

COUNCIL ASSESSMENT REPORT

SYDNEY EASTERN CITY PLANNING PANEL

PANEL REFERENCE & DA NUMBER	PPSEC-321 – DA-2024/133
PROPOSAL	Demolition of existing structures and construction of an eight (8) storey mixed use development comprising of ground floor retail and parking, seven (7) levels of residential units, basement and above ground car parking and landscaping
ADDRESS	573 Gardeners Road, Mascot Lot 1 in DP 334819, Lot 1 in DP 335231
APPLICANT	Mecone
OWNER	APKC Pty Ltd
DA LODGEMENT DATE	14 June 2024
APPLICATION TYPE	Integrated Development
REGIONALLY SIGNIFICANT CRITERIA	Section 3.10, Schedule 6 of <i>State Environmental Planning Policy (Planning Systems) 2021</i> : Private infrastructure and community facilities over \$30 million
CIV	\$62,701,806 (excluding GST)
CLAUSE 4.6 REQUESTS	Bayside LEP 2021, Section 4.3 – Height of Building
KEY SEPP/LEP	<ul style="list-style-type: none"> • State Environmental Planning Policy (Planning Systems) 2021 • State Environmental Planning Policy (Biodiversity and Conservation) 2021 • State Environmental Planning Policy (Resilience and Hazards) 2021 • State Environmental Planning Policy (Transport and Infrastructure) 2021 • State Environmental Planning Policy (Housing) 2021 • State Environmental Planning Policy (Sustainable Buildings) 2022 • Bayside Local Environmental Plan 2021 • Bayside Development Control Plan 2022
TOTAL & UNIQUE SUBMISSIONS KEY ISSUES IN SUBMISSIONS	Two (2)

DOCUMENTS SUBMITTED FOR CONSIDERATION	Architectural Plans – FJC Studios Landscape Plan – Site Image Statement of Environmental Effects – Mecone Clause 4.6 Statement for Height of Building – Mecone
SPECIAL INFRASTRUCTURE CONTRIBUTIONS (S7.24)	N/A
RECOMMENDATION	Deferred Commencement
DRAFT CONDITIONS TO APPLICANT	YES
SCHEDULED MEETING DATE	28 November 2024
PREPARED BY	Andrew Ison, Senior Development Assessment Planner
DATE OF REPORT	20 November 2024

Summary of s4.15 matters Have all recommendations in relation to relevant s4.15 matters been summarised in the Executive Summary of the assessment report?	Yes
Legislative clauses requiring consent authority satisfaction Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarized, in the Executive Summary of the assessment report?	Yes
Clause 4.6 Exceptions to development standards If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report?	Yes
Special Infrastructure Contributions Does the DA require Special Infrastructure Contributions conditions (S7.24)? <i>Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions</i>	N/A
Conditions Have draft conditions been provided to the applicant for comment? <i>Note: in order to reduce delays in determinations, the Panel prefer that draft conditions, notwithstanding Council's recommendation, be provided to the applicant to enable any comments to be considered as part of the assessment report</i>	Yes

EXECUTIVE SUMMARY

The development application (DA-2024/133) seeks consent for demolition of existing structures and construction of an eight (8) storey mixed use development comprising of ground floor retail and parking, seven (7) levels of residential units, basement and above ground car parking and landscaping.

The subject site is known as 573 Gardeners Road, Botany ('the site'). The site comprises a lot with a 45.72 metre frontage to Gardeners Road to the north. The site occupies a regular shaped area of 2,795m². The current vehicular access to the site is via Gardeners Road.

Existing development on the site consists of a three-storey scaled commercial building, with a large hardstand area and some vegetation.

The site is located in an area that is evolving from commercial and light industrial uses into shop top housing, as evidenced by the neighbouring sites to the east and west along Gardeners Road.

The site is located in the MU1 Mixed Use zone pursuant to section 2.2 of the Bayside Local Environmental Plan 2021 (LEP). The proposed development subject to this application is defined as shop top housing, which is permissible with consent in the MU1 Mixed Use zone.

The proposal is inconsistent with various provisions of the planning controls including:

- Variation to the building separation and solar access requirements in the Apartment Design Guide;
- Height of building exceeds LEP development standard; and
- Non-compliance with the solar access controls and dwelling mix controls in the Bayside DCP.

Referrals from external agencies were undertaken, with the following below being satisfied:

1. **Water NSW:** Section 4.47 of the Environmental Planning and Assessment Act 2000 in relation to General Terms of Approval (GTAs) from Water NSW. GTAs have been issued.
2. **Ausgrid:** Section 2.48 of the State Environmental Planning Policy (Transport and Infrastructure) 2021 in relation to proposed works in proximity to an electricity transmission or distribution network. They have no objections to the proposed development.
3. **Transport for NSW (TfNSW):** Section 2.119 of the Transport and Infrastructure SEPP with relation to development with frontage to a classified road (Gardeners Road). They have issued comments.
4. **NSW Police:** To review Crime Prevention Through Environmental Design (CPTED) principles. They are supportive of the proposed development subject to conditions.

The application was placed on public exhibition from 26 June 2024 to 27 July 2024, with two (2) submissions being received. These submissions raised issues relating to environmental impacts on neighbouring properties, solar access impacts on the neighbouring houses to the south, impacts during construction, traffic, privacy and impacts on property values. These issues are considered further in this report.

The application was referred to the Sydney Eastern City Planning Panel for determination pursuant to Clause 3 of Schedule 4A of the Environmental Planning and Assessment Act 1979 (EP&A Act) as the Capital Investment Value of the proposal exceeds the \$30M threshold.

A briefing was held with the Regional Panel on 15 August 2024 where key issues were discussed, including EV charging points for each residential unit, screening of fire hydrants, communal open space usability, access, location and design and setback requirements.

The key issues associated with the proposal included:

- **Design Excellence & Design Quality Principles:** The Council's Design Review Panel (DRP) reviewed the proposal on 1 August 2024 where it concluded that the application could achieve both the design quality principles under Chapter 4 of the Housing SEPP and the 'Design Excellence' provisions under Clause 6.10 of the Bayside LEP 2021 subject to a series of amendments to Council satisfaction, including resolution of the residential lobby and commercial tenancy layout at ground level, treatment of the substation, a redistribution and redesign of the communal open space and changes to the western elevation. Amended plans address the issues raised.
- **Building separation:** The proposed development is not capable of achieving full compliance under the Apartment Design Guide chiefly due to the setbacks of the neighbouring developed sites to the east and west.
- **Height of building:** The proposed development exceeds the LEP development standard, with a Section 4.6 variation prepared by the applicant.
- **Floodplain Management:** Further changes are required to achieve full compliance, relating to a redesign of the commercial tenancy area as well as the civil engineering plans being consistent with the recommendations of the flooding report. This is to be resolved by way of a Deferred Commencement condition.
- **Solar access:** The neighbouring sites to the south on Miles Street do not receive the minimum required amount of natural light in mid-winter.
- **De-commissioning of sewer branch:** Sydney Water have advised that an existing sewer branch traversing the centre of the site needs to be decommissioned before any works on site can commence. The applicant has engaged with Sydney Water, however no further written evidence has been provided to demonstrate that their requirements have been met. Therefore, this is to be resolved by way of a Deferred Commencement condition.

The application is subject to the Housing and Productivity Contribution (HPC) and a condition of consent has been included compliance with the Ministerial Planning Order 2024.

Following a detailed assessment of the proposal, pursuant to Section 4.16(1)(b) of the EP&A Act, DA-2024/133 is recommended for APPROVAL subject to a Deferred Commencement to address floodplain management and the de-commissioning of the Sydney water sewer branch..

1. THE SITE AND LOCALITY

1.1 The Site

The subject site is located at 573 Gardeners Road, Mascot (Lot 1 in DP 334819, Lot 1 in DP 335231). The proposed development site has a frontage of 45.72 metres to Gardeners Road, a length of 61.015 metres along the eastern boundary, 45.72 metres along the southern boundary, and 61.265 metres along the western boundary, with a total area of 2,795m². The subject site currently contains a three-storey scaled commercial building,

with a large hardstand area and vegetation. The site is relatively level with a cross fall of 200mm from the Gardeners Road frontage to the rear.



Figure 1: Aerial showing subject sites, marked in red (Source: Bayside IntraMaps)

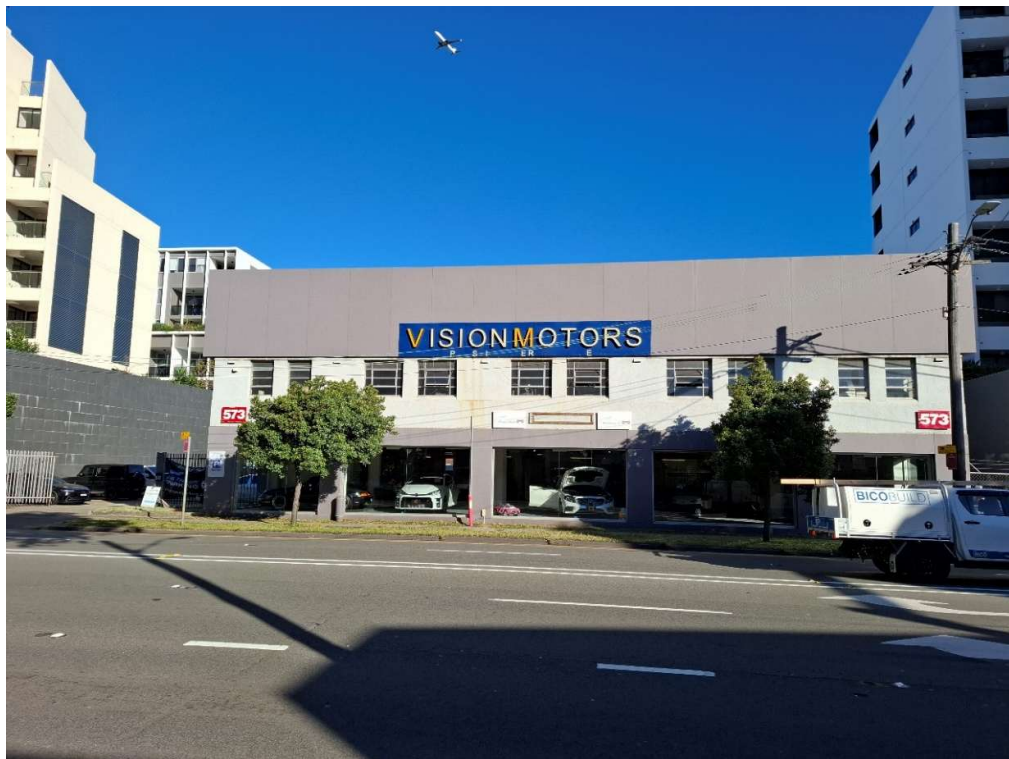


Figure 2: Subject site as viewed from Gardeners Road



Figure 3: Looking west down Gardeners Road to neighbouring sites

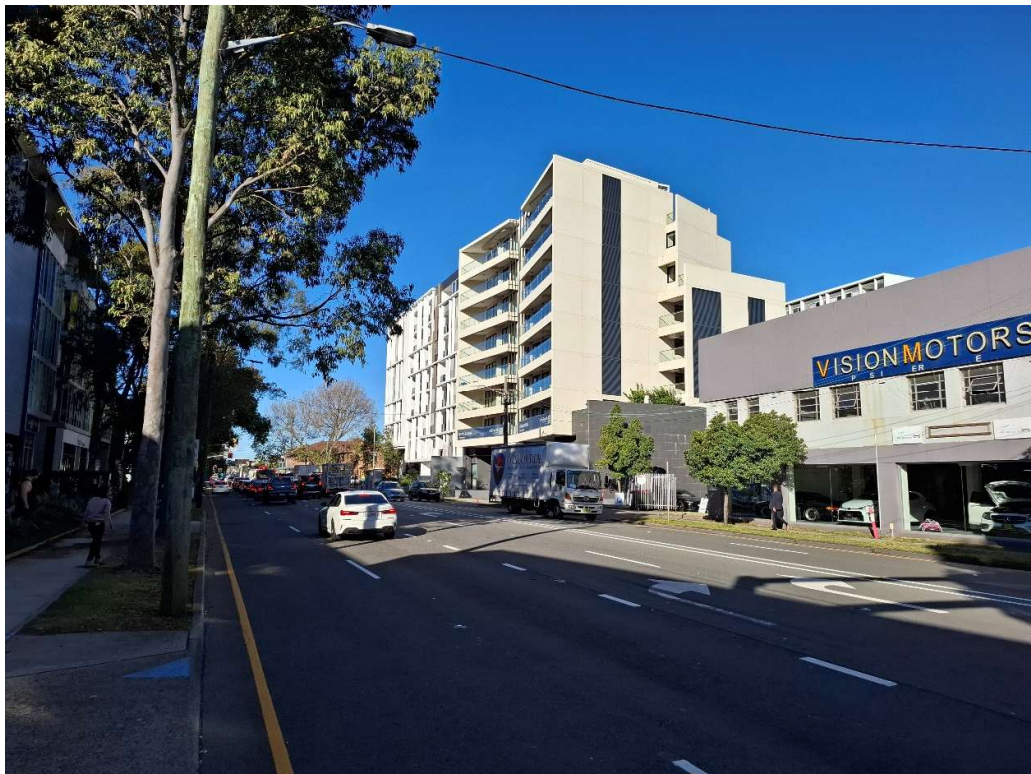


Figure 4: Looking east down Gardeners Road to neighbouring sites



Figure 5: Rear of the site from Miles Street to the south

1.2 The Locality

The subject site is located to the north-east of the Mascot Town Centre, on the southern side of Gardeners Road, with City of Sydney Council located immediately to the north on the opposite side of Gardeners Road.

The site is located between O’Riordan Street to the west and Botany Road to the east. The subject site is surrounded by a number of land uses with (in a clockwise direction) a seven storey mixed use developments of similar scale, including at 577 Gardeners Road to the west, a low rise building containing a vehicle sales and hire premises to the north at 470 Gardeners Road (Porsche Sydney), a seven storey mixed use development at 563 Gardeners Road to the east and a cluster of single dwellings to the south (12 to 26 Miles Street). It is located approximately 700 metres to the north east of Mascot railway station.

2. THE PROPOSAL AND BACKGROUND

2.1 The Proposal

The subject application seeks consent for Integrated Development - demolition of existing structures and construction of an eight (8) storey mixed use development comprising of ground floor retail and parking, seven (7) levels of residential units, basement and above ground car parking and landscaping.



Figure 6: Photo montage of proposal, as seen from Gardeners Road (supplied by the applicant)

The proposal is described in further detail below:

Demolition and Tree Removal

- Demolition of existing buildings
- Removal of existing slab
- Removal of 3 trees

Excavation

- Excavation for one level of basement

Mixed use development

Basement

- Car parking for 31 vehicles;
- Parking for 2 motorcycles;
- Bike storage for 87 bicycles;
- Storage cages;
- Plant rooms;
- Fire stairs; and
- Lifts

Ground Level

- One retail tenancy addressing Gardeners Road;
- Residential lobby entry off Gardeners Road;
- At-grade car parking for 27 vehicles;

- Plant rooms including substation;
- Bin rooms;
- Fire stairs;
- Lift access;
- Deep soil landscaped area at the rear.

Mezzanine Level

- Car parking for 28 vehicles;
- Parking for 1 motorcycles;
- Plant rooms;
- OSD tank;
- Fire stairs; and
- Lifts

Level 1

- 9 residential units (3 x 1 bedrooms, 2 x 2 bedrooms, 4 x 3 bedrooms); and
- Communal open space (internal and external)

Level 2

- 12 residential units (2 studio, 4 x 1 bedrooms, 2 x 2 bedrooms and 4 x 3 bedrooms)

Level 3

- 14 residential units (2 x studio, 6 x 1 bedrooms, and 6 x 2 bedrooms)

Level 4

- 14 residential units (2 x studio, 6 x 1 bedrooms, and 6 x 2 bedrooms)

Level 5

- 14 residential units (2 x studio, 6 x 1 bedrooms, and 6 x 2 bedrooms)

Level 6

- 10 residential units (10 x 2 bedrooms)

Level 7

- 7 residential units (1, 1 bedrooms and 6 x 2 bedrooms); and
- Communal open space (internal and external)

Roof

- Photovoltaic panels; and
- Plant

Landscaping

- Landscaping at ground level and within the communal open space areas

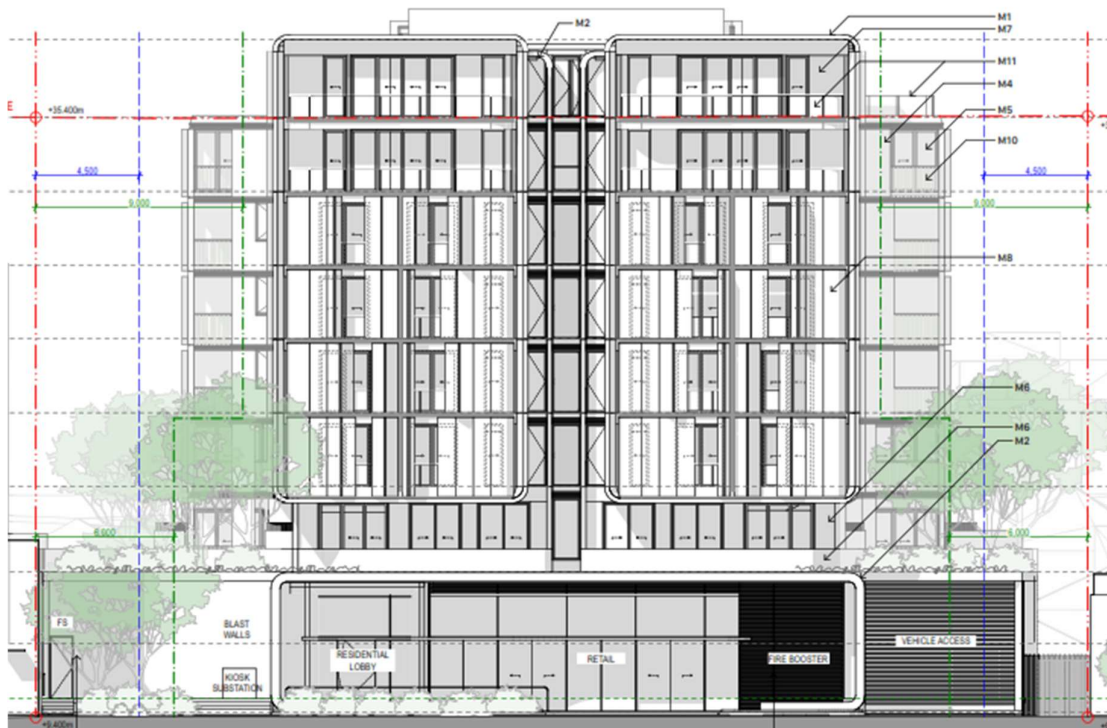


Figure 7: Northern (Gardeners Road) elevation (supplied by the applicant)



Figure 8: Eastern elevation (supplied by the applicant)

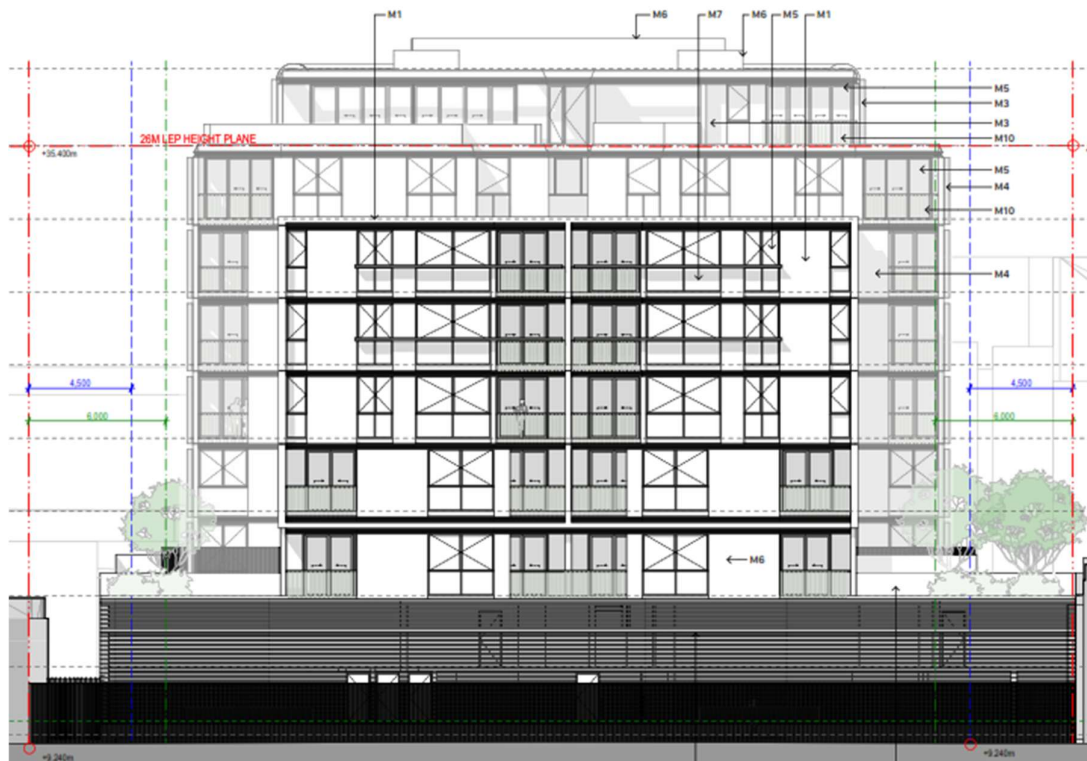


Figure 9: Southern (rear) elevation (supplied by the applicant)



Figure 10: Western elevation (supplied by the applicant)

The table below is a summary of key development data:

Control	Proposal
Site area	2,795m ²
GFA	6,974m ²
FSR (retail/residential)	2.5:1
Clause 4.6 Requests	Yes – Height of Building

No of apartments	80
Max Height	30.65m
Landscaped area	267.68m ²
Car Parking spaces	86

2.2 Background

A pre-lodgement meeting was held with Council officers prior to the lodgement of the applicant on 1 February 2024 where various issues were discussed, including building separation, building height and solar access impacts to the neighbouring properties to the south.

A pre-lodgement Design Review Panel (DRP) meeting was also held with the applicant on 4 April 2024.

The development application was lodged on 14 June 2024. A chronology of the development application since lodgement is outlined below including the Panel's involvement with the application:

Date	Event
14 June 2024	DA lodged
14 June 2024	DA referred to external agencies
19 June 2024	Site inspection
26 June 2024	The start of the notification period with the closing date being 27 July 2024. No submissions were received.
1 August 2024	Reported to the Bayside Design Review Panel (DRP), with the recommendation in the minutes that subject to further amendments it would satisfy the design quality principles under Chapter 4 of the Housing SEPP and achieve design excellence in accordance with Section 6.10 of the Bayside LEP.
15 August 2024	Panel briefing, with the following comments provided: <ul style="list-style-type: none"> • EV charging points for each residential unit • Screening of fire hydrants • Communal open space usability, access, location and design • Setback requirements
27 September 2024	A request for information (RFI) letter was issued to the applicant, requesting additional information on the following: <ul style="list-style-type: none"> • Amended architectural plans • Amended landscape plans • Parking, traffic and access • Stormwater management • Floodplain management • Waste management
28 October 2024	RFI response lodged through the Planning Portal

2.3 Site History

The following applications have previously been considered by Council in relation to the subject site:

DA-2019/445: Integrated Development - Demolition of existing structures and construction of a part six (6) and eight (8) storey mixed use building comprising of two (2) commercial

tenancies and eighty six (86) residential units with two (2) basement levels. Withdrawn on 24 August 2020.

3. STATUTORY CONSIDERATIONS

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

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

These matters are further considered below.

It is noted that the proposal is considered to be (which are considered further in this report):

- Integrated Development (s4.46)

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

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

(a) Environmental Planning and Assessment Act 1979 – Section 4.47 Integrated Development

The relevant requirements under Division 4.8 of the EP&A Act and Part 6, Division 3 of the Environmental Planning and Assessment Regulation 2000 have been considered in the assessment of this application.

Section 91 – Water Management Act 2000

It is Integrated Development in accordance with the Water Management Act 2000 as the development is deemed to be a specified controlled activity as excavation works for the basement will intercept groundwater. In this regard, the Development Application was referred to Water NSW.

On 8 August 2024, Water NSW provided General Terms of Approval (GTAs).

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

The following Environmental Planning Instruments are relevant to this application:

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

A summary of the key matters for consideration arising from these State Environmental Planning Policies are outlined in the table below:

EPI	Matters for Consideration	Comply (Y/N)
State Environmental Planning Policy (Planning Systems) 2021	Chapter 2: State and Regional Development <ul style="list-style-type: none">• Section 2.19(1) declares the proposal regionally significant development pursuant to Clause 2 of Schedule 6 as it comprises general development over \$30 million.	Y
State Environmental Planning Policy (Sustainable Buildings) 2022	Chapter 2 Standards for residential development—BASIX	Y
State Environmental Planning Policy (Biodiversity & Conservation) 2021	Chapter 2: Vegetation in non-rural areas <ul style="list-style-type: none">• Section 2.6(1) – Clearing of vegetation has been reviewed and considered satisfactory subject to conditions including replacement tree planting.	Y
State Environmental Planning Policy (Resilience & Hazards) 2021	Chapter 4: Remediation of Land <ul style="list-style-type: none">• Section 4.6 – Contamination and remediation has been considered in the Contamination Report and the proposal is satisfactory subject to conditions.	Y

State Environmental Planning Policy (Transport and Infrastructure) 2021	Chapter 2: Infrastructure <ul style="list-style-type: none"> Section 2.48(2) (Determination of development applications—other development) – electricity transmission. The proposal is satisfactory subject to conditions. Section 2.119 - Development with frontage to classified road. Concurrence has been issued by Transport for NSW. Section 2.120 – Impact of road noise or vibration on non-road development 	Y
State Environmental Planning Policy (Housing) 2021	Chapter 4 – Design of residential flat buildings <ul style="list-style-type: none"> Clause 145(2) - Design Quality Principles - The proposal is consistent to the design quality principles and the proposal is generally consistent to the ADG requirements, with the exception of solar access, building separation and deep soil. 	Y
Bayside LEP 2021	<ul style="list-style-type: none"> Clause 2.3 – Permissibility and zone objectives Clause 2.7 – Demolition requires consent Clause 4.3 – Height of buildings Clause 4.4 – Floor space ratio Clause 4.6 – Exceptions to development standards Clause 6.1 – Acid Sulfate Soil Clause 6.2 – Earthworks Clause 6.3 – Stormwater and sensitive water urban design Clause 6.7 – Airspace operations Clause 6.8 – Development in areas subject to aircraft noise Clause 6.9 – Active street frontage Clause 6.10 – Design Excellence Clause 6.11 – Essential services 	Y

Consideration of the relevant SEPPs is outlined below:

State Environmental Planning Policy (Planning Systems) 2021

This SEPP applies to the proposal as it is a modification application of an approved development that is identified as regionally significant development. In this case, pursuant to 3.10 of this SEPP, the proposal is a regionally significant development as it satisfies the criteria in Clause 2 of Schedule 6 as the modified proposal is general development with a capital investment value (CIV) over \$30 million. Accordingly, the Sydney Eastern City Planning Panel is the consent authority for the application. The proposal is consistent with this Policy.

State Environmental Planning Policy (Biodiversity and Conservation) 2021

Chapter 2 – Vegetation in non-rural areas

This SEPP applies to the proposal.

The applicant lodged an Arboricultural Impact Assessment, dated 27 May 2024 and prepared by Blues Bros Arboriculture as part of the application. It recommended the

removal of 3 trees (all Blueberry Ash), two being street trees and one within the subject property.

This application was referred to Council's Tree Management Officer, and they agreed with the recommendations from the Arboricultural Assessment.

Based on the above, the proposal is considered acceptable with regards to this SEPP subject to the inclusion of a 3:1 ratio relating to three trees to be planted for everyone removed.

On this basis, a total of 9 trees is required to be planted. The proposed landscape plan includes at least 9 canopy trees along the rear deep soil zone, and hence no condition is required to be imposed.

State Environmental Planning Policy (Resilience and Hazards) 2021

Chapter 4 – Remediation of Land

The site was a market garden until 1937, then used for industrial purposes from 1937 until current. Two underground storage tanks were installed sometime in the early 1970s. There are no records showing the USTs have been decommissioned.

The applicant has provided the following documentation as part of the application:

- State 1 and 2 Environmental Site Assessment, prepared by Geo-Environmental Engineering, and dated 22 May 2019; and
- Remedial Action Plan, prepared by ET Consultants and dated 28 June 2024

This was referred to Council's Environmental Scientist for assessment.

They agree in general with conclusion of the Environmental Site Assessment that it can be made suitable for residential development, subject to remediation. However, it has noted data gaps, which can be addressed through an amended Detailed Site Investigation as follows:

- Ecological considerations along the southern and western boundaries outside the footprint of the basement excavation;
- Total recoverable hydrocarbons impacts potentially associated with the underground storage tanks

The above will be imposed as a condition in the attached draft schedule.

It is considered that it complies with the SEPP.

State Environmental Planning Policy (Transport and Infrastructure) 2021

Section 2.48 – Development likely to affect an electricity transmission or distribution network

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

The application was referred to Ausgrid for comment. No objections were raised to the proposed development.

The proposal satisfies Section 2.48 of the SEPP.

Section 2.119 – Development with frontage to classified road

The proposed development is located on land with a frontage to a classified road (i.e. Gardeners Road). In this regard, Section 2.118 Development with frontage to a classified road, of the SEPP must be considered before consent can be granted.

The proposed development involves access to and from the site via Gardeners Road, and has frontage to Gardeners Road.

As part of the assessment of this Section, the application was referred to Transport for NSW (TfNSW), who provided comments on 4 July 2023, subject to conditions.

The proposal has been assessed by Council's Engineers who have not raised any objections to the proposal. Vehicular access to and from the site must be from Gardeners Road, with no alternative access road for the site, and the proposal is found to be satisfactory with regards to the requirements of Section 2.119 of the SEPP.

Section 2.120 – Impact of road noise or vibration on non-road development

The proposed development is for shop top housing that is on land in or adjacent to the road corridor for a freeway, a tollway or a transitway or any other road with an annual average daily traffic volume of more than 20,000 vehicles and that the consent authority considers is likely to be adversely affected by road noise or vibration. Accordingly, Clause 2.120 of the SEPP is required to be considered as part of this assessment.

For residential accommodation, the consent authority must not grant consent unless it is satisfied that appropriate measures will be taken to ensure that the following LAeq levels are not exceeded:

- a. *in any bedroom in the building 35 dB(A) at any time between 10 pm and 7 am,*
- b. *anywhere else in the building (other than a garage, kitchen, bathroom or hallway) - 40 dB(A) at any time.*

The proposal was accompanied by an Acoustic Report, prepared by West and Associates and dated on 28 May 2024 which considered the potential impact of road noise on the proposed development. The report concludes that the development will satisfy the noise level requirements as outlined in the SEPP, should the recommendations in the report be adopted. The acoustic report recommendations have been included within the recommended conditions of consent.

The proposal satisfies Clause 2.120 of the SEPP.

State Environmental Planning Policy (Housing) 2021

Chapter 4 – Design of residential flat buildings

In accordance with Section 145(2) of this SEPP, the consent authority must take into consideration the following:

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

The proposal was reported to the DRP at pre-DA stage on 4 April 2024 and following lodgement of this DA on 1 August 2024.

The DRP supported the proposed modified development, subject to further amendments, which will be discussed further under the design quality principles below:

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

The design quality principles have been considered in the assessment of the proposal and are found to be satisfactory as indicated below.

Principle 1: Context and Neighbourhood Character

The subject site is located within the Gardeners Road corridor area between Kent Road to the west and Botany Road to the east and is zoned MU1 Mixed Use as prescribed under the Bayside LEP 2021. The existing streetscape of the southern side of Gardeners Road is characterised primarily by recently completed multi-storey mixed use and shop top housing developments.

The zone objectives for the MU1 Mixed Use zone is to provide a mixture of compatible land uses, and to integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling. Accordingly, this is an area that has gradually been undergoing transition, with a large number of mixed use and shop top housing developments recently constructed. Furthermore, the proposal is consistent with the desired future character, with respect to generally meeting the relevant development standards in the Bayside LEP 2021 (with the exception of the Height of Building) and most of the relevant standards in the Apartment Design Guide (ADG) as prescribed under this SEPP and controls in the Bayside DCP 2022.

The following comments were made by the DRP:

- (a) The Panel notes that the proposal exceeds the maximum allowable height by an entire floor. Whilst the Panel is sympathetic to the pressures on floor-to-floor dimensions due to changes to the NCC, the Panel does not consider that providing adequate clearance to a loading dock justifies non-compliance. The Panel also notes that the floor-to-floor height between level 01 and the lower ground floor level is in the order of 6m, well above the required clearance for the garbage truck. This is created by the above ground car parking level shown as the mezzanine in fact.*

Council assessment: No changes have been required, as the clearance height for the driveway is for a medium rigid vehicle as per the requirements under AS 2890.1 and the Bayside DCP 2022. This will allow waste collection by Council and/or private waste companies, and the applicant has submitted a clause 4.6 variation for the variation to building height which is considered satisfactory – refer to section 4.6 of the Bayside LEP 2021.

Principle 2: Built Form and Scale

The built form of the proposed development will actively contribute towards the evolving nature of the streetscape and character for the Gardeners Road corridor, with respect to the scale, bulk and height of the building, and also manipulation of building elements

adding visual interest from the street. Internal amenity, outlook and surveillance opportunities are provided through the location of living areas and the communal open space on the roof top.

The following comments were made by the DRP:

- (a) *The Panel notes that the substation is still not integrated into the building volume. On balance the Panel agrees that the impacts of integration would result in an inferior outcome than the current proposal. Whilst this is understood, further work to harmonise the built form façade arrangement across the street frontage would improve the overall scheme.*

Applicant response: *The substation design has been amended to increase tree cover and further decrease visibility to the substation from the public domain.*

The proposed “portal” design provides a contrast to the neighbouring sites, as well as framing a welcoming zone designated to the lobby and retail space. In contrast, services (substation and driveway access) are setback to diminish their presence to the public domain.

Council assessment: The amended design and proposed substation location is considered suitable as it does not dominate the Gardeners Road frontage when viewed from the public domain. The portal design is also considered suitable as it provides a distinctive building element that clearly identifies the primary visitor points to the ground floor, that being the entry to the residential lobby and also the commercial tenancy.

- (b) *The entry sequence from Gardeners Road to the residential lobby is to be simplified, as it is currently a long and rather contorted route to access the lifts*

Applicant response: *The residential lifts must be flood protected, and therefore must be elevated 700mm from the Gardeners Road footpath to achieve this protection. The proposed design implements 1:20 walkways to traverse this elevational change, which is a comfortable gradient. Any steeper (eg 1:14 ramp) and handrails, kick rails and tactile indicators are all required, which, are commercial in character and detract from what should be an overtly residential setting. 700mm of elevation at 1:20 gradient equates to 14m of walkway ramping. Gardeners Road experiences heavy vehicular traffic. The optimal design for these frontages are protected and nurtured spaces with introverted, intimate experiences. The following figure shows a more detailed design, split up into six different portions (detailed further below):*

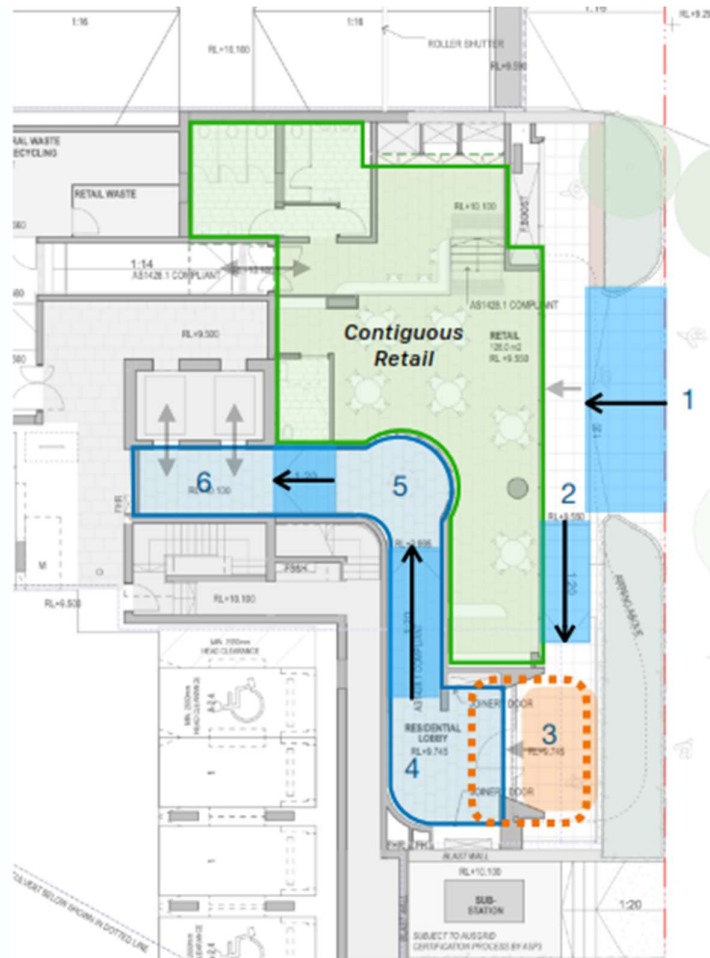


Figure 11: Entry sequence mark up (supplied by the applicant)

1. *Relative level access from the sidewalk via the landscaped setback reserve. A gentle 1:20 walkway is embedded within the landscape and 'folds' up to arrive within the portal and in a level landing area outside the retail glazing.*
2. *The portal edge then frames the second 1:20 walkway, invisible from the street.*
3. *The walkway comes to a sheltered, elevated arrival 'moment', with setback glazing creating a more generous space for residents and heavier planting to shield it from vehicle traffic.*
4. *Entering the double height lobby, there's space for joinery embedded seating areas, mail and bulky delivery facilities. Importantly, residents then enter a corridor framing the third walkway and depart the street-side setting.*
5. *The corridor comes to a generous corner arrangement with spatial opportunities for features finishes, sculptures and artworks with a central skylight aligning with the building's open-air slot overhead.*
6. *The intimate lift lobby is revealed; a gilded space of beautiful materials, detailing, and accent lighting.*

The highlighted plan adjacent illustrates a 'more direct residential lobby, and is noted:

- *The resultant lobby ramp gradients are noncompliant, exceeding 1:10. 1:14 is the maximum ramp gradient for DDA compliance.*
- *Flood protection to the resident lift lobby is not achievable with a direct ramp access.*

- *Even if there were a compliant ramp capable of providing flood protection, the lobby is fully exposed to the streetscape and footpath. There's no protection from traffic sight and noise, and from a CPTED perspective residents waiting for lifts are visible from the street.*
- *There is also a commercial driver to provide a singular retail tenancy. The tenancy currently proposed is not large, and any forced subdivision accommodating a more direct residential lobby design would result in smaller and impractical split tenancies.*
- *Any eastern tenancy would have no loading dock access.*

Council assessment: The residential lobby design is considered suitable, as it appropriately strikes the right balance in achieving the requirements for floodplain management and also providing a dignified access for people with disabilities with a prominent residential lobby and appropriate grading of the ramp. However, further work is required to ensure that the retail space is protected when flooded and will be discussed later in this report under the LEP section (floodplain management).

- (c) *The commercial and lobby area at ground level could be more rationalised to allow for the needs of future tenants. The layout of the commercial tenancy is not practical and has spatial limitations should the tenancy be used for anything other than a food and drink premise.*

Applicant response: *The retail tenancy requires internal loading dock access for waste and goods delivery. The dock requires flood level and freeboard protection, therefore a level change is required somewhere within the retail tenancy. We have indicated a minimum raised/flood protected area, leaving scope for flexible fit out design by any future tenant. Any additional raised internal area without a defined use or tenant design would be arbitrary and potentially obstructive to any future fit out.*

Regarding the practicality and use of the tenancy, agent input has been provided endorsing the efficacy and flexibility of the tenancy shell proposed, noting it would be receptive to the following uses:

- *Takeaway food and drink*
- *Convenience Store*
- *Kiosk*
- *Newsagency or similar*

Any of these uses would be beneficial to proposed and existing residents.

Council assessment: These above uses are considered suitable, however, would also need to be considered as part of a future fit out application and also be consistent with the active street frontage requirements under the Bayside LEP.

- (d) *As the western wall will be exposed permanently, it should be treated as a significant elevation with quality materials and visual interest – not just a painted surface.*

Applicant response: *The extent of the west wall has been reduced by repositioning the vehicle garage door. The portion of the west wall outside the garage door line is the portal end providing visual interest and material character.*

Council assessment: It is to be noted that this only relates to the podium wall, with the residential levels proposing openings. It is considered that given the design of the eastern façade on the neighbouring property, being blank with no openings, as also

adequate landscaping at ground level along that boundary, no further amendments are required on the western podium.

- (e) *The arrival sequence to the COS on Level 01 should be reconsidered. There is an opportunity to create a sense of arrival, from the moment the lift doors open into natural light and views of green open spaces. The narrow paths to the south ends of both spaces should not be accessible but instead be made into garden spaces; this would necessitate the removal of the one-bedroom unit.*

Applicant response: Level 01 COS has been reconfigured with expanded internal spaces, and new access routes to the external areas.

There are now two internal spaces, either side of the lift lobby and directly opposite each other. This provides intuitive way finding and access between both the east and west level 01 terrace COS areas, without a dependency on the narrow paths.

Council assessment: Considered suitable. It is noted that the size of Units 4 and 5 on this level have been reduced from two to one bedroom to expand the amount of internal communal open space and also provide new access routes from the central aisle. This in turn has improved the arrival sequence to the communal open space. The design and location of these spaces will not give rise to any negative visual or acoustic privacy to the neighbouring site.

- (f) *The communal space and room to Level 07 has the potential to be a very positive space for residents. This was addressed by the Design Review Panel who do not support the small room that visitors must pass through to access the outdoor area and, in considering the comments on the ground floor COS area, the quantum of COS is better arranged on this level across the full width of the southern extent Level 07 by deleting Unit 07, so that a generous sized COS room and outdoor area can be provided.*

Applicant response: The previously provided internal space on Level 07 has been expanded to improve usefulness, with new means of external terrace access independent of the internal space. The revised space has been designed to accommodate concurrent events and will be a wonderful amenity to the residents.

Additionally, by converting the southeast corner 2B to a 1B, the level 07 external area has been increased in size to account for the COS area reduction at Ground Floor. The new external terrace area is accessible directly from the common corridor.

Council assessment: Considered suitable. It is noted that the size of Unit 7 on this level have been reduced from two to one bedroom to expand the amount of external communal open space. This in turn has made this space a more positive one for residents.

Principle 3: Density

The density is considered acceptable with respect to the bulk and scale of the development and will be assessed in greater detail in the LEP section of this report. Furthermore, there is sufficient communal open space as well as private open space areas. The application of these principles means that it is not considered to be overdevelopment of the site. It is within the Gardeners Road corridor to the west of Botany Road, which is in close proximity to Mascot railway station, and is within walking distance of a number of public parks and reserves, as well as schools.

The following comments were made by the DRP:

- (a) *Due to the site's proximity to public transport, the sizing and mix of apartment types is considered reasonable. However, there may be potential for a greater number of larger sized apartments on the site. This should be reviewed based on the local demographics of the area.*

Applicant response: No change to the number of three bedroom units (eight).

Council assessment: Considered suitable, refer to DCP assessment later in this report.

Principle 4: Sustainability

The applicant has submitted a BASIX Certificate, demonstrating that the proposal achieves the relevant energy efficiency standards as specified by the Sustainable Buildings SEPP. It also complies with the minimum 70% requirement of the proposed apartments living area windows and private open space (balconies) needing to receive at least two hours sunlight between 9am and 3pm in midwinter.

No comments were made by the DRP for the applicant to respond to with relation to this Principle.

Principle 5: Landscape

Landscape details have been provided, with respect to the public domain at ground level, the communal open space areas as well as the private courtyard areas. This has been reviewed by our Landscape Architect, and is deemed acceptable, subject to the imposition of modified conditions.

The following comments were made by the DRP:

- (a) *The Applicant has not engaged with a Designing with Country process to inform design decisions.*

Applicant response: No response provided.

Council assessment: A condition will be imposed in the attached draft schedule of conditions relating to a Connecting to Country report which shall provide a framework for developing connections to Country in relation to design, planning and construction of this new development. Based on the local aboriginal significance provide practical actions, including art, and Aboriginal perspectives into the proposal.

- (b) *Concern is raised with the relationship and access to the ground floor landscaped area at the rear of the site.*

Applicant response: All communal open space has been removed from the Ground floor Deep Soil area to the rear. The balance of the 25% communal open space provision for Apartment Design Guide compliance has been made up by increasing the size of the Level 1 and 7 areas.

Council assessment: This is supported and considered suitable.

- (c) *The addition of a set of spiral stairs over 2 floors in height, protruding into the setback, to access the ground floor landscape creates issues of privacy. The*

walkway space is better utilised for the provision of green architecture, landscape and planting.

Applicant response: *These spiral stairs have been deleted and a fully landscaped area has now been included in the amended plans.*

Council assessment: This is supported and considered suitable.

- (d) *The arrival sequence to the COS on Level 01 should be reconsidered. There is an opportunity to create a sense of arrival, from the moment the lift doors open into natural light and views of green open spaces. The narrow paths to the south ends of both spaces should not be accessible but instead be made into garden spaces; this would necessitate the removal of the one-bedroom unit.*

Applicant response: *Level 01 COS has been reconfigured with expanded internal spaces, and new access routes to the external areas. There are now two internal spaces, either side of the lift lobby and directly opposite each other. This provides intuitive way finding and access between both the east and west level 01 terrace COS areas, without a dependency on the narrow paths.*

Council assessment: Refer to comments earlier in this section.

- (e) *The communal space and room to Level 07 has the potential to be a very positive space for residents. This was addressed by the Design Review Panel who do not support the small room that visitors must pass through to access the outdoor area and, in considering the comments on the ground floor COS area, the quantum of COS is better arranged on this level across the full width of the southern extent Level 07 by deleting Unit 07, so that a generous sized COS room and outdoor area can be provided.*

Applicant response: *The previously provided internal space on Level 07 has been expanded to improve usefulness, with new means of external terrace access independent of the internal space. The revised space has been designed to accommodate concurrent events and will be a wonderful amenity to the residents.*

Additionally, by converting the southeast corner 2B to a 1B, the level 07 external area has been increased in size to account for the COS area reduction at Ground Floor. The new external terrace area is accessible directly from the common corridor.

Council assessment: Refer to comments earlier in this section.

Principle 6: Amenity

The proposed design provides a good level of amenity for future occupants by providing appropriate room dimensions, suitable solar access to most units, natural ventilation through each floor, appropriately sized courtyards and balconies for each residential unit as well as communal open space, and ease of access for all age groups and degrees of mobility.

The following comments were made by the DRP:

- (a) *The Panel is still not supportive of the treatment of the rear COS given its interrelationship with the building and the adjacent car parking, the lack of meaningful passive surveillance, the difficult and compromised resident excess to it and the potential security issues given visitor and commercial parking proposed on the*

ground level and access for the commercial tenants. Whilst this space can provide a positive landscape buffer to the lower scale uses to the south and a general 'greening' of the building setback it is not suitable as a recreation area and should not be counted as such.

Applicant response: As stated earlier, the deep soil area at the rear is no longer characterised as communal open space.

Council assessment: Considered suitable.

- (b) *The entry design has been amended however the interior and exterior needs further refinement*

Applicant response: Refer to the Built Form and Scale section.

Council assessment: Refer to comments earlier in this section.

Principle 7: Safety

It provides for an easily identifiable, prominent and generous residential lobby entry off Gardeners Road, with a commercial tenancy comprising individual distinguishable pedestrian entries. Residential apartments and car parking areas on site will be accessible via a secure electronic system. Common areas will be well lit with clearly defined legible pathways.

The DA was referred to the NSW Police for comment. It is supportive of the proposal subject to conditions will be imposed in the attached draft schedule.

The following comments were made by the DRP:

- (a) *A more direct access path should be provided to the residential lifts*

Applicant response: Refer to the Built Form and Scale section.

Council assessment: Considered suitable.

- (b) *No access should be provided to the ground floor landscaped area (other than for maintenance purposes).*

Applicant response: Refer to the Landscape section.

Council assessment: Considered suitable.

Principle 8: Housing Diversity and Social Interaction

The proposed development will provide for a mixture of housing types that will cater for different budgets and housing needs, including Build to Rent Housing. This will aide in addressing housing affordability.

The following comments were made by the DRP:

- (a) *Due to the site's proximity to public transport, the sizing and mix of apartment types is considered reasonable. However, there may be potential for a greater number of larger sized apartments on the site. This should be reviewed based on the local demographics of the area.*

Applicant response: No change to the number of three bedroom units (eight).

Council assessment: Considered suitable, refer to DCP assessment later in this report.

Principle 9: Aesthetics

The proposal incorporates a varied palette of colours and materials to create visual interest when viewed from the public domain. Materials proposed include but are not limited to pre-cast concrete, off-form concrete, frameless glass and aluminium louvres. These materials will provide a modern, contemporary, high quality and visually appealing development on site.

The following comments were made by the DRP:

- (a) *The aesthetic approach of the podium 'portal' needs further refinement to enhance the buildings contribution to the character of the street. The extent of louvres should be significantly reduced, especially within the 'portal' that frames the entry and retail premises.*

Applicant response: The louvre surface area within the portal has been reduced by 85%, from 25.5m² to only 4m². The louvers have also been re-designed to be more recessive, running in a continuous slot across the top of the retail shopfront glazing.

Council assessment: Considered suitable.

- (b) *The use of more contributory materials such as sandstone or masonry could assist.*

Applicant response: The portal is proposed to be of GRC or precast to the curves and GRC, precast or texture finished FC to the balance of the portal and in a sandstone tone. These are suitably robust materials that will provide a befitting finish to the market aspirations of the proposal.

The curved profile of the portal is important to the design, presenting a soft, human-scaled character. Curved sandstone is not in keeping with a realistic price point, and the use of masonry is incompatible with a spanning portal frame.

Council assessment: Considered suitable.

(c) the Apartment Design Guide

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

Section	Design Criteria	Proposed	Complies
Part 3 Siting the Development			
Part 3D: Communal and Public Open	Communal open space has a minimum area equal to 25% of the site.	The communal open spaces located on Level 1 and 7 has a total area of 698m ² , which is equal to 25% of the site.	Yes

Section	Design Criteria	Proposed	Complies
Space	Developments achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of 2 hours between 9 am and 3 pm on 21 June (midwinter).	Across the three primary communal open space areas (level 1 east/west, level 7), the proposal achieves greater than 50% direct sunlight for a minimum of 2 hours at midwinter.	Yes
Part 3E: Deep Soil Zones	For sites greater than 1,500m ² , a deep soil area equal to 7% of the site and with a minimum dimension of 6m	The total area of deep soil is proposed at 267.68m ² or 9%.	Yes
Part 3F: Visual Privacy	For developments up to 4 storeys: <ul style="list-style-type: none"> 6m between habitable/balconies and non-habitable 3m between non-habitable rooms 	Minimum of 8m to the east and west boundaries	No , see Note 1
	For developments up to 8 storeys: <ul style="list-style-type: none"> 9m between habitable/balconies and non-habitable 4.5m between non-habitable rooms 	Minimum of 11m to the east and west boundaries	No , see Note 1
	At the boundary between a change in zone from apartment buildings to a lower density area, increase the building setback from the boundary by 3m	An additional 3m has been added to the southern elevation	Yes
Part 3J: Car Parking	On sites that are within 800 metres of a railway station or light rail stop in the Sydney Metropolitan Area the minimum car parking requirement for residents and visitors is set out in the Guide to Traffic Generating Developments, or the car parking requirement prescribed by the relevant council, whichever is less	Located within 800 metres of Mascot railway station	Yes
Part 4 Designing the Building			
Part 4A: Solar and Daylight Access	Living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 2 hours direct	The living rooms and private open space areas for 56 out of the 80 units (70%) receive at least 2 hours of direct sunlight	Yes

Section	Design Criteria	Proposed	Complies
	sunlight between 9am and 3pm at midwinter.	between 9am and 3pm on 21 June.	
	A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid-winter	10 out of the 80 units (12.5%) receive no direct sunlight between 9am and 3pm on 21 June.	Yes
Part 4B: Natural Ventilation	At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building.	48 out of the 80 units (60%) will be naturally cross ventilated.	Yes
Part 4C: Ceiling Heights	Measured from finished floor level to finished ceiling level, minimum ceiling heights are: <ul style="list-style-type: none"> • 3.3m for ground floor to promote future flexibility of use • 2.7m for habitable rooms • 2.4m for non-habitable rooms 	5.5m is proposed for the ground floor retail, 3.2m for residential levels	Yes
Part 4D: Apartment Size and Layout	Apartment are required to have the following minimum internal areas: <ul style="list-style-type: none"> • 1 bedroom: 50m² • 2 bedrooms: 70m² • 3 bedrooms: 90m² The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m ² each.	The minimum area for the studios is 39.8m ² . The minimum area for the 1-bedroom units are 53.2m ² . The minimum area for the 2-bedroom units are 76m ² . The minimum area for the 3-bedroom units are 107m ² .	Yes
	Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms.	All habitable rooms have windows of acceptable size to facilitate acceptable solar access and natural ventilation.	Yes
	Habitable room depths are limited to a maximum of 2.5 x the ceiling height.	The habitable room depths comply.	Yes
	Master bedrooms have a minimum area of 10m ² and other bedrooms 9m ² (excluding wardrobe space).	The size of all bedrooms complies.	Yes
	Bedrooms have a	All bedrooms have a	Yes

Section	Design Criteria	Proposed	Complies
	minimum dimension of 3m (excluding wardrobe space).	minimum dimension of 3m, excluding wardrobe space.	
	Living rooms or combined living/dining rooms have a minimum width of: <ul style="list-style-type: none"> 3.6m for studio and 1-bedroom apartments 4m for 2- and 3-bedroom apartments 	The width of the studio and 1-bedroom units is at or greater than 3.6m, and the width of the 2-bedroom units is at or greater than 4m.	Yes
	The width of crossover Or cross through apartments are at least 4m internally to avoid deep narrow apartment layouts.	The width of each apartment is greater than 4m.	Yes
Part 4E: Private Open Space and Balconies	All apartments are required to have primary balconies as follows: <ul style="list-style-type: none"> Minimum area of 8m² and minimum depth of 2m for 1-bedroom units Minimum area of 10m² and minimum depth of 2m for 2-bedroom units Minimum area of 12m² and minimum depth of 2m for 3-bedroom units The minimum balcony depth to be counted as contributing to the balcony area is 1m.	The balconies provided for each apartment comply with these minimum requirements.	Yes
Part 4F: Common Circulation and Spaces	Maximum number of apartments off a circulation core on a single level is eight	The proposal provides two circulation cores servicing 6 and 4 apartments respectively.	Yes
	Daylight and natural ventilation should be provided to all common circulation spaces that are above ground	Lobbies are naturally lit and there is opportunity for natural ventilation.	Yes
Part 4G: Storage	In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided: <ul style="list-style-type: none"> 6m³ for 1-bedroom units 8m³ for 2-bedroom units 10m³ for 3-bedroom units At least 50% of the	There is a mixture of storage located within the units as well as within the basement areas.	Yes

Section	Design Criteria	Proposed	Complies
	required storage is to be located within the apartment.		

Note 1 – Building Separation

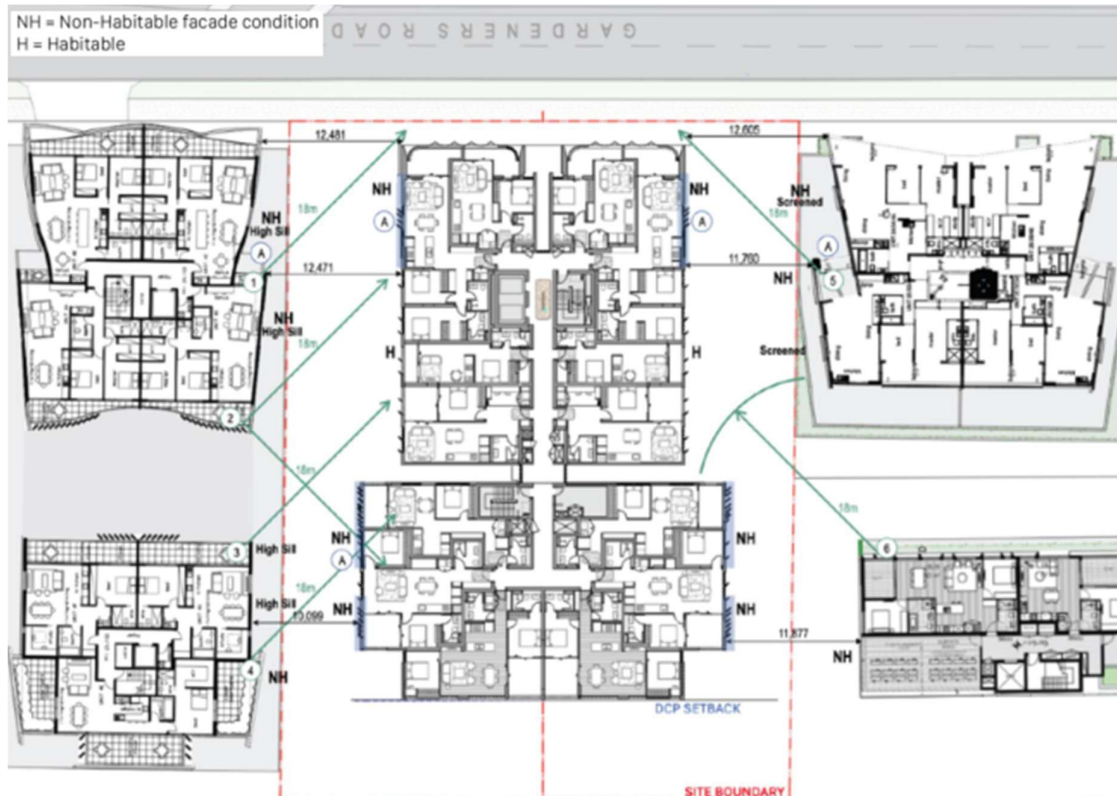


Figure 12: Building separation to neighbouring developed sites (supplied by the applicant)

Minimum building separation is difficult to achieve given adjacent developments are in close proximity to the boundary and do not comply with ADG separation.

As shown in the Figure above, building separation and visual privacy distances are achieved to the north and south in accordance with the ADG. However, recent existing residential apartment developments to the east and west (common side boundaries), with setbacks as low as 2m, do not provide for equitable sharing of building separation distances, and therefore total separation distances cannot be strictly achieved to these boundaries.

Objective 3F-1 of the ADG design criteria prescribes to “achieve reasonable levels of external and internal visual privacy”. As shown in the above Figure, the adjoining developments generally provide for blank walls or high sill windows facing the proposed development. The proposal has been designed in response to this, with direct views to opposing blank walls or non-habitable facades, whilst providing angled blades and façade articulation to provide privacy screening and angled views out from the façade line which break up direct lines of sight between habitable rooms within the buildings. Where possible, primary views for living areas (which are more frequented than bedrooms) are oriented to the north and south where building separation distances are achieved. Notwithstanding the numerical departure, it is deemed that the proposal satisfies Objective 3F-1 of the ADG by

achieving reasonable levels of external and internal visual privacy for the proposal and adjoining developments.

Based on the above, it is considered that the variation to this is considered acceptable.

Bayside Local Environmental Plan 2021

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

The site is located within the MU1 Mixed Use Zone pursuant to Clause 2.2 of the LEP.

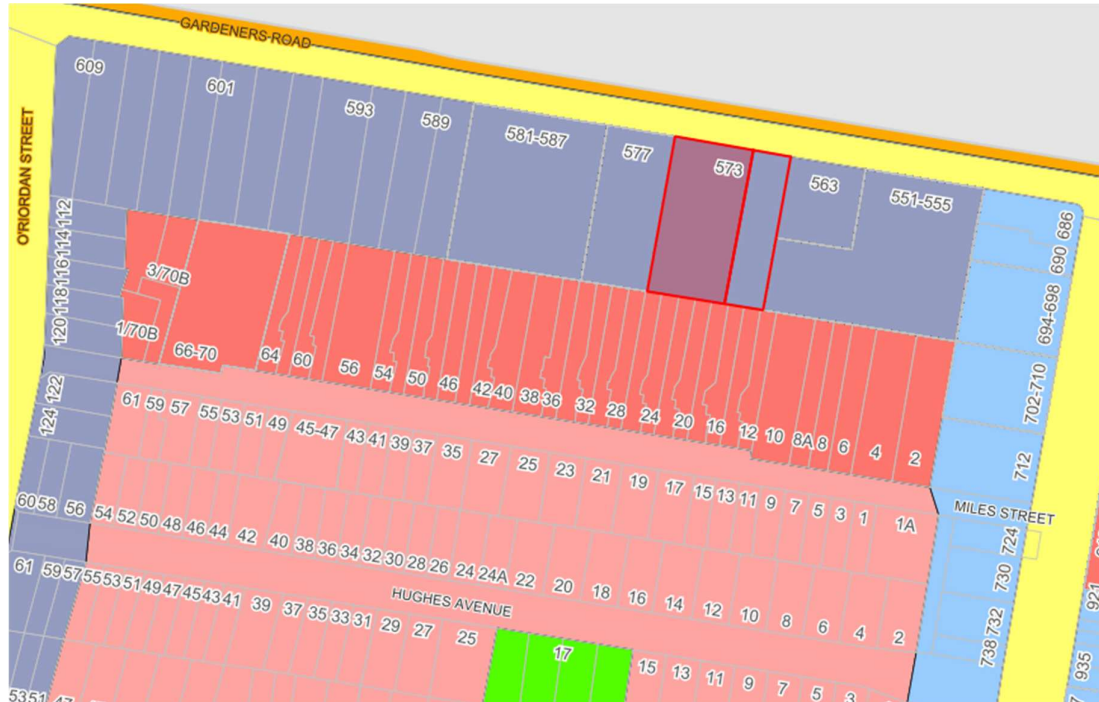


Figure 13: Zoning map (Source: Bayside IntraMaps)

According to the definitions in Clause 4 (contained in the Dictionary), the proposal satisfies the definition of shop top housing which is a permissible use with consent in the Land Use Table in Clause 2.3.

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

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

The proposal is considered to be consistent with these zone objectives for the following reasons:

- The proposed development will provide an opportunity for a range of retail and business uses, which in turn will encourage investment and employment opportunities;
- It will provide for an active street frontage;
- Any future uses on ground floor will not cause conflict to land uses in adjoining zones;
- It will encourage suitable non-residential uses on the ground floor; and
- It will provide suitable accessibility to and from the site by way of public transport, walking and cycling.

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

The LEP also contains controls relating to development standards, miscellaneous provisions and local provisions. The controls relevant to the proposal are considered in the table below. The proposal does not comply with the Height of Building development standard in Part 4 of the LEP and accordingly, a Clause 4.6 request has been provided with the application for the exceedance of the maximum 26 metres.

Relevant Clauses	Compliance with Objectives	Compliance with Standard / Provision
2.7 Demolition requires consent	Yes – see discussion	Yes – see discussion
4.3 Height of buildings	Yes – see discussion	No – see discussion
4.4 Floor space ratio	Yes – see discussion	Yes – see discussion
4.6 Exceptions to development standards	Yes – see discussion	Yes – see discussion
5.21 Flood Planning	Yes – see discussion	Yes – see discussion
6.1 Acid Sulfate Soil – Classes 2 and 5	Yes – see discussion	Yes – see discussion
6.2 Earthworks	Yes – see discussion	Yes – see discussion
6.3 Stormwater and water sensitive urban design	Yes - see discussion	Yes - see discussion
6.7 Airspace operations	Yes – see discussion	Yes – see discussion
6.8 Development in areas subject to aircraft noise	Yes – see discussion	Yes – see discussion
6.9 Active Street Frontage	Yes – see discussion	Yes – see discussion
6.11 Design Excellence	Yes – see discussion	Yes – see discussion
6.11 Essential services	Yes – see discussion	Yes – see discussion

Section 2.7 – Demolition

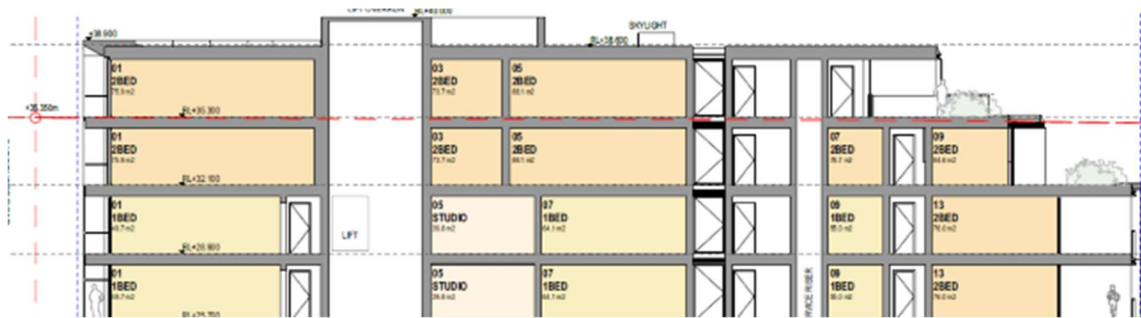
The proposal seeks consent for demolition of the existing buildings and associated structures. In this regard, the proposal satisfies the provisions of this Section.

Section 4.3 – Height of Buildings

A height standard of 26m applies to the property.

The proposed development has a maximum height of 30.65 metres (RL 40 AHD) which does not comply with the provisions of this Section. This is a height exceedance of 4.65 metres to the top of the lift overrun and results in a variation of 17.9%.

As shown in the section below, this represents one part residential level, communal open space, as well as the lift over run.



In this assessment, consideration has been given to *Wehbe v Pittwater Council* [2007] NSWLEC 827 (*Wehbe*) where the Court held that there are five (5) different ways, through which an applicant might establish that compliance with a development standard is unreasonable or unnecessary. The five (5) ways of establishing that compliance is unreasonable or unnecessary are:

1. *The objectives of the development standard are achieved notwithstanding non-compliance with the standard; (First Test)*
2. *The underlying objectives or purpose is not relevant to the development with the consequence that compliance is unnecessary; (Second Test)*
3. *The objectives would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable; (Third Test)*
4. *The development standard has been virtually abandoned or destroyed by the Council's own actions in granted consents departing from the standard hence the standard is unreasonable and unnecessary; (Fourth Test) and*
5. *The zoning of the land is unreasonable or inappropriate. (Fifth Test)*

It is sufficient to demonstrate only one of these ways to satisfy Clause 4.6(3)(a).

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

The applicant has prepared a Clause 4.6 Request, in which the first of the *Wehbe* methods as listed above has been used.

The applicant's arguments are summarised below, with the assessing officer's response provided.

Applicant Arguments (summarised):

Objective (a) To ensure that building height is consistent with the desired future character of an area

Defining 'desired future character'

The 'desired future character' of an area is determined by a range of factors including the LEP provisions and the approved buildings neighbouring a development.

In Woollahra Municipal Council v SJD DB2 Pty Limited [2020] NSWLEC 115 CJ Preston found that where not defined in the LEP, when determining the desired future character:

- *Matters other than the development standard needed to be considered such as:*
 - *other provisions of the local environmental plan*
 - *other approved development that contravenes the development standard*
- *Councils cannot define the future character that is referred to in a LEP by doing so in a DCP, unless the LEP expressly refers to the DCP in the definition (we note the BLEP does not define "desired future character").*

Surrounding developments

When determining the desired future character of the area, the site's immediate context, consisting of recent developments along Gardeners Road has been considered. The site is the "missing piece" in a row of recently completed 8-storey mixed-use developments along Gardeners Road will all protrude above the 26m height plane. The proposal is consistent

with these existing developments, presenting as an 8 storey street wall to Gardeners Road.

The proposed development is largely consistent with the prevailing building heights along Gardeners Road, which all exceed the 26m building height limit as follows:

- No. 581
- No. 577: Maximum RL 38.3
- No. 573 (subject site): Proposed RL 40.0 (30.65m)
- No. 563: Maximum RL 38.9
- No. 551-559: Maximum RL 40.9 (31.01m)

Notwithstanding the proposed building height breach, the proposed building height will remain consistent the desired future character of the area, as established by recently approved buildings along Gardeners Road.

With respect to FSR, bulk and scale, the proposal complies with the 2.5:1 FSR development standard. It is commensurate in bulk and scale to other developments in the immediate locality and the Gardeners Road streetscape.

Objective (b) To minimise visual impact of new development, disruption of views, loss of privacy and loss of solar access to existing development

The development has been designed with careful consideration of the surrounding established urban environment.

To the east and west, the site adjoins existing high-density residential apartment developments which largely provide blank walls to the common side boundaries with the site. The building envelope has been carefully designed, with reference to the ADG guidance on building solar access, building separation and visual privacy.

It is to be noted that the existing buildings on those adjoining sites, and their proximity to the site's boundary, pose significant challenges in achieving ADG objectives, specifically regarding visual privacy and building separation, and that despite these challenges the proposal achieves this. The proposal has been designed to maximise solar access to these adjoining developments and incorporates the use of blank walls and oriented windows to ensure privacy is maintained.

*To the south, the site adjoins low-density residential housing in the form of dwellings houses which front onto Miles Street. The building has been designed to ensure an acceptable level of solar access is maintained to these properties in accordance with DCP objectives and the solar access planning principle in *The Benevolent Society v Waverley Council* [2010]. The additional building height (above 26m) has negligible additional overshadowing impact in the middle of the day when these properties receive their solar access.*

Objective (c) To nominate heights that will provide an appropriate transition in built form and land use intensity.

The proposed building height is consistent with heights of surrounding recent developments within the immediate proximity of the site.

An important height transition occurs from the site to the rear, from 26m for the site to 9m for low-density housing to the south. The building form tapers to the south, sensitive to southern neighbours' sun access, and consistent with adjacent developments. This

reinforces an appropriate transition in built form and land use intensity between these properties.

With respect to land use intensity, the proposal complies with the maximum FSR for the site of 2.5:1. An appropriate transition in land use intensity is achieved for the site.

Council assessment

It is noted that the top of the adjoining buildings have a similar maximum height to the proposed development. The approved lift overrun, stairs and communal room at roof top level for 563-567 Gardeners Road has a maximum height of 39m AHD (approximately 1m lower than the current scheme), and the top of the plant enclosures for No.577-579 Gardeners Road is approximately 1.7m lower than this current scheme. The parapet wall for the proposed development is approximately 2.3 metres higher than the neighbouring sites, however balustrading for the communal roof terrace at No.563-567 Gardeners Road steps up 1.2m in height and is approximately 1.1m below the parapet height of the proposal. Notwithstanding, the parapet walls are located are set back a considerable distance from the boundary as a response to the small side setbacks for the approved developments to the west and the east.

It is agreed that the proposed development complies with the objectives of the Height of Building development standard as:

- It presents a built form that is consistent with the completed neighbouring sites;
- It will not disrupt any protected view corridors;
- It has been designed in a way to ensure that visual privacy to neighbouring developments will be achieved by way of addressing the building separation requirements where applicable, and where not, provide an alternative design which is deemed suitable (refer to the Housing SEPP section earlier in this report);
- It has been designed in such a way that solar access impacts to the lower density areas to the south have been satisfied (refer to the solar access assessment in the DCP section later in this report); and
- It has been designed in such a way that it provides an appropriate transition to the south, and in particular the additional 3 metre buffer to the south as prescribed in the Apartment Design Guide for lower density residential zones

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

Applicant Arguments (summarised):

Flood Constraints: The site is affected by the 1% AEP Flood Level. With the addition of a 500mm freeboard, the requirement for the ground floor retail is 10.1m AHD. This therefore requires the Finished Floor Level (FFL) of the ground floor retail and residential lobby to be 0.7-1m above ground existing ground level.

New NCC 2022 Requirements: Recent updates to requirements of the National Construction Code (NCC) have resulted in the increasing need for greater floor-to-floor levels for residential apartment developments. To accommodate necessary floor-to-floor heights, slab thicknesses and newer more stringent acoustic shielding requirements under the 2022 NCC, the development has needed to incorporate minimum 3.2m floor-to-floor heights for the residential levels. The 0.1m increase across 7 levels has in itself raised the building another 0.7m in height.

Waste Headroom Clearance: The DCP prescribes a requirement for 4.5m headroom height to be provided for MRV waste and loading vehicle access to the building. As a result, the ground level floor height is 4.5m to accommodate the headroom clearance for waste vehicles which has also increased the overall building height. This is compared to other recent adjoining developments such as 577 Gardeners Road to the west, which accommodated a 3.5m headroom for vehicle access, enabling a lower ground floor-to-floor height and lower overall building height.

GFA Redistribution: The gross floor area has been redistributed across the site to achieve a more considered design in response to existing development surrounding the site. As identified above, the immediately adjoining buildings present significant challenges in achieving compliance with ADG objectives regarding visual privacy and building separation, as well as the allowable GFA for the site. Where these adjoining buildings have reduced and non-compliant side setbacks, this allowed for the distribution of GFA close to boundaries on lower levels, beneath the height limit.

Environmental Impacts: The portion of the building exceeding the height limit does not result in any unacceptable environmental or amenity impacts. The proposed height, bulk and scale of the building is consistent within the existing streetscape along Gardeners Road. The height variation results in negligible additional overshadowing to the rear Miles Street properties in mid-winter in comparison to a compliant 26m height building. The height exceedance will not result in the loss of any identified key views, or visual privacy.

Council assessment

It is agreed that there are sufficient environmental planning grounds, based on the following:

- Flooding constraints which have required the finished floor level to be raised up from the natural ground level by up to 1 metre;
- Compliance with the National Construction Code requirements for floor to ceiling heights, with a 0.1 metre increase per floor on its own contributing to a 0.7 metre increase overall;
- Compliance with the Australian Standard for waste headroom clearance, with a 4.5 metre requirement being significantly higher than the 2.5 metre minimum requirement for standard vehicles;
- The acceptable redistribution of gross floor area to meet various requirements in the Apartment Design Guide; and
- The extent of the non variation above the Level 6 parapet wall (i.e. Level 7 units and communal open space is stepped in with the exception of the Gardeners Road (northern) elevation, and hence will not result in any unacceptable environmental impacts such as a further increase in overshadowing to the residential properties to the south as well as visual privacy to the neighbouring properties.

With the above considered, it is recommended that this variation is supported by the Sydney Eastern City Planning Panel.

Section 5.21 – Flood Planning

Council records indicate that the lot is subject to flooding in a 1% AEP and PMF event. The floor levels of the development are therefore required to be raised to a level of RL 10.1.

A flood report prepared by WMA Water and dated 25 October 2024 was submitted with the application.

The report and proposal were reviewed by Council's Development Engineer who advised the following:

- The retail space on the ground floor is a habitable space and therefore the retail space needs to be protected by revising the finished floor level to be set at a minimum level of RL 9.75m AHD (currently at RL 9.55 in the architectural plans).
- The civil engineering design shall be revised to address the flood related matters and show full details of the flood mitigation measures as outlined within the flood report:

The above matters shall be imposed as conditions in the attached draft schedule, by way of a Deferred Commencement.

Subject to resolution of the above through the recommended Deferred Commencement condition, the proposal has been designed to adhere to the relevant minimum flood levels and is satisfactory with respect of the provisions of this LEP Clause.

Section 6.1 – Acid Sulfate Soils

Acid Sulfate Soils (ASS) – Classes 2 and 5 affects the property.

A 'Report on Geotechnical Investigation and Acid Sulfate Soil Assessment', prepared by Douglas Partners and dated 30 April 2024 was provided by the applicant.

This was reviewed by Council's Environmental Scientist, who provided the following comments:

An acid sulfate soils management plan would not be required, given that the proposed basement level is above 5mAHD and no acid sulfate soils have been detected within the basement excavation depths. Temporary dewatering would unlikely expose potential acid sulfate soils in areas surrounding the site.

The proposal meets the objectives of this clause.

Section 6.2 – Earthworks

The proposal involves extensive excavation within the site to accommodate the basement levels. The impacts of the proposed earthworks have been considered in the assessment of this proposal. Conditions of consent have been imposed in the draft Notice of Determination to ensure minimal impacts on the amenity of surrounding properties, drainage patterns and soil stability. The proposal meets the objectives of this clause.

Section 6.3 – Stormwater and WSUD

The proposal involves the construction of an on-site detention system to manage stormwater. The proposed stormwater system has been reviewed by Council's Development Engineer and conditions of consent are recommended. As conditioned the proposal satisfies the requirements of this clause and is satisfactory in this regard.

Section 6.7 – Airspace Operations

The proposed development is affected by the 15.23m Obstacle Limitation Surface (OLS). The proposed building height is at 30.65m to AHD the highest point and in this regard, the proposed development will have minimal adverse impact on the OLS. Notwithstanding,

Sydney Airport Corporation Limited have consented to the erection of a building to a maximum height of 40m to AHD on the subject site. The proposal is satisfactory with regards to this clause.

Section 6.9 – Active Street Frontage

The subject site is required to provide an active street frontage at ground floor level, along the Gardeners Road frontage of the property. As designed, the proposal incorporates a commercial tenancy, vehicular access and residential lobby within the Gardeners Road frontage.

Fit out and use of the commercial tenancy will be subject to a future application. Appropriate design measures at ground floor level facilitates the activation of the development to the adjoining public domain, as required by the Clause. The proposal is satisfactory in this regard.

Section 6.11 – Essential Services

Services are generally available on site. Additional conditions have been incorporated in the draft Notice of Determination requiring consultation with relevant utility providers with regard to any specific requirements for the provision of services on site.

Section 6.10 – Design Excellence

The proposed development is subject to the requirements of this clause. In accordance with the requirements of Section 6.10(4), the application was reviewed by the Design Review Panel (DRP) on 1 August 2024.

The DRP made the recommendation that subject to further amendments, the proposed development would achieve design excellence. These further amendments were listed earlier in this report under the Housing SEPP section of the report and, where relevant, have been included as conditions of consent to be addressed during the detailed design submitted with the Construction Certificate.

In considering whether the development exhibits design excellence, the consent authority must have regard to the following matters:

(a) whether a high standard of architectural design, materials and detailing appropriate to the building type and location will be achieved,

DRP comments

Acceptable

Council assessment

Agreed. As discussed in the under the Housing SEPP section earlier in this report, the proposal incorporates a varied palette of colours and materials to create visual interest when viewed from the public domain. Materials proposed include but are not limited to pre-cast concrete, off-form concrete, frameless glass and aluminium louvres. These materials will provide a modern, contemporary, high quality and visually appealing development on site.

(b) whether the form, arrangement and external appearance of the development will improve the quality and amenity of the public domain,

DRP comments

Acceptable

Council assessment

Agreed. As discussed in the under the Housing SEPP section earlier in this report, the design of the proposed development includes a prominent portal design within the podium that clearly identifies the residential lobby entry as well as the commercial tenancy, and appropriately.

(c) *whether the development detrimentally impacts on view corridors,*

DRP comments

N/A

Council assessment

Agreed, there will be no impact on view corridors.

(d) *the requirements of any development control plan made by the Council and as in force at the commencement of this clause,*

DRP comments

Acceptable

Council assessment

Agreed

(e) *how the development addresses the following matters:*

(i) *the suitability of the land for development, existing and proposed uses and use mix,*

DRP comments

Suitable

Council assessment

Agreed

(ii) *existing and proposed uses and use mix*

DRP comments

Suitable

Council assessment

Agreed, the proposed ground floor commercial tenancy will appropriately activate the ground floor

(iii) *heritage issues and streetscape constraints,*

DRP comments

Suitable

Council assessment

Agreed

(iv) *the relationship of the development with other development (existing or proposed) on the same site or on neighbouring sites in terms of separation, setbacks, amenity and urban form,*

DRP comments

Not yet suitable.

Council assessment

As discussed earlier in this report under the Housing SEPP section, the noted variations to the building separation requirements are deemed suitable as the neighbouring sites (as developed) have been designed as such with the positioning of openings so as to not create any amenity issues. As such, it is deemed that the proposed development will appropriately relate to the neighbouring sites.

(v) *bulk, massing and modulation of buildings,*

DRP comments

Not yet suitable to the rear or in relation to height given the height impacts of the extent of above ground car parking.

Council assessment

The rear portion of the proposed development has been appropriately designed to include horizontal louvres on the balcony balustrades and solid tall spandrels to the windows to address privacy concerns. Other matters relating to bulk, massing and modulation of the proposed building has been discussed earlier in this report under the Housing SEPP section.

(vi) *street frontage heights,*

DRP comments

As per Council assessment

Council assessment

The subject site does not have any street frontage height controls prescribed in the Bayside DCP. The proposed portal design provides an appropriate street wall design, and with relation to height is consistent with the neighbouring developed sites both the east and west.

(vii) environmental impacts such as sustainable design, overshadowing, wind and reflectivity,

DRP comments

See comments made under Design Principles in Housing SEPP section.

Council assessment

These elements have been appropriately addressed and are discussed in further detail elsewhere in this report.

(viii) the achievement of the principles of ecologically sustainable development,

DRP comments

See comments made under Design Principles in Housing SEPP section.

Council assessment

The applicant has lodged an ESD Report, prepared by Aspire and dated 28 May 2024. It has sustainable design initiatives as outlined below:

- Passive Design & Energy Efficiency (including light external colour scheme, shading structures and reduced glazing);
- Water (including rainwater tanks and planting of native tree species);
- Emissions (including installation of efficient air conditioning systems);
- Transport (including EV charging and bicycle parking facilities);
- Construction (including minimising the amount of construction waste going to landfill);
- Climate Change Adaptation (including areas of respite during extreme weather events);
- Materials (including recycled content in products where possible); and
- Land Use & Ecology (including stormwater and WSUD)

Based on the above, it is considered that the proposed development will achieve the principles of ecologically sustainable development.

(ix) pedestrian, cycle, vehicular and service access, circulation and requirements,

DRP comments

Needs improvement, see comments made under Design Principles in Housing SEPP section.

Council assessment

As discussed earlier in this report under the Housing SEPP section, the applicant has provided a detailed justification relating to the design of the residential lobby design, including circulation to the lifts. The proposed development suitably addresses pedestrian, vehicular and service access.

(x) the impact on, and any proposed improvements to, the public domain,

DRP comments

Needs improvement, see comments made under Design Principles in Housing SEPP section.

Council assessment

As discussed earlier in this report under the Housing SEPP section, the applicant has provided a detailed justification relating to the design of the residential lobby design, including circulation to the lifts, as well as the design and location of the substation. As such, it is considered that the proposed development in its current form will improve the public domain.

(xi) achieving appropriate interfaces at ground level between the building and the public domain,

DRP comments

Needs improvement, see comments made under Design Principles in Housing SEPP section.

Council assessment

As discussed earlier in this report under the Housing SEPP section, the proposed design achieves an appropriate interface at ground level in response to constraints on the site such as flooding and also meeting the relevant disabled access requirements such as the grading of ramps into the residential lobby area.

(xii) excellence and integration of landscape design.

DRP comments

Needs improvement, see comments made under Design Principles in Housing SEPP section.

Council assessment

As discussed earlier in this report under the Housing SEPP section, the proposed design achieves excellence and integration of landscape design.

Based on the above assessment, the proposed development in its current form does achieve design excellence.

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

There are no draft Environmental Planning Instruments that apply to this proposal.

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

The following Development Control Plan is relevant to this application:

Bayside Development Control Plan 2022

The following table outlines the relevant Clauses of the DCP applicable to the proposal, while aspects warranting further discussion follows:

Relevant Clauses	Compliance with Objectives	Compliance with Standard / Provision
PART 3 – GENERAL DEVELOPMENT PROVISIONS		
3.1 Site Analysis and Locality	Yes – see discussion	Yes – see discussion
3.2 Design Excellence	Yes – see discussion	Yes – see discussion
3.3 Energy and Environmental Sustainability	Yes – see discussion	Yes – see discussion
3.4 Heritage	Yes – see discussion	Yes – see discussion
3.5 Transport, Parking and Access	Yes – see discussion	Yes – see discussion
3.6 Social Amenity, Accessibility and Adaptable Design	Yes – see discussion	Yes – see discussion
3.7 Landscaping, Private Open Space and Biodiversity	Yes – see discussion	Yes – see discussion
3.8 Tree Preservation and Vegetation Management	Yes – see discussion	Yes – see discussion
3.9 Stormwater Management and WSUD	Yes – see discussion	Yes – see discussion
3.11 Flood Prone Land	Yes – see discussion	Yes – see discussion
3.11 Contamination	Yes – see discussion	Yes – see discussion
3.12 Waste Minimisation and Site Facilities	Yes – see discussion	Yes – see discussion
3.13 Areas subject to Aircraft Noise and Airport airspace	Yes – see discussion	Yes – see discussion
3.14 Noise, Wind, Vibration and Air Quality	Yes – see discussion	Yes – see discussion
3.18 Utilities and Mechanical Plant	Yes – see discussion	Yes – see discussion
PART 4 – SUBDIVISION, CONSOLIDATION AND BOUNDARY ADJUSTMENTS		
4.1 General	Yes – see discussion	Yes – see discussion
PART 5 – RESIDENTIAL AND MIXED-USE DEVELOPMENTS		
5.1.4 Quality of Design,	Yes – see discussion	Yes – see discussion

Relevant Clauses	Compliance with Objectives	Compliance with Standard / Provision
Choice and Diversity		
5.2.5 Shop-top Housing and Mixed Use	Yes – see discussion	Yes – see discussion

The following Sections elaborate on Key matters from the above table.

Part 3.1 – Site Analysis and Locality

The proposed development has provided a detailed and comprehensive site analysis.

Part 3.2 – Design Excellence

Refer to the LEP section earlier in this report.

Part 3.3 – Energy and Environmental Sustainability

The proposed development provides appropriate sun protection during summer for glazed areas facing north, west and east, whilst allowing for penetration of winter sunlight

The location of windows, doors and internal layout of the building promotes air movement for cooling.

A condition will be imposed in the attached draft schedule of conditions ensuring that light reflectivity does not exceed 20%.

As mentioned earlier in this report, an ESD report has been lodged by the applicant and considered acceptable.

Part 3.5 – Transport, Parking and Access

A Traffic Impact Assessment was submitted with the DA, prepared by Traffix and dated 28 May 2024. This report and the application was referred to Council's Development Engineer who had no objections to the proposal, subject to conditions which have been included in the recommended conditions.

The design and location of the parking facilities and pedestrian access on the site is acceptable having regard to the nature of the site and the proposal.

As discussed earlier in this report, the subject site is located within an accessible area (i.e. 800 metres of Mascot railway station), and hence the parking rates in the TfNSW Guide to Traffic Generating Developments 2002 can be used in lieu of the car parking rates prescribed under this part of the DCP. These are as follows:

- 0.6 spaces per studio and one bedroom dwelling
- 0.9 spaces per two bedroom dwelling
- 1.4 spaces per three bedroom dwelling
- 1 visitor space per 5 dwellings.

Based on the proposed development of 80 units (8 x studio, 26 x 1 units, 38 x 2 units and 8 x 3 units), a total of 84 spaces is required, which has been provided.

For the commercial tenancies, 1 space is to be provided for every 80m² of floor area. A total of two spaces is required, with two provided.

This has been reviewed by Council's Development Engineer and considered acceptable.

A total of 86 spaces are provided, split amongst the basement level, at grade and in the mezzanine.

No end of trip facility has been proposed. A condition can be imposed in the attached draft schedule of conditions whereby appropriate facilities are included adjacent to the bike storage within the basement level. This bike contains spaces for 87 bicycle spaces, which exceeds the minimum of 50.

Motorcycle spaces are located in all three car parking levels. It is provided for 6 spaces, which meets the minimum of 6.

A loading dock area is provided in the at-grade car park to accommodate a medium rigid vehicle (SRV).

The proposal does not trigger the need for a Green Travel Plan.

Proposed waste collection arrangements meet Council's specifications and requirements.

The proposal satisfies the transport and access requirements of the DCP.

Part 3.6 – Social Amenity, Accessibility and Adaptable Design

The proposal has been designed so that the development is accessible from the public domain and internally. The development provides ramped access from the footpath to the lift core and also to communal open space on Levels 1 and 7.

The proposal provides 16 adaptable units within the development with these located at Levels 1 to 6.

The development provides 8 accessible car spaces located within the at grade and mezzanine levels and these spaces are located in close proximity to the lifts.

The applicant has provided an access report prepared by Purely Access and dated 28 May 2024.

It concluded that the proposal is capable of meeting the requirements of the Housing SEPP for accessibility, the Bayside DCP 2022 and the Performance Requirements set out in the National Construction Code Building Code of Australia Volume One 2022 (BCA) and referenced Australian Standards with respect to access for people with a disability. Further design information focusing on the detailed elements will be developed as the scheme progresses through to the construction phase to ensure compliance is achieved.

A Social Impact Assessment was not required for this proposal.

The proposal is satisfactory and complies with the objectives of this Part of the DCP.

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

Refer to the Housing SEPP section earlier in this report for deep soil landscaping requirements.

At least one canopy tree is provided in the site.

Council's Tree Management Officer has recommended conditions be imposed, which have been included if the recommendation was for approval.

The proposal is satisfactory in regard to the objectives and provisions of Parts 3.7 and 3.8 of the DCP, subject to recommended conditions.

Part 3.9 – Stormwater Management and WSUD

Refer to the LEP section earlier in this report.

Part 3.10 – Flood Prone Land

Refer to the LEP section earlier in this report.

Part 3.11 – Contamination

Refer to the SEPP section earlier in this report.

Part 3.12 – Waste Minimisation and Management

An Operational and Construction Waste Management Plan prepared by Waste Audit and dated May 2024 was submitted with the application listing methods for minimising and managing construction and ongoing waste on site.

Waste rooms and facilities are located at grade.

The proposed waste arrangements and report was reviewed by Councils' Waste Officer who had no objections to the proposal.

An appropriate condition has been included in the recommended conditions.

Part 3.14 – Noise, Wind, Vibration and Air Quality

Refer to the SEPP section earlier in this report relating to road traffic noise.

The acoustic considerations to and from the proposed use are acceptable in the context of the objectives and provisions of the DCP.

Part 3.18 - Utilities and Mechanical Plant

Appropriate site facilities are provided. Utilities are located in an appropriate location.

Part 4 – Subdivision, Consolidation and Boundary Adjustments

The proposed redevelopment does not result in the isolation of adjoining properties, that could not otherwise be redeveloped to their full potential.

Part 5.1.4 – Quality of Design and Housing Choice and Diversity

Design Excellence considerations have been addressed previously in response to the LEP provisions.

An adequate site analysis plan was provided with the DA.

As the proposal contains more than 20 units, the DCP contains provisions related to unit mix, as below:

- a. Studio: 5 - 10%;*
- b. 1 bedroom: 10 – 30%*
- c. 2 bedroom: 40 – 75%; and*
- d. 3+ bedroom: 10 - 100%*

The proposed development has 24 x 1 bedroom units (including studios – 42.5%), 38 x 2 bedroom units (47.5%) and 8 x 3 bedroom units (10%). Whilst the percentages are not strictly met for each of the above, it is considered that there is a demonstrated housing choice and diversity for all residential development types, and therefore is considered acceptable.

Matters relating to design and materials, internal design and balcony design have been addressed earlier in this report.

Part 5.2.4.1 – Streetscape, Local Character, and Quality of Design

The provisions of Chapter 4 of the Housing SEPP and the associated Apartment Design Guide have been addressed previously.

The proposed substation along the Gardeners Road frontage is considered to be in a suitable location.

The proposal is considered consistent with the objectives and controls relating to building design, materials and finishes.

Part 5.2.4.2 – Built Form Controls

Some of the provisions of this Part of the DCP are similar to Chapter 4 of the Housing SEPP and the associated Apartment Design Guide, which have been addressed previously.

The roof form, pitch, materials, and colours are deemed to be compatible with those prevailing in the surrounding area.

Part 5.2.4.3 – Setbacks

Chapter 4 of the Housing SEPP and the associated Apartment Design Guide override this section of the DCP, and these have been addressed previously.

Part 5.2.4.4 – Landscaping and Private Open Space

The provisions of Chapter 4 of the Housing SEPP and the associated Apartment Design Guide have been addressed previously.

The landscaping controls in Part 3.7 of the DCP have been addressed previously.

Part 5.2.4.5 – Solar Access and Overshadowing

Chapter 4 of the Housing SEPP and the associated Apartment Design Guide override this section of the DCP, and these and have been addressed previously.

In terms of overshadowing to adjoining properties, the applicant has provided existing and proposed shadow diagrams at hourly intervals between 9am to 3pm for mid-winter (June 21) and spring-equinox (September/March 21). Additionally, elevation shadow diagrams have been provided for mid-winter and spring-equinox for the neighbouring residential dwellings to the south on Miles Street.

Given their orientation directly to the south of the subject site, four properties on Miles Street (12, 14, 18 and 22) will not strictly achieve the minimum of two hours sunlight to 50% of the private open space in mid-winter. The applicant has identified that a number of these properties have ancillary structures within these rear yards, in locations immediately to the rear of the dwellings, and where sunlight access in mid-winter would otherwise be achieved if these structures were not in place.

As such, an assessment against the solar planning principle is required to be undertaken.

The applicant has provided a detailed assessment against the Land and Environment Court planning principle on the impact on solar access of neighbours (*Parsonage V Kuring-gai* (2004) NSWLEC 347) and (*The Benevolent Society V Waverley Council* (2010) NSWLEC 1082) as follows:

Principle 1: The ease with which sunlight access can be protected is inversely proportional to the density of development. At low densities, there is a reasonable expectation that a dwelling and some of its open space will retain its existing sunlight. (However, even at low densities there are sites and buildings that are highly vulnerable to being overshadowed). At higher densities sunlight is harder to protect and the claim to retain it is not as strong.

Applicant's submission: *The site is located in high density zone and interfaces with a low-density residential zone to the south. The proposed development is for a high-density residential flat building development where sunlight is harder to protect and the claim to retain it is not as strong. This is evident with the challenges of providing adequate building separation to neighbouring properties to the east and west whilst maintaining solar access to low-density properties to the south. Those low-density properties to the south are also highly vulnerable to being overshadowed by virtue of their interface with high density zone land to the north. As such, the site and planning context does not lend itself to easily accommodate sunlight access to those properties to the south as has been experienced with previous development approvals along Gardeners Road.*

Council assessment: Agreed. The proposed development has a parapet wall along its southern boundary at the maximum allowable height prescribed in the Bayside LEP plus observes the additional 3 metre setback requirement in the Apartment Design Guide for lower density residential zones. Furthermore, the top of the parapet wall along the southern elevation is at the compliant height.

Principle 2: The amount of sunlight lost should be taken into account, as well as the amount of sunlight retained.

Applicant's submission: *With the site's zoning, height and density controls, it is envisaged that redevelopment will incur loss of sunlight access to properties to the south. The amount of sunlight lost is consistent with that caused by recent high-density developments along*

Gardeners Road. Notwithstanding, the amount of sunlight retained to these properties is notable. The southern half of the affected lots, including the rear of dwellings, retain at least 2 hours of solar access during mid-winter. This includes areas of private open space within the affected properties (albeit less than the DCP dimensions) sufficient for seated residents to receive sunlight access.

Council assessment: Agreed, the modelling provided does indicate that sunlight can still be received to these private open space areas at other times of the day during mid-winter.

Principle 3: Overshadowing arising out of poor design is not acceptable, even if it satisfies numerical guidelines. The poor quality of a proposal's design may be demonstrated by a more sensitive design that achieves the same amenity without substantial additional cost, while reducing the impact on neighbours.

Applicant's submission: *The development is subject to a number of competing site constraints including building separation, flooding, groundwater table etc. that has required a skilful design and compromises to achieve an acceptable amenity outcome for adjoining properties and future residents of the development. The overshadowing is by no means a result of poor design. On the contrary, the building has been designed to accommodate the adequate separation requirements from existing non-compliant buildings to the east and west. By doing so, this has provided greater opportunity for sunlight access between these buildings.*

Council assessment: Agreed, as discussed throughout this report, the proposed development is generally consistent with the relevant provisions, and the non-compliances that have been identified, such as height of building and building separation have no bearing on a further increase in overshadowing to these neighbouring properties.

Principle 4: For a window, door or glass wall to be assessed as being in sunlight, regard should be had not only to the proportion of the glazed area in sunlight but also to the size of the glazed area itself. Strict mathematical formulae are not always an appropriate measure of solar amenity. For larger glazed areas, adequate solar amenity in the built space behind may be achieved by the sun falling on comparatively modest portions of the glazed area.

Applicant's submission: N/A

Council assessment: Agreed, not relevant.

Principle 5: For private open space to be assessed as receiving adequate sunlight, regard should be had of the size of the open space and the amount of it receiving sunlight. Self-evidently, the smaller the open space, the greater the proportion of it requiring sunlight for it to have adequate solar amenity. A useable strip adjoining the living area in sunlight usually provides better solar amenity, depending on the size of the space. The amount of sunlight on private open space should ordinarily be measured at ground level but regard should be had to the size of the space as, in a smaller private open space, sunlight falling on seated residents may be adequate.

Applicant's submission: *As shown in the overshadowing diagrams, whilst not all of the 6m x 4m indicated private open spaces shown receive the 50%, there are smaller areas immediately adjoining the dwellings that would receive at least 2 hours, that are suitably sized enough to accommodate seated residents.*

Council assessment: Agreed, the modelling provided does indicate that sunlight can still be received to these private open space areas at other times of the day during mid-winter.

Principle 6: Overshadowing by fences, roof overhangs and changes in level should be taken into consideration. Overshadowing by vegetation should be ignored, except that vegetation may be taken into account in a qualitative way, in particular dense hedges that appear like a solid fence.

Applicant's submission: *Noted. Overshadowing of these various elements are to be taken into consideration. When the affected properties receive the most solar access during midday, when the sun is directly to the north, overshadowing of side boundary fences (running north-south) is at its least.*

Council assessment: Agreed.

Principle 7: In areas undergoing change, the impact on what is likely to be built on adjoining sites should be considered as well as existing development.

Applicant's submission: *The site is the last undeveloped high-density site along Gardeners Road that would overshadow the affected properties. As such, the overshadowing of adjacent developments is measurable as reflected in the overshadowing diagrams.*

Council assessment: Agreed.

Given the above assessment, it is reasonable to conclude the proposal is acceptable in this instance.

Part 5.2.4.6 – Parking and Access

This has been addressed previously in accordance with Part 3.5 of the DCP and in response to relevant provisions of Chapter 4 of the Housing SEPP and the associated Apartment Design Guide.

Part 5.2.4.7 – Visual and Acoustic Privacy

An assessment of potential privacy impacts upon neighbours has been undertaken under the Housing SEPP section of this report (building separation).

Further to the above, mitigation measures had been implemented in the DA including solid tall spandrels to window zones, solid balustrades to balconies, and the rear deep soil zones with tree planting for privacy screening.

Part 5.2.4.8 – Materials and Finishes

These aspects have been considered in relation to *Chapter 4 of the Housing SEPP* and the associated *Apartment Design Guide* addressed previously.

Part 5.2.4.9 – Entries

Building entries are easily identifiable, accessible, and positively contribute to the streetscape. The proposal meets the objective of this Part of the DCP and is acceptable when considered against the applicable controls and provisions.

Details regarding street numbering and letterboxes are addressed by the recommended conditions.

Part 5.2.5 – Shop-top Housing and Mixed Use

This Part of the DCP contains the following 3 objectives:

- *Development at ground-floor is to activate the street and provide opportunity for passive surveillance.*
- *Development demonstrates that non-residential components on the ground floor will not have unacceptable impacts on the liveability, amenity, or efficiency of above-ground residential uses.*
- *Residential development above the ground-floor is to be of an appropriate design quality, consistent with the controls for high-density residential development in the Apartment Design Guide.*

The proposal is acceptable when considered against these objectives, noting:

- Appropriate street activation and surveillance of the street is provided by the proposal and design measures;
- The proposed uses, together with recommended conditions, are such that the ground level uses and upper units should reasonably co-exist, without unacceptable impacts on residential amenity;
- The provisions of *Chapter 4 of the Housing SEPP* and the associated *Apartment Design Guide* have been addressed previously and found to be acceptable.
- This Part of the DCP also contains 6 controls. The proposal is acceptable having regard to these controls, as:
 - Appropriate street activation is provided;
 - Clear entries are provided;
 - Appropriate siting and design measures are incorporated relative to access, parking, refuse, and in consideration of amenity impacts;
 - A response to SEPP 65 has been provided;
 - The ground and first floor have ceiling heights of at least 3.3m to provide flexibility in adaption over time.

Developer Contributions

The provisions contained in Council's Section 94 Contributions Plan apply to developments involving the construction of additional residential development that creates further demand to improve or upgrade existing facilities, amenities or services.

A total of **\$1,600,000** has been calculated. This payment will be imposed as a condition in the attached schedule.

NOTE: The Housing and Productivity (HPC) contribution also applies to this proposal and has been included as a condition of consent.

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

There have been no planning agreements entered into and there are no draft planning agreements being proposed for the site.

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

Sections 92-94 of the Regulations outline the matters to be considered in the assessment of a development application. Section 92 requires the consent authority to consider the provisions of *AS 2601:1991 Demolition of Structures* when demolition of a building is

involved. In this regard a condition has been imposed in the draft Notice of Determination to ensure compliance with the standard.

All relevant provisions of the Regulations have been taken into account in the assessment of this proposal.

(g) Section 4.15(1)(b) - Likely Impacts of Development

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

De-commissioning of sewer branch

Sydney Water have advised that an existing sewer branch traversing the centre of the site needs to be decommissioned before any works on site can commence. They have advised that an investigation is to be undertaken to ensure any upstream properties connecting to the asset are no longer connected, after which the disuse and decommissioning of the asset can then be considered. The applicant has engaged with Sydney Water, and are in the process of obtaining a Section 73 Certificate. However, the Sydney Water requirements will be imposed as a Deferred Commencement condition in the attached draft schedule to ensure that their requirements are met.

Natural Hazards

The property is affected by the provision of surface flows however, excavation for the proposed dwelling is not deep enough to cause any adverse impact on the direction of the surface flows.

Construction

There are no specific issues relating to the BCA in the proposed design. Site and safety measures to be implemented in accordance with conditions of consent and Workcover Authority guidelines/requirements.

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

The relevant matters pertaining to the suitability of the site for the proposed development have been considered in the assessment of the proposal. Additional conditions of consent are proposed to further minimise any impacts on neighbouring properties. There are no known major physical constraints, environmental impacts, natural hazards or exceptional circumstances that would hinder the suitability of the site for the proposed development.

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

In accordance with Part 2 of the Bayside DCP, the DA was advertised for 30 days from 26 June to 27 July 2024. A total of 2 submissions were received (with all of them considered to be unique), with the primary issues raised discussed further below:

Overshadowing and loss of sunlight

Comment: This has been discussed earlier in this report under the DCP section.

Loss of privacy

Comment: This has been discussed earlier in this report, with mitigation measures being implemented including solid tall spandrels to window zones, solid balustrades to balconies, and the rear deep soil zones with tree planting for privacy screening.

Traffic impacts

Comment: The traffic report provided as part of this application has forecasted around 19 extra vehicular movements in AM peak and 17 in PM peak as a result of this development once fully operational. This has been assessed by both TfNSW and Council's Development Engineer and considered acceptable with relation to impacts on the local road network. Furthermore, the site has been zoned for these purposes, and the application complies with the anticipated density of development for the site.

Property values

Comment: This is not considered to be a valid planning consideration.

Noise during construction

Comment: Appropriate conditions have been imposed in the attached draft schedule of conditions that will regulate the construction phase.

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

The proposal has been assessed against the relevant planning policies applying to the site having regard to the objectives of the controls. As demonstrated in the assessment of the development application, the proposal will allow the development of the site in accordance with relevant planning policies and its environmental capacity. The proposed building is one that has demonstrated 'design excellence' and will add architectural value to the existing streetscape. Furthermore, the proposal does not create unreasonable impacts on surrounding properties. As such it is considered that the development application is in the public interest.

4. REFERRALS AND SUBMISSIONS

The Development Application was referred to Council's internal and external departments for comment. Appropriate conditions have been recommended to address the relevant issues raised. The following table is a brief summary of the comments raised by each referral department.

Referral Agency	Comments
<i>External Referrals</i>	
Water NSW	General Terms of Approval
Transport for NSW	Conditions
NSW Police	Conditions
Ausgrid	Conditions
Sydney Airport	Conditions
Sydney Water	Conditions
<i>Internal Referrals</i>	
Design Review Panel	Supported subject to amendments
Development Engineer	Conditions
Environmental Scientist	Conditions

Referral Agency	Comments
Section 7.11 Contributions	Conditions
Waste	Conditions
Trees Officer	Conditions
Landscaping	Conditions

5. CONCLUSION

In accordance with Clause 3 of Schedule 4A of the Environmental Planning and Assessment Act 1979, the Application is referred to the Sydney East Central Planning Panel for determination.

The proposed development is permissible in the MU1 Mixed Use Zone. The applicant has submitted a Clause 4.6 Exception to the maximum Building Height standard of 26 metres which is found to be acceptable.

The proposal has been assessed in accordance with Section 4.15 of the *Environmental Planning and Assessment Act 1979*.

On balance, the proposed development in its current form should be appropriate for the site and it is recommended that the Panel approve DA-2024/133 for the reasons outlined in this report.

The reasons for this recommendation are:

- The proposed variation to the Height of Building has been assessed in accordance with Section 4.6 of Bayside Local Environmental Plan 2021 and is considered acceptable.
- The development, subject to conditions, is consistent with the objectives of the MU1 Mixed Use zone and the relevant objectives of Bayside Local Environmental Plan 2021.
- The proposal is an appropriate response to the streetscape and site context by way of architectural design and will not result in any significant impact on the environment or the amenity of nearby residents.
- The proposal will not result in any significant impact on the environment or the amenity of nearby residents.
- The issues raised by objectors have been considered and where appropriate, addressed via amendments to plans or conditions of consent.
- Recommended conditions of consent appropriately mitigate and manage potential environmental impacts of the proposal.