

COUNCIL SUPPLEMENTARY ASSESSMENT REPORT

SYDNEY EASTERN CITY PLANNING PANEL

PANEL REFERENCE & DA NUMBER	PPSSEC-316 DA-2024/56 PAN-413901
PROPOSAL	Amended – Concept Development Application – Consolidation of lots (including road), demolition of existing structures, tree removal, construction of commercial development comprising of five (5) towers (with plant) above a podium with a maximum total gross floor area of 48 645sqm, 400 car parking spaces 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	• State Environmental Planning Policy (Planning Systems) 2021 • State Environmental Planning Policy (Sustainable Buildings) 2022 • State Environmental Planning Policy (Resilience and Hazard) 2021 • 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 KEY IN SUBMISSIONS	One (1)
DOCUMENTS SUBMITTED FOR CONSIDERATION	• Additional Traffic Modelling and Sensitivity Testing Report, prepared by WPS, dated 20 October 2025. • VPA Offer, prepared by the Trustee Mayer Imports Superannuation Plan, dated 21 October 2025. • Amended VPA Offer, prepared by CPW, dated 4 November 2025. • Stormwater Management Report, prepared by WPS, dated 24 October 2025. • Amended Clause 4.6 Variation Statement for Floor Space Ratio (FSR), prepared by City Planning Works, dated 24 October 2025. • TfNSW comments, dated 11 November 2025 • Revised Amended Schematic Drawings, prepared by Crone Architects, submitted 20 November 2025. • Site Connection Ground Floor Plan, prepared by Crone Architects, submitted 20 November 2025. • Site Connection Podium Floor Plan, prepared by Crone Architects, submitted 20 November 2025. • Amended Traffic Report, prepared by WPS, dated 24 November 2025. • Amended Clause 4.6 Variation Statement for Floor Space Ratio (FSR), prepared by City Planning Works, dated 24 November 2025. • Design excellence peer review, prepared by Atlas Urban, dated 24 November 2025. • TfNSW comments, dated 26 November 2025.
RECOMMENDATION	Refusal
DRAFT CONDITIONS TO APPLICANT	N/A – Due to time constraints, the draft conditions could only be provided as an appendix to this report
SCHEDULED MEETING DATE	10 December 2025
PREPARED BY	Felicity Eberhart - Senior Development Assessment Planner
DATE OF REPORT	27 November 2025

EXECUTIVE SUMMARY

Council received Concept Development Application No. 2024/56 on 15 April 2024. The application seeks approval for the consolidation of sixteen (16) allotments and the eastern part of the Chalmers Crescent cul-de-sac turning bulb roadway, demolition of existing structures, removal of trees, and construction of a commercial development comprising five (5) eight-storey towers above a four-level split parking podium, with associated landscaping. The site includes Nos. 7–9, 14–16, and 18–21 Chalmers Crescent.

Bayside Council reported the application to the Sydney Eastern City Planning Panel (SECPP) on 24 September 2025, with a recommendation for refusal. The reasons for this recommendation are outlined in the initial report considered by the panel. Both this supplementary report and the report already reviewed by the panel should be read in conjunction to ascertain councils' position on the matter.

On 27 September 2025, the SECPP resolved to defer determination of the application. The reasons for deferral are outlined below.

The Panel considered the matters listed at item 6, the matters listed at item 7 and the material presented at the meetings observed at the site inspection listed at item 8 in Schedule 1.

The Panel agreed to defer the determination of the matter until 27 November 2025. The matter was deferred to allow for the provision and assessment of additional information that would enable a complete assessment of the proposal. The following information is requested:

- *Response to concurrence requested from Transport for NSW*
- *Revised stormwater Concept Plans*
- *Revised S.4.6 Request to Vary Development Standards (Floor Space Ratio)*
- *Resolution of land acquisition issues*

In addition, the Panel recommends that Council engage an independent peer review to report to the Panel in design excellence, at the cost of the applicant.

The Panel also recommends that Council engage an independent valuer be appointed to resolve the question of land valuation and acquisition.

The information initially was not provided on time to enable a determination on 27 November 2025. Due to the delay in receiving the information, council sought direction from the panel secretariat to extend the agreed deferral date to allow Transport for NSW time to provide their response to concurrence, the applicant time to submit information and for the independent peer review to be complete. Transport for NSW provided a response to the matter of Concurrence on 11 November 2025. The applicant prepared further information to address the panels deferral in stages between 24 October and 24 November 2025. The peer review of design excellence was provided on 24 November 2025. This supplementary report evaluates that material and provides the documentation in the appendices to this report for the panels review.

Upon comprehensive review, the Assessing Officer still considers that the proposal cannot be supported, as multiple outstanding issues raised in the initial report remain unresolved. Furthermore, the revised Clause 4.6 Request to Vary Development Standards (Floor Space Ratio) is inadequate. The applicant has not demonstrated that the development standard is

unreasonable or unnecessary, nor have they provided sufficient environmental planning grounds to justify the variation.

ADDITIONAL INFORMATION

The following additional information relevant to this report was submitted by the applicant between the 24 October and 24 November 2025.

- Additional Traffic Modelling and Sensitivity Testing Report, prepared by WPS, dated 20 October 2025.
- Stormwater Management Report, prepared by WPS, dated 24 October 2025.
- Amended VPA Offer, prepared by CPW, dated 4 November 2025.
- Revised Amended Schematic Drawings, prepared by Crone Architects, submitted 20 November 2025.
- Amended Traffic Report, prepared by WPS, dated 24 November 2025.
- Amended Clause 4.6 Variation Statement for Floor Space Ratio (FSR), prepared by City Planning Works, dated 24 November 2025.
- Design excellence peer review, prepared by Atlas Urban, dated 24 November 2025.

ASSESSMENT – REASONS FOR DEFERRAL

Response to concurrence requested from Transport for NSW

Council referred the above-mentioned documentation to Transport for NSW (TfNSW) for comment following the meeting held on 24 September 2025. Following their initial review of the documentation considered by the panel, dated 11 November 2025, TfNSW advised that they did not support the application and provided the following observations in relation to the transport impacts of the proposed development:

- *The two key nearby intersections that are affected by the proposed development are I-01 (Kent Road / Coward Street) and I-03 (Kent Road / Ricketty Street).*

Two amelioration measures are proposed by the Applicant at the abovementioned intersections, to ameliorate the traffic impact of the proposed development on the surrounding road network. The proposed works will require TfNSW approval under section 87 and concurrence under section 138 of the Roads Act 1993 respectively.

- *No strategic design has been provided for either of the amelioration measures at the above intersections to enable TfNSW to determine the feasibility of the proposed upgrades to fit within the existing road reserve and their impact on lane widths, services, footpaths and other considerations. Without the strategic design, TfNSW cannot make an informed comment as to the impact of the proposed development on the classified road network and confirm whether the proposed measures can be constructed.*
- *TfNSW requires strategic concept designs for the above works to be submitted for further consideration. The requirements for a strategic concept design are provided within TAB B of this letter. The proposed strategic designs should consider the likely cycleways identified within Bayside Council's Bike Plan 2024 and should not preclude potential future cycleway designs to connect missing links within the existing cycleway network.*

In addition to the above the following commentary was provided by TfNSW with regards to public and active transport:

- *TfNSW notes the draft Green Travel Plan provided in Appendix I of the updated Traffic and Transport Impact Assessment prepared by WSP Issue D dated 19/9/2025. TfNSW would recommend a condition of any consent issued for the subject development to include the following requirements:*

Prior to the issue of the first Occupation Certificate, the proponent shall prepare a final Green Travel Plan (GTP) in consultation with TfNSW. 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.

The Applicant should submit a copy of the final GTP to TfNSW at development.sco@transport.nsw.gov.au for endorsement, prior to the issue of any Occupation Certificate. TfNSW is also happy to meet with the proponent to discuss the above requirements.

Council's development engineer reviewed the submitted documentation at the time and concurred with TfNSW's initial response. In good faith, Council sought to facilitate continued progression of the application by providing suggestions to address the outstanding concerns. Council recommended reducing car parking provisions to between 425 and 450 spaces which was prior to any modelling, post the initial TfNSW response.

This initial recommendation was informed by the traffic modelling which demonstrated that a compliant scheme (FSR 3.0:1 and a GFA 37,809m²) would have the least impact on the surrounding road network. Under a compliant scheme, car parking would equate to 425 spaces (calculated at 1 space per 80m² GFA, with a 10% reduction applied for the submission of a Green Travel Plan in accordance with DCP Clause 3.5.2, Control C7). This suggestion was primarily made by Council's development engineer to reduce queuing on Council roads, including the intersection of Kent Road and Chalmers Crescent.

The applicant was advised that, should the above solution be adopted, or any amendment to the parking made, a revised traffic report would be required to reflect the amended design and parking provision. The amended report needed to demonstrate how reduced parking supports the arguments that the intersection could operate satisfactorily without upgrades. It would also need to show that reduced parking lowers traffic generation, thereby altering traffic modelling to remove the need for intersection upgrades. Additionally, reducing car parking could encourage greater use of public transport, aligning with TfNSW's view that the site is highly accessible and well serviced by public transport.

Following these discussions, the applicant amended the traffic report from 608 spaces to a maximum of 500 spaces. The proposal comprised 400 commuter spaces and 100 "pool/corporate" spaces which were not intended for commuter traffic. The revised traffic report that was submitted following the initial TfNSW comments were based on the movements associated with 400 parking spaces only and did not account for the other remaining 100 spaces.

The revised report was received and formally referred to TfNSW on 24 November 2025 for assessment and feedback. Correspondence was received on 26 November 2025, in which TfNSW advised that, due to a highly constrained timeframe provided for their review, they were unable to undertake a detailed review of the SIDRA modelling files (although there were no files provided). Instead, their assessment was based solely on the information contained within the memorandum prepared by WSP, dated 24 November 2025.

TfNSW offered the following comments in their final response in respect of public and active transport to assist Council and the consent authority in determining the application:

- *The walking distance from Mascot Station to the proposed development is approximately 720m (8-10 minute walk). TfNSW recommends investigation of the potential to negotiate a through-site pedestrian link to be provided to Coward Street via 10-12 Bourke Road, Mascot, to provide more direct access to public transport for the subject development. While it is noted that this land belongs to a third party, such a link would substantially reduce the walking distance to approximately 440m (5 to 6 minute walk), encourage further mode shift to public and active transport, and reduce the traffic impact of the subject development on the surrounding road network.*

TfNSW also offered the following comments in respect of road-based transport to assist Council and the consent authority in determining the application:

- *The development proposes 48,645 m² Gross Floor Area (GFA) of commercial floor space and based on the Bayside Council Development Control Plan (DCP) 2023, the minimum car parking rate of a commercial premises (including business premises, office premises and retail premises) located within 800m of Mascot Train Station is 1 space per 80m² GFA, resulting in a minimum of 608 car parking spaces.*
- *TfNSW notes Section 3.5.2 of the Bayside DCP 2023 which states “Council may reduce the requirement for onsite parking provisions (up to 10% of total parking spaces required) for commercial and industrial developments when both Workplace “Green” Travel Plans and Transport Access Guides are provided”. Application of a 10% reduction would result in 547 car parking spaces.*
- *TfNSW notes the development now proposes to reduce the on-site car parking spaces to 500, with 100 of those spaces being allocated to corporate vehicles. While TfNSW appreciates the intent of providing lower car parking supply on-site and potentially restricting the use of 100 spaces, it is unclear whether it would be possible to provide a consent condition to reasonably restrict some spaces being allocated to corporate vehicles in perpetuity and the consent authority would need to be satisfied whether this can reasonably be achieved. Further, the allocation of 100 spaces to corporate vehicles would not necessarily guarantee a reduction in peak hour trip generation, depending on how these vehicles are used and managed.*
- *It is also noted as stated by the Applicant that the car park will not operate as a public car park. This is considered an important requirement of any development consent to prevent future use of the car park as a public car park.*
- *The Applicant has calculated a trip rate value of 0.31 trips per car parking space during the AM peak hour. How this value was determined is not clear and TfNSW’s survey data indicates that a value of approximately 0.40 trips per car parking space for all Sydney sites and 0.58 for all sites of similar public transport accessibility (excluding Olympic Park and Norwest) would be more appropriate.*
- *Application of these values to the proposed 500 car parking spaces equates to traffic generation of between 200 and 290 movements in the AM peak hour. The Applicant has undertaken a Sidra modelling assessment based on 340 trips during the AM peak hour, which is considered a conservative value in total, however a detailed assessment of the revised traffic distribution has not been undertaken due to the time available for TfNSW’s review.*

- *The Sidra modelling undertaken by the Applicant as summarised on Page 5 of the memo notes an estimated queue of 209m on the north approach of the intersection of Coward Street / Kent Road in Scenario 3. In Scenario 4, this queue was estimated at 340m and in Scenario 4A this was estimated at 336m. There is a distance of approximately 250m, for vehicles travelling southbound, between the intersection of Coward Street / Kent Road and Kent Road/ Ricketty Street.*
- *The modelling indicates that the proposed development traffic at the intersection of Coward Street / Kent Road is anticipated to affect the intersection of Kent Road / Ricketty Street in Scenario 4A, however to a lesser extent in Scenario 4A than Scenario 4 (i.e. there is a slight improvement when parking and resultant trip generation is reduced). Should the on-site car parking and resultant AM peak hour traffic generation be reduced further, this would be expected to result in less impact on the classified road network.*
- *TfNSW supports the further reduction of car parking on-site, in association with the implementation of Travel Demand Management (TDM) including the preparation of a Green Travel Plan (GTP), as a traffic impact mitigation measure. The GTP should be prepared by the Applicant and endorsed by Council prior to the issue of any occupation certificate for the proposed development. The NSW Government provides a range of resources to help in the development of a GTP at: <https://www.nsw.gov.au/driving-boating-and-transport/travel-demand-management/toolkit/benefits-of-a-plan>*

As noted above, adequate time has not been afforded to TfNSW to undertake a detailed assessment. However, they have identified a slight improvement where parking provision and resultant trip generation are reduced. As outlined in their correspondence, should on-site car parking and associated AM peak hour traffic generation be further reduced, this would be expected to further lessen impacts on the classified road network.

Since the works are no longer proposed on a classified road, TfNSW concurrence is not required and their most recent correspondence does not make reference to concurrence. Furthermore, the letter does not indicate whether there is in principle support of the proposal. Should the application be supported, a condition of consent is recommended, limiting parking to 400 spaces/parking bays, consistent with the submitted traffic study prepared by WPS, dated 24 November 2025. This would align with councils' recommendation and TfNSW comments reproduced above.

Revised Stormwater Concept Plans

The development has satisfactorily addressed the stormwater management requirements in the most recent stormwater report. The report demonstrates compliance with Part 3.9 of the Bayside Development Control Plan 2022 and the Bayside Technical Specification Stormwater Management. It confirms that stormwater quantity will be managed via an OSD system discharging to a new underground stormwater network constructed in Chalmers Crescent (extending from Kent Road to the site frontage). The report also states that runoff water quality will meet WSUD pollution reduction requirements. Should the application be supported, an appropriate condition of consent will be imposed.

Revised S.4.6 Request to Vary Development Standards (Floor Space Ratio)

A revised Clause 4.6 Objection Statement to vary the development standard has been lodged by the Applicant. 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.*

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 total site area is 12,603m². Based on the maximum permissible Floor Space Ratio (FSR) of 3:1 under Clause 4.4 of the Bayside Local Environmental Plan 2021, the allowable Gross Floor Area (GFA) is 37,809m². The applicant has advised that their proposal seeks a GFA of 48,645m², resulting in an FSR of 3.86:1. This represents an additional 10,836m² above the maximum permissible GFA, equating to a variation of approximately 28.7%.

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 that there are sufficient environmental planning grounds to support the non-compliant GFA.

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

Applicant Comments/Arguments (summarised):

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.

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 above that strict compliance with the FSR 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 4.4 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 4.4 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>Evidence has been found to demonstrate that Council has modified the FSR standard in the approvals given for commercial development in the E3 zone recently. Presumably this is to meet employment goals for the area at large.</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.</i>

The proposed development meets the objectives of Clause 4.4 of the LEP based on the following assessment:

<i>Clause / Objective</i>	<i>Justification</i>
<i>4. BLEP</i>	
<i>1(a) to establish standards for the maximum development density and intensity of land use,</i>	<i>Noted</i>
<i>1(b) to ensure buildings are compatible with the bulk and scale of the existing and desired future character of the locality,</i>	<i>A number of buildings in the immediate vicinity have been approved with similar FSR. FSR is a crude control of bulk and scale and similarity of FSR usually results in similar characteristics of bulk and scale.</i> <i>These buildings represent the desired future character of the area. Having regard to the 40–50-year life of commercial buildings, and the intrusion of other appropriate uses, such as data centres, with very low employment numbers on large sites, it is important to maximise employment floorspace in Mascot.</i>
<i>1(c) to minimise adverse environmental effects on the use or enjoyment of adjoining properties and the public domain,</i>	<i>Enjoyment of the public domain will be increased to a very high level with this proposal which will transform Chalmers Crescent into an inviting and green workplace thoroughfare. This is not minimisation of adverse impact but the maximisation of positive impact on the public domain. Traffic impact due to the proposal will remain within reasonable bounds (LoS D) subject to a commuter parking cap of 400 allocated spaces.</i>
<i>1(d) to maintain an appropriate visual relationship between new development and the existing character of areas or locations that are not undergoing or likely to undergo a substantial transformation,</i>	<i>Setback from the site boundaries, with spaces between the towers, the proposal will create an appropriate visual relationship with adjoining buildings. Chalmers Crescent will be positively transformed by the proposal. Progressive renewal of the obsolete buildings in Chalmers</i>

	<i>Crescent will remove the need for compatibility with existing development by establishing a new character.</i>
<i>1(e) to ensure buildings do not adversely affect the streetscape, skyline or landscape when viewed from adjoining roads and other public places such as parks and community facilities.</i>	<i>Renders produced for the project show how the streetscape, and skyline, will be positively impacted by the proposal. The public domain will be transformed from uninviting to active and inviting with the building foyers at street frontage and the abundant landscaping on the site and the footpaths.</i>

The following table includes comparable approvals in the surrounding locality:

Address	Zone	LEP control	Description	Approved	Approval Date of original approval
21 Ossary Street, Mascot	E3 Productivity Support	3.55:1	The self storage facility is seven storeys and corridors are included in the gross floor area calculation.	3.85:1	28/06/2022
32-34 Ricketty Street, Mascot	E3 Productivity Support	3:1	Demolition of existing structures and construction of an eleven (11) storeys commercial office development with roof top terrace and above ground parking.	3.9:1	1/07/2021
253 Coward Street, Mascot	E3 Productivity Support	3:1	Modification to the approved scheme for demolition of existing buildings, construction of an eleven (11) storey commercial building comprising one (1) basement level car park, ground floor retail / commercial tenancies, commercial and parking on level one (1), parking on levels two (2) and three (3), and seven (7) levels of office use above.	4:1	7/08/2023
1-5 Chalmers Crescent, Mascot	E3 Productivity Support	3:1	Demolition, lot consolidation and construction of a 12 storey commercial development at 1-5 Chalmers Crescent, Mascot.	3.89:1	30/07/2019

2 Chalmers Crescent, Mascot	E3 Productivity Support	3:1	Demolition of existing structures, consolidation from two lots to one lot and construction of a twelve-storey commercial development comprising retail and office space.	3.83:1	23/03/2021
40 Ricketty Street, Mascot	E3 Productivity Support	3:1	Alterations to existing three (3) storey commercial office building Alterations to existing three (3) storey commercial office building and addition of two (2) commercial office floors.	3.87:1	22/11/2022
46-50 Kent Street, Mascot	E3 Productivity Support	3:1	Demolition of existing structures and construction of a ten (10) storey commercial development comprising retail and office space.	3.99:1	17/01/2020

- *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.*
- *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.*
- *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.*
- *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.*
- *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.*
- *A sensitivity analysis of the impact of project FSR on traffic has been prepared by WSP (submitted under extra cover). The analysis shows that the intersection of Ricketty Street/Kent Road is sensitive to the project and other background development in the locality. On a prima facie basis, the intersection might reach an unacceptable Level of*

Service (LoS) by 2036 without any mitigating factors. However, there are numerous mitigating factors which could prevent the intersection reaching LoS F by 2036

- *Commuter parking for the subject project should be capped at 400 allocated spaces forcing greater workforce use of the considerable public transport network and active transport. Capped commuter parking, as is the case with the City of Sydney 650m north of the site, will maintain intersection performance of the critical Rickety Street/ Kent Road intersection at LoS D into the future (2036), refer WSP report PS210815-PAM-SYD-MEM- 001 of 24/11/2025.*
- *Airport- related uses will have much more extended hours of operation with fewer than forecast workers arriving and departing during the standard peak hours.*
- *Not all parking would be likely to be commuter parking with space allocated for service vehicles (eg police cars which cannot be used for commuting).*
- *Organisations might vary hours or workers might choose flexibility to avoid peak traffic conditions.*
- *Green travel plans, and corporate incentives, could be used to influence worker behaviour in a positive direction.*

Officer Comment:

The applicant appears to have attempted to address multiple ‘ways’ outlined in *Wehbe v Pittwater Council [2007] NSWLEC 827* (‘Wehbe’), despite indicating reliance on Test One. It should be noted that only one test needs to be satisfied.

Test One requires an assessment of whether “*the objectives of the standard are achieved notwithstanding non-compliance with the standard and compliance with the standard is unreasonable or unnecessary.*”

The applicant’s suggestion that Council has approved similar FSR variations elsewhere cannot be relied upon to support the current request. Each application is assessed on its own merits. Previous variations do not establish a precedent or guarantee support for this proposal. There is no certainty that these approved developments will be constructed, so reliance on them as justification for compatibility with the bulk and scale of the future character of the locality is not supported. Approvals within the locality were determined on a site-specific basis. Further, a review of Council’s records also indicates discrepancies between what was approved and what the applicant has claimed.

The applicant’s documents acknowledge traffic implications, suggesting the proposal cannot minimise environmental effects of adjoining properties. These matters remain unresolved. The justification also relies heavily on speculative assumptions about traffic generation such as “*not all parking would be commuter parking*” and “*organisations might vary hours or workers might choose flexibility to avoid peak traffic conditions.*” Justification should be based on evidence, not speculation.

Furthermore, while the renders provide a visual representation of the proposed design, they do not in themselves justify why a requirement should be considered unreasonable or unnecessary. A planning rationale is still required to support such a position. The application is still at a concept stage, so the arguments about transforming the public domain through active frontage and landscaping are premature. Detailed plans to substantiate this claim cannot be provided at this stage, making the argument largely speculative.

The following arguments are also not considered valid:

- There are no amenity impacts, such as overshadowing or privacy
- Market preferences or post-COVID workplace trends; and
- A larger development will positively influence the future of the locality.

The written request does not provide sufficient reasons that compliance is unreasonable or unnecessary in the circumstances of the case, as required by Clause 4.6(3)(a). The variation sought would result in a built form that is inconsistent with the objectives of the FSR control particularly in relation to bulk, scale, and density which has also been driven by height.

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

- *General compliance of the proposed development with the applicable controls under the SEPPs and Bayside LEP and Development Control Plan (BDGP), ensures the potential adverse environmental impact of that part of the proposal which breaches the FSR standard is within the acceptable limits established by similar planning approvals in the last five years for developments in the E3 zone.*
- *The additional GFA is not discernible from the public domain where the bulk and scale of the built form matches that of other projects in the locality. The proposal 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 greatly enhances 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 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.”

- *Traffic impact modelling (WSP report PS210815-PAM-SYD-MEM-001 of 24/11/2025), indicates that imposition of capped commuter parking of 400 max spaces on-site will maintain LoS D at the critical Rickety Street/ Kent Road intersection until 2036. The impact of the additional floor space above FSR 3.0:1 is sufficiently mitigated to justify approval of the proposed FSR of 3.86:1.*
- *The lack of any material or discernible adverse visual 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 built form outcome for the development*
- *As traffic impact is mitigated by capping allocated commuter spaces to max 400, the proposal would also meet the Micaul test with regard to traffic impact.*

Officer Comment:

Council does not consider the reasons provided are sufficient to support the proposed FSR variation.

Increasing floor space by an additional 10,836 m² based on employment opportunities, economic growth, or market preferences does not constitute a sound planning justification. Similarly, proximity to a train station does not, on its own, warrant additional bulk or floor space. The claim that there are no amenity impacts, such as overshadowing or privacy, also fails to demonstrate why the variation should be supported. None of these reasons provide adequate environmental planning ground to approve the variation.

Furthermore, the suggestion that Council has approved variations elsewhere cannot be relied upon. Each application is assessed on its own merits. Approvals within the locality were determined on a site-specific basis. A review of Council's records also indicates discrepancies between what was approved and what the applicant has claimed.

Had the applicant adopted Council's suggestion to reduce parking to a compliant scheme, there may have been an environmental planning ground to justify the FSR proposal. The reduction in parking is supported by TfNSW.

The written request does not provide sufficient environmental planning grounds to justify contravening the development standard, as required by Clause 4.6(3)(b). The variation sought would result in a built form that is inconsistent with the objectives of the FSR control and the zone, particularly in relation to bulk, scale, and density which has also been driven by height. Even with the removal of one floor from each tower, while this would resolve the non-compliant height, the development would still exceed the permissible FSR.

Resolution of land acquisition issues / Independent valuer be appointed to resolve the question of land valuation and acquisition.

The specifics of the sale arrangement are outside the Panel's scope. Council has granted owner's consent for the land to be included in the development application. Discussions with the developer regarding a methodology for valuing the land have recommenced. While an agreement has not yet been reached, Council remains committed to maintaining open dialogue.

Independent Peer review of Design Excellence

The Panel recommends that Council engage an independent peer reviewer, Paul Walter, to provide a report outlining whether the application achieves design excellence. This report has been attached as a separate addendum. Their review concludes that, based on the revised design, materials, and proposed modifications to be secured through conditions of consent, the concept design is considered capable of achieving design excellence.

OTHER MATTERS

Planning Agreement

A Planning Agreement (PA) was initially put forward by the applicant on 24 October 2025 and subsequently amended on 4 November 2025. The request proposed a range of intersection upgrades, or alternatives where upgrades were not feasible. It also included a monetary contribution for public art, all at the developer's cost. Critical to note is that one of the nominated intersections related to a state road. Council cannot enter into an agreement for state infrastructure, this would trigger the need for a State PA.

Given the limited time available and noting that the application is not recommended for approval, Council was not in a position to enter into negotiations. If the application were ultimately supported, Council would not oppose entering into a planning agreement. However, any agreement would need to deliver tangible benefits to the local community. A condition is included in the suite of conditions if the panel were of the mind to support the proposal.

Height Variation

The proposed development seeks a total height of 46 m (51.0 AHD), representing a variation of 2 m (approximately 4.55%). A Clause 4.6 Objection Statement was originally submitted and assessed as part of the initial report. The justification provided was not substantiated and was therefore rejected. The assessing officer maintains this position.

Compliance with the maximum building height of 44 m is both achievable and reasonable. The applicant has viable alternatives to achieve compliance, most notably by reducing the excessive floor space sought. No environmental constraints, such as flooding, exist that would necessitate additional height. Accordingly, the variation is therefore not a product of site-specific limitations or planning merit, but rather a pursuit of increased FSR. As the application cannot be supported on FSR grounds, the proposed height variation is likewise considered inappropriate and cannot be endorsed.

Recommendations for Progression

The development, as currently proposed, cannot be supported in its present form. However, a pathway forward has been identified that would achieve both a height and parking reduction. This amendment would effectively resolve two of Council's principal concerns with the proposal.

A reduction in parking to 400 spaces could be achieved by deleting the upper ground podium level carparking, which currently accommodates 165 car spaces and provide some articulation to the other car parking levels by design changes. See Figure 1–5 below, which identifies the level that could be removed.

Importantly, the removal of this floor would result in the reduction of overall height, bulk, mass, and scale of the built form, thereby bringing the proposal into compliance with the height development standard.

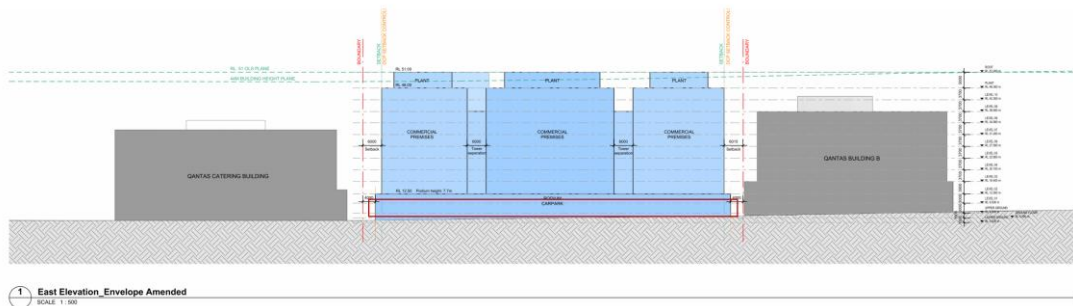


Figure 1 – East Elevation Envelope

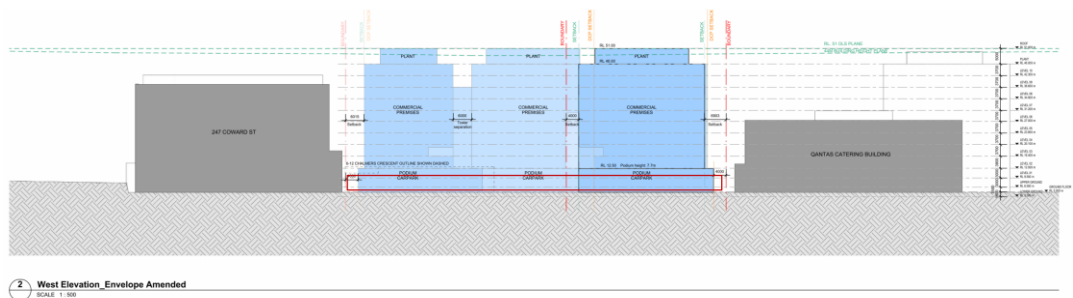


Figure 2 – West Elevation Envelope

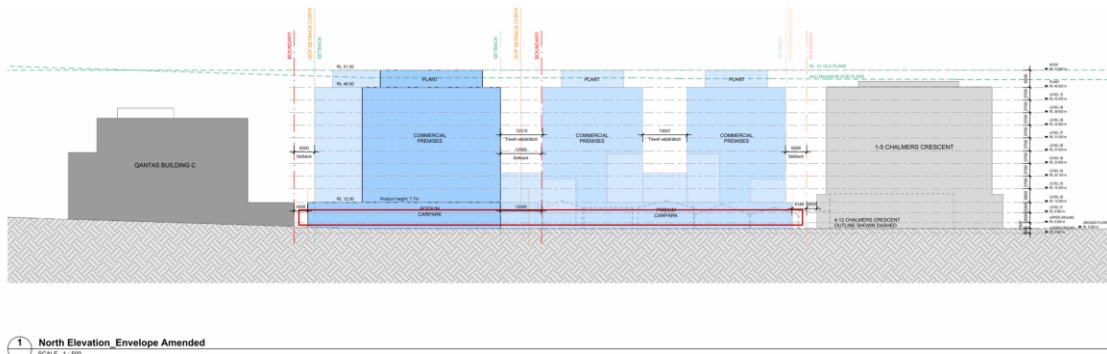


Figure 3 – North Elevation Envelope

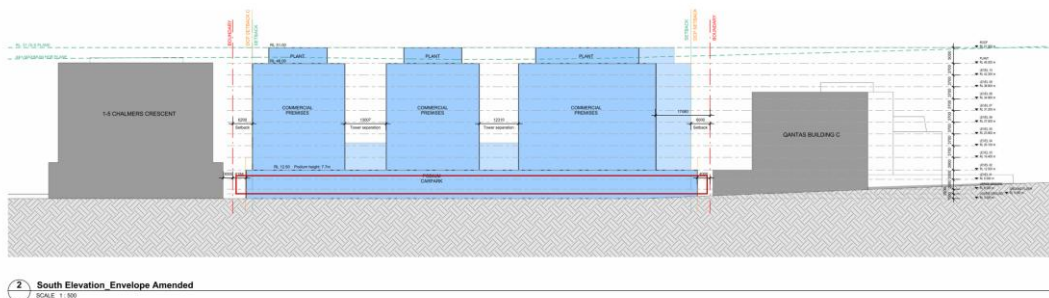


Figure 4 – South Elevation Envelope



Figure 5 - Upper ground level at RL 6.5

A revised Clause 4.6 would still be required to be submitted in relation to FSR. However, this may enable the applicant to present a stronger environmental planning argument that the revised parking rate is appropriate for the expected FSR on the site.

This approach would help address the objection to the FSR development standard by demonstrating that the proposal minimises adverse impacts on adjoining properties and the public domain. Furthermore, reducing the height would deliver a built form more consistent with the desired future character of the locality. With the height reduced and parking aligned with Council's expectations, the proposal could demonstrate genuine planning merit and achieve a better fit within its context, consistent with the desired future character as outlined in the Bayside Council LEP 2021.

While this option addresses the parking issue, it has not been tested from an urban design perspective. There are still concerns regarding the relationship between the podium levels and those of the adjoining building at 1–5 Chalmers Crescent. This results in an unresolved matter.

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 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.

- 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 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 (4.55%) 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.
- 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 4.4(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.
- 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 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.
- 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 6.10 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:
 - 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 Gross Floor Area without justification or compensating public benefit.
- f) 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.

- g) 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.
- h) 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.
- i) 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.