DRP from its meeting on 15 April, 2025 stated that:

- *The design cannot be supported in its current form for the reasons given above*
- *The Panel considers that the proposal cannot be amended to achieve design Excellence in accordance with Clause 6.10 of Bayside LEP 2021.*

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

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

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

BAYSIDE DEVELOPMENT CONROL PLAN (DCP) 2022

The application is subject to the requirements of the Bayside DCP 2022, the relevant provisions of which are discussed below:

PART 3 – GENERAL DEVELOPMENT CONTROLS

Section 3.5 Transport, Parking and Access

Provision	Requirement	Proposed	Compliance
Section 3.5.3 On-site Car Parking Rates	Commercial Premises (including business premises, office premises and retail premises) located within 800m of Mascot Train Station: 1 space / 80m2 GFA Therefore, proposed GFA of 48,645m2 divided by 80m2 =	608 spaces	Yes

	608 spaces min.		
3.5.4 Bicycle and Motorcycle Parking	<p>Commercial Premises (Business Premises, Office Premises and Retail premises):</p> <p>1 bicycle space per 150m2 GFA. So 48,645m2 divided by 150m2 GFA = 324 bicycle spaces</p> <p>1 bicycle space 400m2 GFA provided for visitors. So 48,645m2 divided by 400m2 GFA = 122 visitor bicycle spaces</p> <p>1 motorcycle space per 15 car spaces. So 608 carspaces divided by 15 = 40 motorcycle spaces</p>	<p>324 spaces Can be achieved</p> <p>122 spaces Can be achieved</p> <p>40 motorcycle spaces Can be achieved</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p>
End of Trip Facilities	<p>Non-residential development shall provide "end of trip" facilities on site as follows:</p> <ul style="list-style-type: none"> - 1 Personal locker for each bike parking space - 1 Shower and change cubicle for every 10 bicycle spaces or part thereof - 1 bicycle repair toolkit and pump - Toilets, drying rooms and hand washing facilities <p>End of trip facilities are to be located close to the bicycle parking area, close to entry and exit points and within an area of security camera surveillance.</p> <p>End of Trip facilities are accessible for all staff.</p>	Can be achieved	Yes
3.5.5 Accessible Parking Commercial and industrial developments (including office	In a car parking area containing 6 or greater car parking spaces, one accessible car parking space will be provided for every 50 car parking spaces or part		

premises, business premises, industry and warehouses).	thereof. So 608 carparking spaces divided by 50 = 12 accessible car parking spaces.	12 accessible car parking spaces	Yes
3.5.6 Loading Facilities Commercial Premises (Business, Office & Retail)	The requirements for the number of loading bays required for developments with a GFA over 40,000m2 shall be determined by a specific study.	Subject to further design. Can be achieved.	Yes

Section 3.8 Tree Preservation and Vegetation Management

This matter was addressed earlier in this report under the discussion relating to SEPP (Biodiversity and Conservation) 2021.

Section 3.9 Stormwater Management and Water Sensitive Urban Design

Provision	Requirement	Proposed	Compliance
Control C1	All development is to be consistent with Technical Specification Stormwater Management relating to Stormwater management and WSUD	Adequate details regarding Stormwater Management are yet to be lodged.	No
Control C2	Developments must comply with the WSUD provisions outlined in Section 3.7 of this DCP (Landscaping and Biodiversity)	Adequate details regarding Stormwater Management are yet to be lodged.	No
Control C3	Certain developments are to provide stormwater systems that minimize stormwater run-off from the site as detailed in the technical specification	Adequate details regarding Stormwater Management are yet to be lodged.	No

PART 6 – NON RESIDENTIAL DEVELOPMENT

Section 6.1.1 General Controls – Non Residential Development

Provision	Requirement	Proposed	Compliance
Control C7	No less than 10% of the development site shall be landscaped on all non-	10% of the subject site equates to 1,260m3.	Yes

	<p>residential development sites</p> <p>On sites over 2,000m² the front landscaped setbacks are additional to the 10% requirement. The majority of landscaping shall front the Street(s) to which the development has a frontage and includes side and rear landscaped areas.</p>	<p>The current proposal as amended provides a landscaped area of 1,443.68m² which equates to 11.45 %.</p> <p>As amended the proposal provides for a landscaped setback of 4m from all side and rear boundaries. The proposed landscaped area of 1,443.68m² (ie 11.45%) for the subject site excludes the front setback component.</p>	Yes
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Section 6.3.2 Building & Landscaping Setbacks

Provision	Requirement	Proposed	Compliance
Front Setback	Front setback from southern side of Chalmers Crescent (frontage 107.10m)		
	<p>Building Setback Min = 4.0m</p> <p>Landscaping Setback Min = 3.0m</p>	<p>4.0m</p> <p>3.0m</p>	<p>Yes</p> <p>Yes</p>
Side and rear setbacks	Southern (rear) boundary to podium		
	<p>Building Setback Min = 4.0m</p> <p>Landscaping Setback Min = 3.0m</p>	<p>4.0m</p> <p>3.0m</p>	<p>Yes</p> <p>Yes</p>
	Southern boundary building setback to tower above podium (Proposed Level 2) Min = 6.0m	6.0m to 6.319m	Yes

	Western boundary (side) to podium		
	Building Setback Min = 4.0m	4.0m to 4.13m	Yes
	Landscaping Setback = Min 3.0m	4.0m to 4.13m	Yes
	Western boundary building setback to tower above podium (Proposed Level 2) Min = 6.0m	6.099m	Yes
	Eastern boundary (side) podium		
	Building Setback Min = 4.0m	4.0m	Yes
	Landscaping setback Min = 3.0m	3.0m	Yes
	Eastern boundary building setback to tower above podium = Min 6.0m	6.0m	Yes
	Northern boundary (side) podium		
	Building Setback Min = 4.0m	4.0m	Yes
	Landscaping Setback Min = 3.0m	3.0m	Yes
	Northern boundary building setback to tower above podium = 6.0m	6.15m	Yes

PART 7 – NON-RESIDENTIAL DEVELOPMENT

Part 7.7.2 - Mascot West Employment Lands.

Part 7 is dealt with first, as the BDCP 2022 states: *“Provisions in the chapter [7] prevail over any similar provisions in other sections of the DCP”*. This section of the BDCP 2022 provides controls and guidelines for 17 areas within the Local Government Area. Not all areas are included. The areas chosen are either unique or have been subject to detailed master planning controls, with more specific controls to guide development.

The provisions of this section prevail over other sections of the DCP, including where there is

any inconsistency.

The site is located within the Mascot West Employment Lands. Land uses in the area comprise of warehouse and distribution developments (related to freight transportation); and industrial developments including smash repair stations and welding businesses. Newer buildings include commercial and office premises with active street frontages comprising coffee shops and retail outlets. Hotels have been also becoming prevalent in the locality.

The proposed use is consistent with the vision of the precinct as stated in the description of the precinct. However, the proposal has not yet demonstrated an efficient and sustainable transport systems are in place and therefore does not comply with the objectives of the precinct. Specific controls relating to built form, risk from flooding and environmental management will be relevant to future building applications.

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

There are no Planning Agreements applicable to the subject Concept Development Application.

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.

All provisions of the 2021 EP&A Regulation have been considered in the assessment of this application.

Section 4.15(1)(b) – The Likely Impacts of the Development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality

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.

As stated, the application lacks significant information to demonstrate that the surrounding road network is capable to accommodate the proposed density. Further, issues such as stormwater management and acid sulfate soils management have not been appropriately addressed.

Accordingly, it is considered that the proposal cannot be supported on environmental grounds.

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

Based on the assessment and the issues raised in this report, the site is not suitable for the proposed development.

Section 4.15(1)(d) - Public Submissions

One (1) submission (letter of objection) was received in response to the Public Notification of the proposed development the contents of which are discussed in Section 6.3 of this report.

Section 4.15(1)(e) - Public interest

Approval of the proposed development is not in the public interest for the reasons outlined in this report.

6 REFERRALS AND SUBMISSIONS

6.1 Agency Referrals and Concurrence

The development application was referred to various agencies for comment/concurrence/referral as required by the EP&A Act and outlined below in Table 5 below.

Table 5: Concurrence and Referrals to agencies

Agency	Concurrence/ referral trigger	Comments (Issue, resolution, conditions)	Resolved
Concurrence Requirements (s4.13 of EP&A Act)			
Transport for NSW	SEPP (Transport and Infrastructure) 2021, (Section 2.122 Traffic Generating Development)	TfNSW has requested additional information in the form of Traffic Impact Assessments, Traffic Reports and revised traffic modelling. The Applicant has advised that this additional information will be available for referral to TfNSW around 8 September, 2025.	No
Referral/Consultation Agencies			
Sydney Water	Sydney Water Act 1994 (Section 78)	No issues raised subject to conditions	Yes
Sydney Airport	Reg 15A (2) of the Airports (Protection of Airspace) Regulations 1996	No issues raised subject to conditions	Yes
Ausgrid	SEPP (Transport and Infrastructure) 2021, (Section 2.48)	No issues raised subject to conditions	Yes
Design Review Panel	Clause 6.10 design Excellence of Bayside LEP 2021	The proposed design fails to achieve design excellence. Refer to the more detailed discussion earlier in this report under Bayside LEP 2021.	No

6.2 Council Officer Referrals

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

Table 6: Consideration of Council Referrals

Officer	Comments	Resolved
Stormwater	<p>Council's Development Engineers have consistently maintained throughout the four (4) RFI letters issued to the Applicant that more details are required relating to the proposed method of stormwater management for the subject site. Specifically Council has sought details on the Applicant's proposed method of an "absorption system" to manage stormwater for the subject site.</p> <p>The Applicant's response has been that that an "absorption system" is only one method of draining the site and that the issue of stormwater disposal can be deferred to Stage 2 Development Applications for the actual construction of the five (5) x eight (8) storey towers.</p> <p>Arising from a meeting involving the Applicant's Project Team and Council staff on 10 July, 2025 (held at the request of the SECPP) the Applicant has advised that ground testing to determine ground absorption co-efficients and laboratory testing will be undertaken. Furthermore, the Applicant stated that an amended stormwater concept plan will be prepared by their stormwater drainage consultants (WSP Consulting) which is likely to be lodged by 8 September, 2025.</p> <p>At the time of writing this report additional stormwater management details have not been submitted.</p>	No
Traffic	<p>Council's Traffic Engineers have also maintained across the four (4) RFI letters issued to the Applicant that there are inadequacies with the level of traffic management data submitted with the Application.</p> <p>Specifically Council's Traffic Engineers identified the following:</p> <ul style="list-style-type: none"> • The submitted traffic report had not considered nor assessed the potential traffic impact/ generation of the surplus GFA proposed • Suitable measures had not been identified to ensure that intersections within the locality operate at a satisfactory level of service post development. • The Traffic Impact Assessment is also required to consider the cumulative traffic impact assessment for all developments in the area including current and approved Development Applications/ State 	No

	<p>Significant Development Applications/ Planning Proposals etc.</p> <ul style="list-style-type: none"> A list of additional criteria for inclusion in any revised Traffic Impact Statements such as specific modelling etc was also prepared. <p>The Applicant was also advised of deficiencies with the application and that a full traffic impact assessment was required at the Stage 1 Concept Development Application stage rather than deferred to the more detailed design for Stage 2 Development Applications.</p> <p>The Applicant on 4 August, 2025 advised Council that revised Traffic Impact Assessments/ Reports will be available for referral to TfNSW and Council by 8 September, 2025.</p> <p>Council notes that it is likely that TfNSW may require up to four (4) weeks to review the new data which will also require referral to the Bayside Traffic Advisory Development Committee. Therefore, feedback on the revised traffic data is unlikely to be available until mid-late October, 2025.</p> <p>At the time of writing this report revised Traffic Impact Statements/ Reports have not been submitted.</p>	
Contaminated Land	<p>The issue of potential land contamination and the need for lodgement of a Detailed Site Investigation (DSI) report was identified by Council's Contaminated Land Officer (CLO).</p> <p>However, the Applicant submitted an additional detailed report prepared by WSP Consulting dated 13 February, 2025. Council's CLO reviewed the report and advised of the following:</p> <p><i>I concur with the assessment completed in the 'Contamination Advice - Concept DA 2024/56 - Response to Bayside City Council RFI'. Investigations completed so far are satisfactory for a Concept DA. The site can be made suitable for the proposed commercial development, subject to the completion of a DSI. The DSI should be prepared following demolition of site structures to adequately characterise the site. I have no objection to the proposal subject to compliance with the following conditions.</i></p>	Yes
Environmental Health	<p>Additional noise attenuation measures apply to sites located within the 25-30 Aircraft Noise Exposure Forecast (ANEF) contour.</p> <p>The site is located within the 25-30 ANEF contour. The proposal consists of commercial uses only which are</p>	Yes

	<p>considered to be “conditionally acceptable” within the 25-30 ANEF contour under Table 2.1 of the Australian Standard AS 2021 for aircraft noise.</p> <p>Acoustic Reports regarding noise attenuation measures relating to aircraft noise will be required for Development Applications lodged for Stage 2 of the proposed development.</p> <p>Council’s Environmental Health Officer has also identified the need for Acoustic Reports to be lodged for mechanical ventilation systems, air-conditioning systems etc for Stage Development Applications.</p>	
Waste Management	<p>Council’s Waste Management team originally sought additional details relating to the following matters:</p> <ul style="list-style-type: none"> • Demolition Phase Waste Plan • Construction Phase Waste Plan • Ongoing Waste Plan • Design Control • Bin Storage and Collection points <p>However, these specific technical details are considered to be beyond the scope of a Concept Development Application and will be addressed at the time that Development Applications are lodged for Stage 2 of the overall development.</p>	Yes
Tree Management	<p>A discussion regarding Tree Management was outlined earlier in this report under Section 5 relating to SEPP (Biodiversity and Conservation) 2021.</p> <p>Council’s TMO accepts the removal of 33 trees associated with the proposed development based on additional information lodged by the Applicant relating to proposed mature/ advanced plantings and a tree replenishment plan including a feature tree in the Chalmers Crescent cul-de-sac turning bulb in a 400 litre tub.</p> <p>One of the conditions related to the proposed tree removal involves Tree Offset Controls whereby to offset the loss of 33 live trees the Applicant is required to replace the trees at a 3:1 replacement ratio. Therefore, a total of ninety-nine (99) new trees shall be planted to offset the canopy loss for environmental reasons.</p>	Yes

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

6.3 Community Consultation

The subject Concept Development Application was placed on Public Notification for the period 13 May – 27 May, 2024.

One (1) written submission (letter of objection) was received which raised the following issues:

1. Concern regarding the traffic generation from the construction phase of the proposed development and the ongoing traffic management of the local road networks now and into the future.
2. Further modelling is required of the possible traffic impacts and the performance of key road intersections and the ability of the overall local road network to function adequately.

Comment

The comments raised by the author of the submission are acknowledged and reflect the concerns raised by Council's Traffic Engineers, the Bayside Traffic Development Advisory Committee and Transport for NSW regarding the proposed development.

Accordingly, the Applicant has been requested to provide additional Traffic Impact Statements, Traffic Generation reports and revised modelling to more accurately reflect the likely traffic implications of the proposed development. The additional reports will also contain data responding to the concerns raised in the public submission.

The additional information once submitted will again be referred to Council's Traffic Engineers, the Bayside Traffic Development Advisory Committee for review and comment.

7 CONCLUSION

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

8 RECOMMENDATION

That the Sydney Eastern City Planning Panel, exercising the functions of Council as the consent authority pursuant to Section 4.16 and Section 4.17 of the Environmental Planning and Assessment Act, 1979, as amended, **REFUSE** Concept Development Application No. DA-2024/56 Concept Development Application – which proposes consolidation of sixteen allotments (16) with the eastern part of the Chalmers Crescent cul-de-sac roadway, demolition of existing structures, tree removal, construction of a commercial development comprising of five (5) x eight (8) storey towers above a parking podium of four split levels, and associated landscaping at **NO'S 7-9, 14-16, 18-21 CHALMERS CRESCENT, MASCOT** for the reasons outlined in this report.

The following attachments are provided:

- Landscape Plans prepared by Taylor Brammer Landscape Architects consisting of 9 Drawings – Revision 2 – dated 03/08/25
- Clause 4.6 Objection Statement – Height of Buildings
- Clause 4.6 Objection Statement – Floor Space Ratio
- DRP minutes