

COUNCIL ASSESSMENT REPORT TO PANEL
SYDNEY EASTERN CITY PLANNING PANEL

PANEL REFERENCE & DA NUMBER	PPSSEC-330 – DA-2024/172
PROPOSAL	BATA 2 - Lot C – Integrated Development - Tree removal, excavation, construction of a mixed-use development including three buildings comprising 7 to 13 storeys, 3 basement levels for car parking, 232 residential apartments, 2 retail premises, and associated communal recreational facilities, landscaping and servicing infrastructure.
ADDRESS	2 Tingwell Boulevard, Eastgardens
APPLICANT	Karimbla Properties (no.39) Pty Ltd
OWNER	Karimbla Properties (no.39) Pty Ltd
DA LODGEMENT DATE	01/08/2024
APPLICATION TYPE	General Development
REGIONALLY SIGNIFICANT CRITERIA	CIV >\$30 million
CIV	\$130,922,276.61
CLAUSE 4.6 REQUESTS	4.4 – FSR
LIST OF ALL RELEVANT PLANNING CONTROLS (S4.15(1)(A) OF EP&A ACT)	<ul style="list-style-type: none"> • <i>State Environmental Planning Policy (Planning Systems) 2021</i> • <i>State Environmental Planning Policy (Sustainable Buildings) 2022</i> • <i>State Environmental Planning Policy (Housing) 2021</i> • <i>State Environmental Planning Policy (Biodiversity and Conservation) 2021</i> • <i>State Environmental Planning Policy (Resilience & Hazards) 2021</i> • <i>State Environmental Planning Policy (Transport and Infrastructure) 2021</i> • <i>Bayside LEP 2021</i> • <i>Bayside DCP 2022</i>
TOTAL & UNIQUE SUBMISSIONS	36 (two x pro forma letters & 12 unique submissions)

DOCUMENTS SUBMITTED FOR CONSIDERATION	Architectural & Landscape Plans Statement of Environmental Effects Clause 4.6 – FSR
HOUSING PRODUCTIVITY CONTRIBUTION (S7.24)	Applicable – Conditioned
RECOMMENDATION	Approval
DRAFT CONDITIONS TO APPLICANT	Yes
PLAN VERSION	Various
SCHEDULED MEETING DATE	29 April 2025
PREPARED BY	Fiona Prodromou – Senior Assessment Planner
DATE OF REPORT	March 2025

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>	Yes
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

In accordance with Schedule 6 subclause 2 of State Environmental Planning Policy (Planning Systems) 2021, as the proposed development has a capital investment value of greater than \$30 million, it is referred to the Regional Planning Panel for determination.

The subject site forms part of a larger property known as the BATA (British American Tobacco Australia) site, which was previously utilised for industrial purposes. The southern portion of the site is being redeveloped in line with the Stage 1 Masterplan approval granted by the Land and Environment Court on 7 August 2015. The consent is a concept approval for the southern portion of the site, with construction nearing completion.

The subject site was previously rezoned from IN1 General Industrial and R3 Medium Density Residential to R4 High Density Residential and granted substantial uplift in height and FSR. Lot C benefits from an FSR of 2.35:1 and split height standard of 37m to the eastern portion of the site and 69m to the western portion of the site.

On 26 November 2020, the Sydney Eastern City Planning Panel approved a Concept Plan (DA-2019/386), for future mixed-use development upon the subject site. As per Section 4.23 of the Environmental Planning and Assessment Act, the Concept DA now functions in lieu of a DCP for the site.

The Concept Plan established parameters for future development including numerical requirements and objectives and incorporated Torrens title subdivision of the site, creation of building envelopes, indicative heights, numerical setbacks, maximum gross floor area, materiality of building forms, public domain interface, concept landscaping and public domain provision, car parking rates, public open space and art provision in addition to a myriad of other design measures. All relevant conditions of the Concept Plan have been complied with or can be complied with by way of condition of consent.

A Planning Agreement for the subject site was executed on 28 October 2021. The benefits of the Planning Agreement are detailed in this report. The proposal has been conditioned to ensure any operational consent is consistent with the Planning Agreement for the site.

Lot C is located in the south eastern corner of the overall precinct at the junction of Tingwell Boulevard and Bunnerong Road and comprises a total site area of 6,198sq/m.

The BATA 2 Precinct benefits from numerous development consents incorporating retail and residential uses. Numerous buildings including two public open space areas within the precinct have been completed. Construction is currently occurring within the precinct.

The Design Competition and Design Excellence provisions of BLEP 2021 apply. The applicant requested a waiver from the design competition requirements of Bayside LEP 2021 in correspondence dated 21 August 2024. Council accepted the applicant's rationale as to why a design competition was not required for Lot C. i.e. Approved concept plan for precinct, ongoing liaison and successful review by Design Review Panel etc. On 30 August 2024, Council granted the applicant a waiver with respect of the design competition requirements.

The proposal was peer reviewed by the Design Excellence Panel on three occasions. The Panel confirmed in February 2025 that the revised scheme as presented satisfies the Design Excellence requirements of BLEP 2021 subject to minor amendments discussed in this report.

The subject site benefits from a maximum FSR of 2.35:1 as per Bayside LEP 2021. The proposal incorporates a proposed gross floor area of 21,508sq/m which is equivalent to a maximum FSR of 3.47:1 across Lot C. The aforementioned indicates a surplus GFA of 6,942.7sq/m, being 1.1:1 FSR beyond the standard permitted.

Whilst the FSR sought to be accommodated upon Lot C does not strictly comply with the FSR standard of Bayside LEP 2021, the variation is a direct consequence and result of the Torrens title subdivision of the BATA 2 precinct into the creation of smaller lots, roads and future open space, replacing the two large lots that previously existed.

Whilst it may appear that surplus density is proposed, this is not technically the case, as the total maximum gross floor area for Lot C and the overall gross floor area within the BATA 2 precinct remain consistent with that envisaged and allocated for developable lots within the approved concept plan. i.e. 21,900sq/m envisaged by approved Concept Plan for Lot C. In this regard the variation is supported, justifiable and the FSR standard in this instance is unreasonable and unnecessary.

A total of 36 objections, being two x pro forma letters used by majority of objectors as 12 unique submissions were received during the public notification of the proposal, issues raised have been considered in this assessment report.

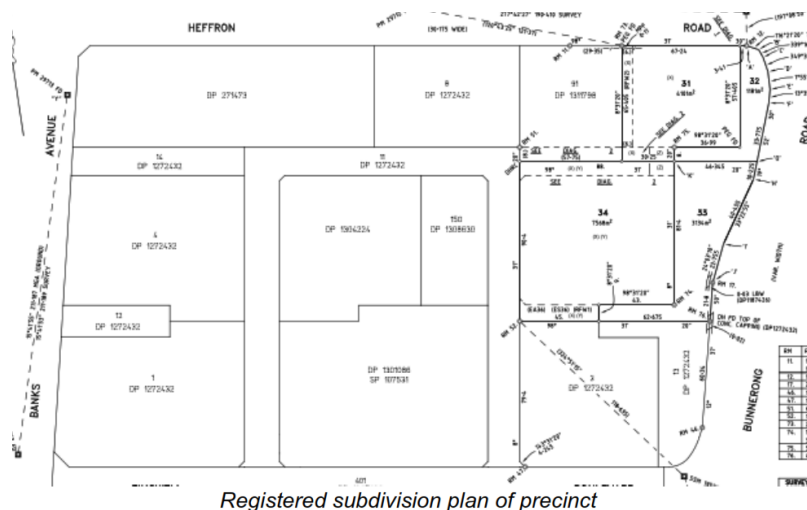
The development application (“DA”) has been assessed in accordance with the relevant requirements of the Environmental Planning and Assessment Act 1979 (“the Act”) and is recommended for Approval.

The officers involved in writing and authorizing this report declare, to the best of their knowledge, that they have no interest, pecuniary or otherwise, in this application or persons associated with it and have provided an impartial assessment.

Following a detailed assessment of the proposal, DA-2024/169 is recommended for Approval subject to the imposition of standard and specific conditions of consent.

1. THE SITE AND LOCALITY

The BATA 2 Precinct is an expansive property which has been torrens title subdivided into numerous mega lots and occupies a total area of 89,570sq/m. Lots and the precinct overall are identified in the diagram below.



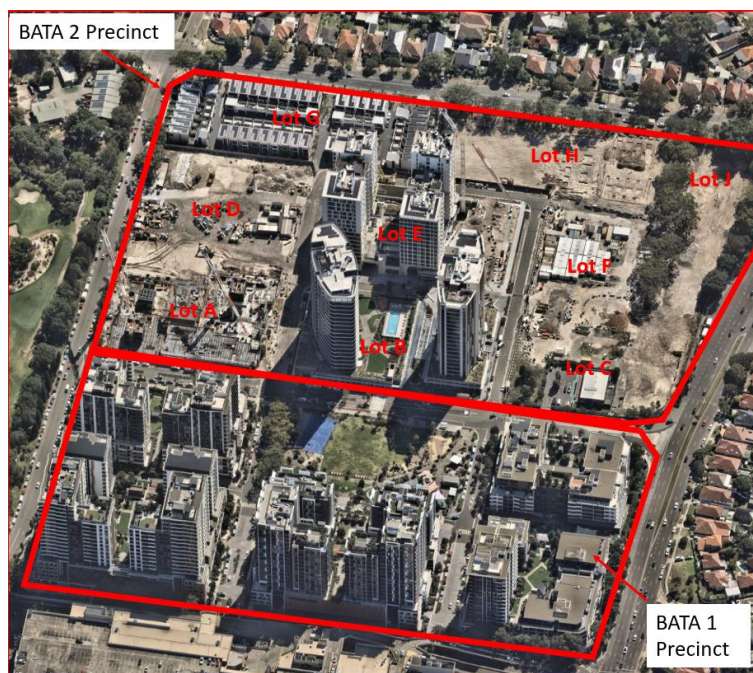
The BATA 2 Precinct benefits from an existing concept plan approval and multiple development consents for a range of building forms and housing typologies including high

rise mixed use commercial / residential towers up to 21 storeys in height and two storey residential terraces fronting Heffron Road. A range of public open space is incorporated into the precinct, including but not limited to two community parks.



Approved Concept Plan

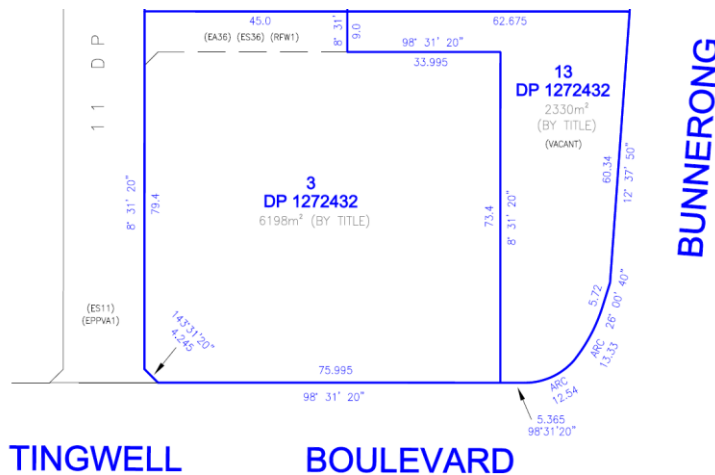
The proponent has previously redeveloped land directly south of the BATA 2 Precinct within a separate precinct colloquially known as BATA 1. This area was developed as part of a separate Stage 1 Master Plan approved by the Land and Environment Court and is characterised by a mix of land uses and building forms of varying heights from 6-21 storeys. The BATA 1 precinct also incorporates a public park.



Aerial context of both precincts

The site subject of this application is located within the BATA 2 precinct. It is colloquially known as Lot C, legally identified as Lot 3 DP1272432 and is located in the south eastern

corner of the Precinct, at the junction of Tingwell Boulevard and Bunnerong Road. Lot C is irregularly shaped, has an overall site area of 6,199sq/m and its dimensions are identified in an excerpt of the submitted survey below. The site is currently vacant.



Lot C has a 73.4m frontage to Lot 13 DP 1272432 (Open Space 08) directly to the east, this parcel is 2,330sq/m in area, is identified as 136 Bunnerong Road and its future intended use is for the purpose of public open space. Lot 13 is identified as 'Open Space 08' within the approved Concept Plan for the precinct and is to be the subject of a future separate development application.

Lot C is located along Tingwell Boulevard, directly to the east of the core retail area of the BATA 2 precinct and to the direct south of Lot F which is the subject of another current development application, being DA-2024/205 for the removal of trees, excavation, and construction of three (2) connected buildings of 6-13 storeys comprising two (2) levels of basement car parking, 228 residential units, communal recreational facilities, associated landscaping, and construction of a private road.

The southern portion of Lot C along the Tingwell Boulevard southern boundary is approximately 0.5m - 1m higher than the northern section of the site. The site is otherwise generally level, with the exception of a dip of up to 2m in depth along a portion of the eastern boundary with Lot 13.



Lot C as viewed from Tingwell Boulevard / Studio Drive



Lot C as viewed from site looking South

A total of 21 existing trees are located on site, including but not limited to *Eucalyptus microcorys*, *Cupaniopsis anacardioides* and *Lophostemon confertus* species. The majority of these trees have been self-sown. All such trees are proposed for removal.

Directly to the west of Lot C is Lot B. The redevelopment of this lot has just been completed for a mixed-use development comprising two residential flat buildings of 20 and 21 storeys in height containing 375 residential units, communal recreational facilities, ground floor residential and retail including supermarket, basement parking, construction & embellishment of two private roads and landscaping.

To the north of Lot C is a future shared access road to provide access to both Lot C and Lot F. Lot F as previously stated, is the subject of a current development application. Directly to the south, on the opposite side of Tingwell Boulevard is an existing five (5) to eight (8) storey residential flat building development within the BATA 1 precinct.



Existing flat building to the south within BATA 1 Precinct as viewed from Bunnerong Road



Existing flat building to the south within BATA 1 Precinct as viewed from Tingwell Boulevard

Existing development on the eastern side of Bunnerong Road, a 6 lane classified road, is located within the Randwick City Council local government area and comprises a range of single and two storey detached dwelling houses and older style 2 storey residential flat buildings.



Properties on eastern side of Bunnerong Road

Council records identify that the subject site is affected by the following constraints;

- Potential Contamination
- Heritage items nearby (I155 / I66 – Local parkland)
- Flood affected

2. SITE HISTORY / BACKGROUND

The BATA 2 Precinct is an expansive property which has been torrens title subdivided into numerous mega lots and occupies a total area of 89,570sq/m. On 22 November 2019 the precinct was rezoned from IN1 General Industrial and R3 Medium Density Residential to R4 High Density Residential and granted substantial uplift in height and FSR.

On 26 November 2020, the Sydney Eastern City Planning Panel approved a Concept Plan (DA-2019/386), for future mixed-use development upon the subject site. As per Section 4.23 of the Environmental Planning and Assessment Act, the Concept DA now functions in lieu of a DCP for the site.

The Concept Plan established parameters for future development including numerical requirements and objectives and incorporated Torrens title subdivision of the site, creation of building envelopes, indicative heights, numerical setbacks, maximum gross floor area, materiality of building forms, public domain interface, concept landscaping and public domain provision, car parking rates, public open space and art provision in addition to a myriad of other design measures.

A Planning Agreement for the subject site was executed on 28 October 2021. The benefits of the Planning Agreement are detailed further in this report. Primary development consents to date within the precinct are as follows;

DA-2020/303 – Lot B (6 Tingwell Boulevard)

Construction of a mixed-use development comprising two residential flat buildings of 20 and 21 storeys in height containing 375 residential units, communal recreational facilities, ground floor residential and retail including supermarket, basement parking, construction & embellishment of two private roads and landscaping.

DA-2021/1 – Lot E (10 Finch Drive)

Construction of a mixed-use development comprising two residential flat buildings up to 17 storeys in height containing 296 residential units, communal recreational facilities, ground

floor residential and retail, basement car parking; Publicly accessible through site pedestrian link; removal of three trees, construction and embellishment of two private roads and a future public open space component.

DA-2021/627 – Lot A (10 Tingwell Boulevarde)

Construction of two (2) mixed use buildings of 18 and 20 storeys accommodating 372 apartments, communal recreational facilities, child care centre, three (3) levels of basement car parking, associated landscaping and construction and embellishment of a private road

DA-2021/208 – Lot G (18 Heffron Road)

Construction of 42 x two (2) storey terraces with detached garages, eight (8) secondary dwellings, tree removal, landscaping and construction and embellishment of private access ways.

DA-2022/268 – Lot H & Open Space 3 (12 and 16 Heffron Road)

Construction of 14 x 3 storey townhouse development with associated parking and driveway, tree removal, landscaping and the creation and embellishment of a recreation park located between Lots G and H (known as Open Space 03)

DA-2024/172 – Lot C (2 Tingwell Boulevarde)

Excavation, construction of three connected buildings of between 7 - 13 storeys. Three (3) basement levels accommodating car parking, residential apartments (232 units) together with communal recreational facilities; retail premises (2 tenancies) associated landscaping and servicing infrastructure.

DA-2024/190 – Lot D (106 Banks Avenue)

Lot D – excavation, removal of eleven (11) trees, and construction of two (2) connected buildings consisting of three (3) levels of basement car parking, 385 residential apartment units, communal recreational facilities, and construction of a private road

DA-2024/169 – Lot J (8 Heffron Road) – *To be determined 29 April 2025*

Construction of two (2) residential apartment buildings of 7-8 storeys, including two (2) levels of basement car parking, 92 residential units, communal recreational facilities, childcare centre for 60 children, associated landscaping, tree removal.

DA-2024/205 – Lot F (16 Studio Drive) – *To be determined 1 May 2025*

Removal of trees, excavation, and construction of three (2) connected buildings of 6-13 storeys comprising two (2) levels of basement car parking, 224 residential units, communal recreational facilities, associated landscaping, and construction of a private road.

3. THE PROPOSAL

The proposed development seeks to consent for tree removal, excavation, construction of a mixed-use development including three buildings comprising 7 to 13 storeys, 3 basement levels for car parking, 232 residential apartments, 2 retail premises, and associated communal recreational facilities, landscaping and servicing infrastructure.



Photomontage view from Tingwell Boulevard / Bunnerong Road

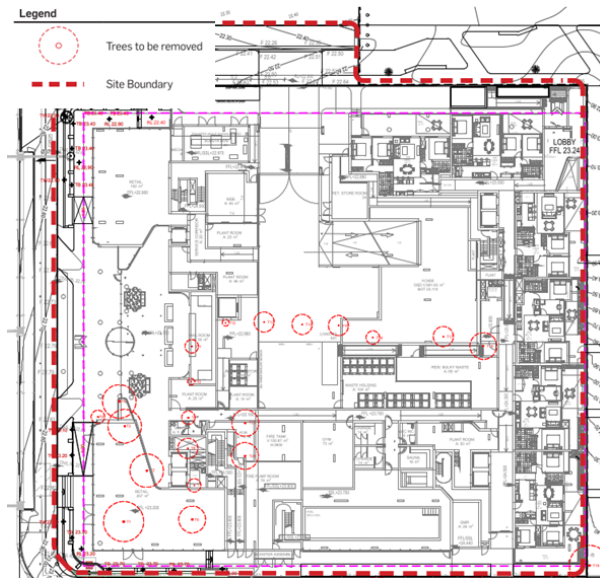


Photomontage view from NE corner of Lot C

The proposal is described in more detail below.

Tree Removal

A total of 21 existing trees are proposed to be removed. Such trees include but are not limited to *Eucalyptus microcorys*, *Cupaniopsis anacardioides* and *Lophostemon confertus* species. Trees for removal are identified in red circles in diagram below.



Tree removal - red circles

Basement 3

105 car spaces, 9 motorcycle spaces, bicycle storage, multiple residential lift and fire stairs with adjoining lobbies, residential storage, sewer pump out room, vehicular and pedestrian circulation.

Basement 2

107 car spaces, 9 motorcycle spaces, bicycle storage, multiple residential lift and fire stairs with adjoining lobbies, residential storage, plant storage, vehicular and pedestrian circulation.

Basement 1

46 car spaces, 2 car wash, 6 car share, bulky waste / general waste storage, grease arrestor, fan room, water pump / filtration rooms, store room, pool plant, vehicular and pedestrian circulation.

Ground

6 x residential units (3 x 3 bed / 3 x 2 bed) with associated private open space areas, 3 x communal residential lobbies, plant and service rooms, OSD storage, waste holding area, 2 x MRV / 1 x SRV loading / 5 x van / unloading bays, vehicular access via northern spur road, single commercial lift, indoor communal pool, spa, sauna, gym and change room facilities. 2 x retail tenancies (199sq/m & 250sq/m), substation and hydrant boosters integrated into built form, periphery landscaping and planters. Awning provided to western side of development.

Level 1

31 residential units with associated private open space areas. Units fronting the communal open space are provided with terraces fronting the communal area at this level. Each unit incorporates periphery fencing to a height of 0.9m behind raised 0.5m high planters directly adjoining. 4 x lift cores (7 lift cars in total) fire stairs, common circulation, service cupboards, waste chutes, air conditioning storage rooms and associated plant rooms.

The central communal open space area incorporates connected level and unimpeded pedestrian walkways with tactile paving and a series of spaces with a unified character for active and passive recreation of future users. A large centrally located open lawn, seating, passive spaces, BBQ and dining pavilions have been incorporated. An extensive range of landscaping is provided, with 0.6m soil depth for shrubs and 1m soil depth for trees. A mix of native and endemic species are proposed to be planted and external areas will be illuminated and irrigated via drip systems with automatic timers / moisture sensor controls.



Level 1 COS

Levels 2 – 5 (per floor)

31 residential units with associated private open space areas. 4 x lift cores (7 lift cars in total) fire stairs, common circulation, service cupboards, waste chutes, air conditioning storage rooms and associated plant rooms.

Level 6

25 residential units with associated private open space areas. 4 x lift cores (7 lift cars in total) fire stairs, common circulation, service cupboards, waste chutes, air conditioning storage rooms and associated plant rooms.

Levels 7 – 9 (per floor)

Rooftop of eastern and southern building forms. Rooftop incorporates stair access, solar panels, plant rooms and periphery built in planters incorporating a range of cascading shrubs and groundcovers.

11 residential units with associated private open space areas. 3 x lift cores (3 lift cars in total) fire stairs, common circulation, service cupboards, waste chutes, air conditioning storage rooms and associated plant rooms.

Level 10

6 residential units with associated private open space areas. 3 x lift cores (3 lift cars in total) fire stairs, common circulation, service cupboards, waste chutes, air conditioning storage rooms and associated plant rooms.

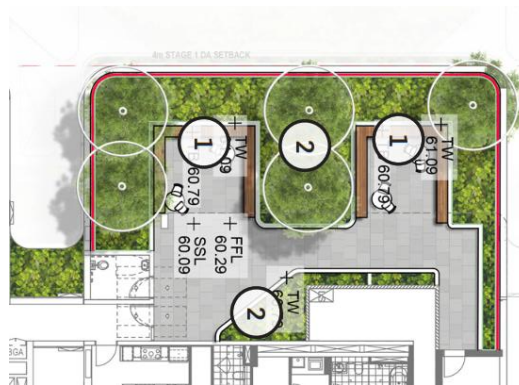
North facing communal open space area, incorporating periphery landscaping and wind screening, raised planters, seating, and a community garden.



L10 COS

Level 11

4 residential units with associated private open space areas. Dual x lift core, fire stairs, common circulation, service cupboards, waste chutes, air conditioning storage rooms and associated plant rooms. Communal open space area, incorporating toilet, periphery landscaping and wind screening, raised planters and seating.



L11 COS

Level 12

3 residential units with associated private open space areas. Dual x lift core, fire stairs, common circulation, service cupboards, waste chutes, air conditioning storage rooms and associated plant rooms. Communal open space area, incorporating toilet, periphery landscaping, raised planters and seating. Services room is also positioned at this level.



L12 COS

The table below is a summary of key development data for the proposed development.

Control	Proposal	
Site area	6,199sq/m	
GFA	21,508sq/m Proposed	
FSR (retail/residential)	21,059sq/m GFA Residential 449sq/m GFA Retail	
Clause 4.6 Requests	Yes	
No of apartments	232 112 x 1 bed / 94 x 2 bed / 26 x 3+ bed dwellings	
Max Height	<i>Eastern Portion of Site</i>	<i>Western Portion of Site</i>
	24.9m – 28.8m	38.1m - 45.3m
Landscaped area	386sq/m of deep soil landscaped area equivalent to 6.2% of the site.	

4. 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*
- (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.*

Further to the above, the provisions of s4.23 - Concept development applications as alternative to DCP required by environmental planning instruments apply to the proposal and have been considered below.

S.4.23 - Concept Development Applications as Alternative to DCP required by Environmental Planning Instruments

As per the provisions of this part, a Concept DA may take the place of a DCP which may be required by a relevant environmental planning instrument. Lot C forms part of an overall precinct of which is subject to the requirements of a Concept Plan approved on 26 November 2020 by the Sydney Eastern City Regional Planning Panel.

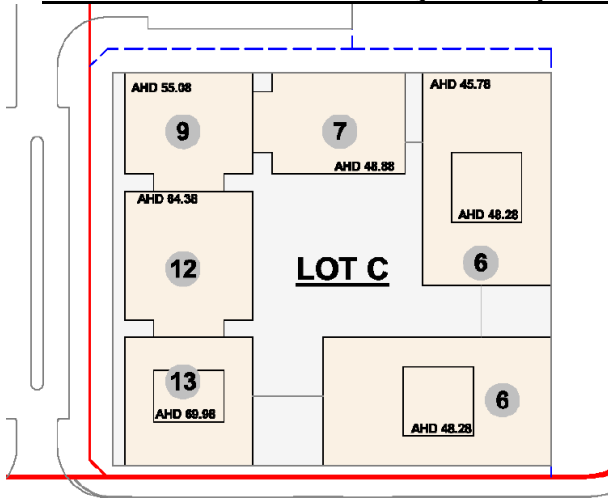
The concept plan contains the relevant information required to be included as required by BLEP 2021 and the Regulations. An assessment of the Concept plan has been carried out and forms the basis of this report. The proposal is therefore consistent with this part of the Act. An assessment against the relevant conditions of the Approved Concept Plan is provided below;

Concept Plan Conditions

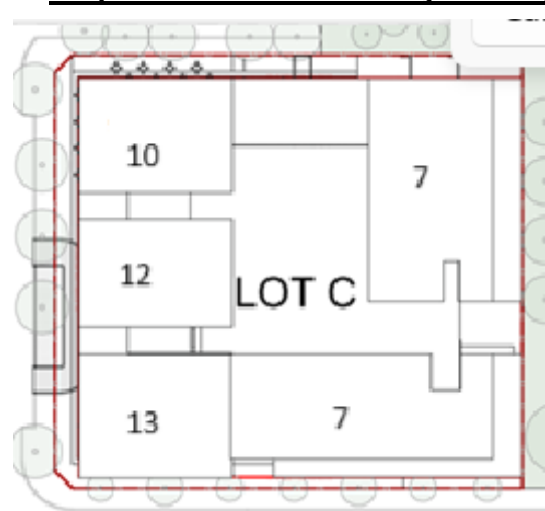
a) Condition 1 – Approved Documents

The concept plan approval incorporates indicative building storey heights, footprints, road plan and setbacks. A comparison of the indicative approved and proposed number of storeys, building footprints and setbacks is provided below.

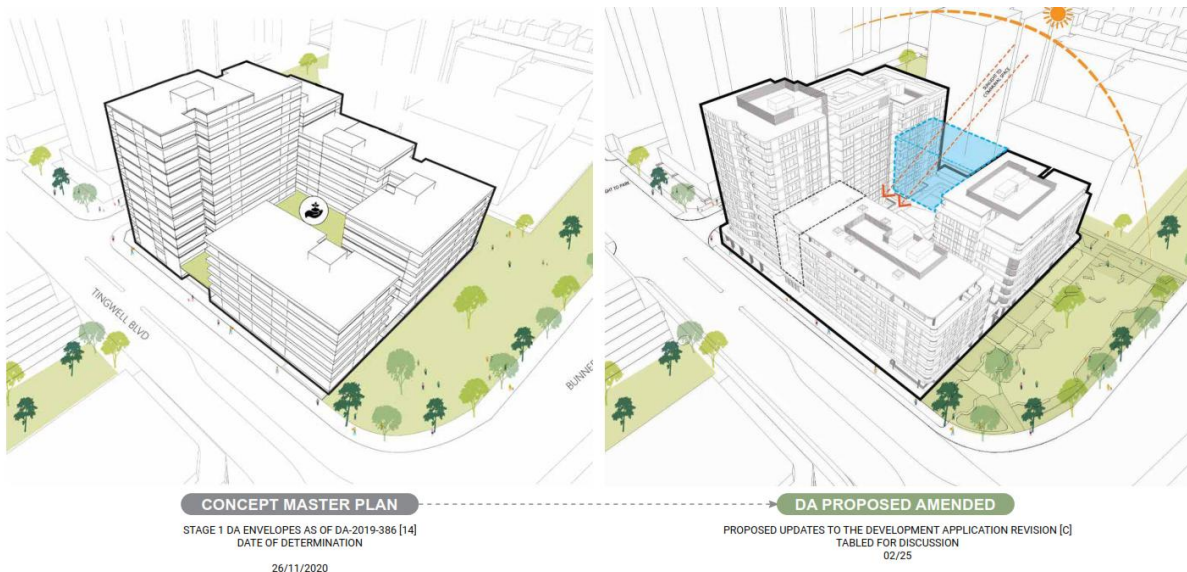
Indicative Number of Storeys / Footprint



Proposed Number of Storeys / Footprint



As indicated above, a variation to the 'indicative' number of storeys and building footprint as envisaged by the concept plan is sought, whereby the bulk of the central northern built form has been relocated as depicted in the diagram below to the southern boundary of Lot C. The shifting of the massing is proposed in order to facilitate improved solar access to a central podium at level 1 of the proposal which is to accommodate the primary communal open space for the development.



Notwithstanding the above modification to the indicative built form and number of storeys, a full assessment and due consideration of potential overshadowing impacts of the proposal have been undertaken as part of this assessment.

The proposal remains generally consistent with the bulk, height and scale of the envisaged future desired character of the precinct. Modifications do not result in adverse amenity or overshadowing impacts within Lot C, nor onto residential units to the south of the site along Tingwell Boulevard within 8 Studio Drive.

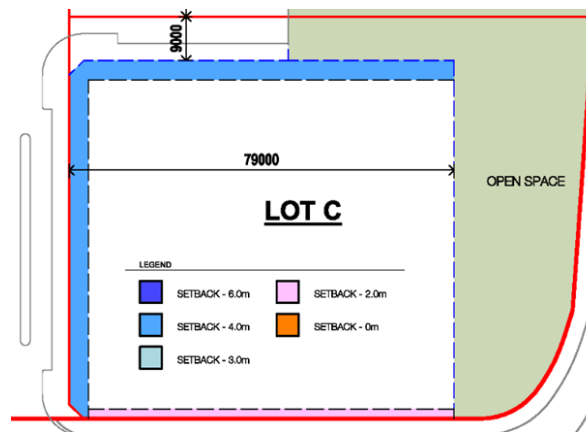
Consideration was given to the impact of the proposed development onto existing units within the development to the south at 8 Studio Drive. Submitted elevational shadow, sun eye view, shadow diagrams and floor plan analysis confirm that with the construction of the proposed development, a total of 118 or 167 of units within 8 Studio Drive will retain a minimum of 2 hours solar access in midwinter, being 70.6% of

dwellings within this development. It is noted that dwellings within 8 Studio Drive also benefit from easterly or westerly orientation and thus compliance with the solar access requirements of the Apartment Design Guide remains achievable despite the proposed development directly north.

Further to the above it is confirmed that proposed building heights do not exceed the maximum 91m AHD Sydney Airport height restrictions and comply with the height standard for the site. The proposal is satisfactory in this regard.

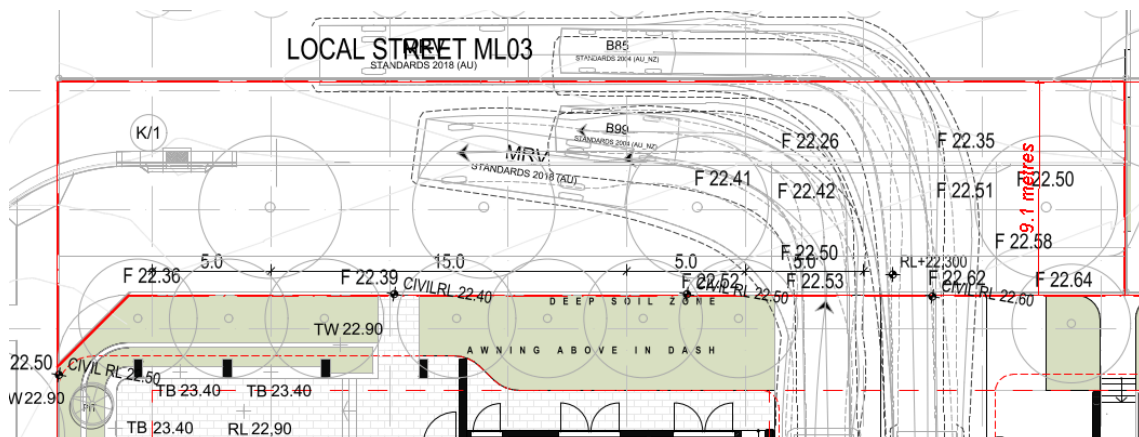
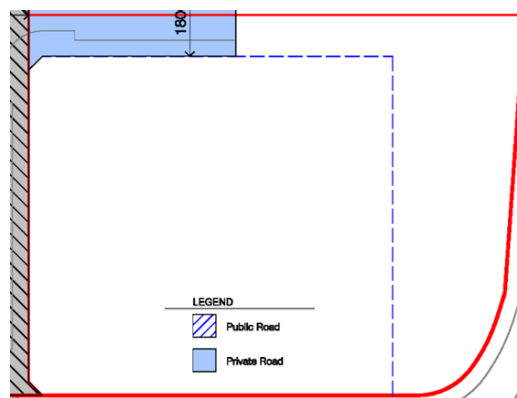
Setbacks

Setbacks as proposed, being 4m to northern and western boundaries and 2m to Tingwell Boulevard to the south comply with the requirements of the Concept Plan.



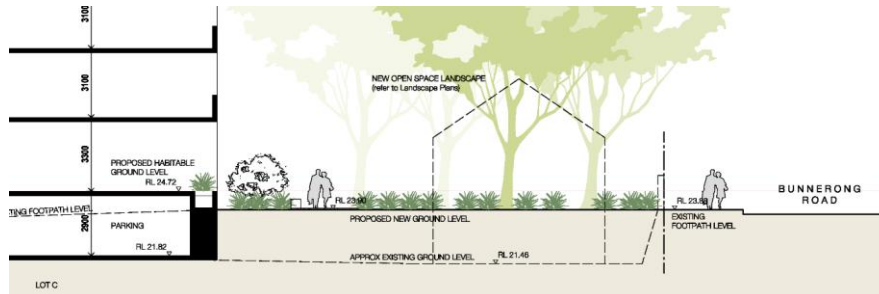
Roadway

The proposed road and its overall 9m width adjoining the northern boundary of the site is consistent with the below requirements of the concept plan.



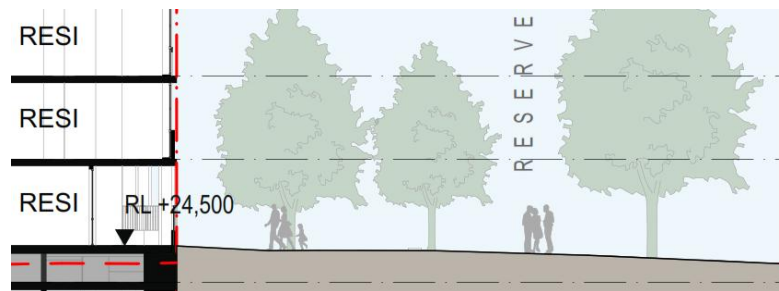
Ground Floor Levels / Cross Section to Bunnerong Road

An indicative finished ground floor level of 24.72RL is noted within the concept plan (excerpt below), with fill up to 2.45m beyond the boundary of Lot C within “Open Space 08” which does not form part of this application, in order to facilitate direct, level and unimpeded pedestrian access from the development to within Open Space 08 and the adjoining public domain beyond at Bunnerong Road.



Concept Plan excerpt

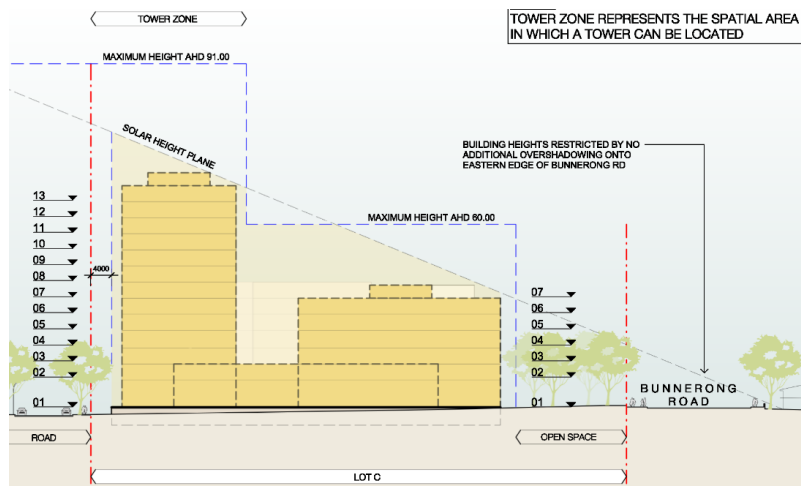
The section below indicates a proposed ground floor level of 23.5RL adjoining future public open space to the east. The proposed floor level is 1.17m below that envisaged by the concept plan. Notwithstanding, the below section demonstrates that the proposed floor level is not subterranean and is generally level with the future anticipated open space to the east. The proposal is satisfactory in this regard.



Proposed Section

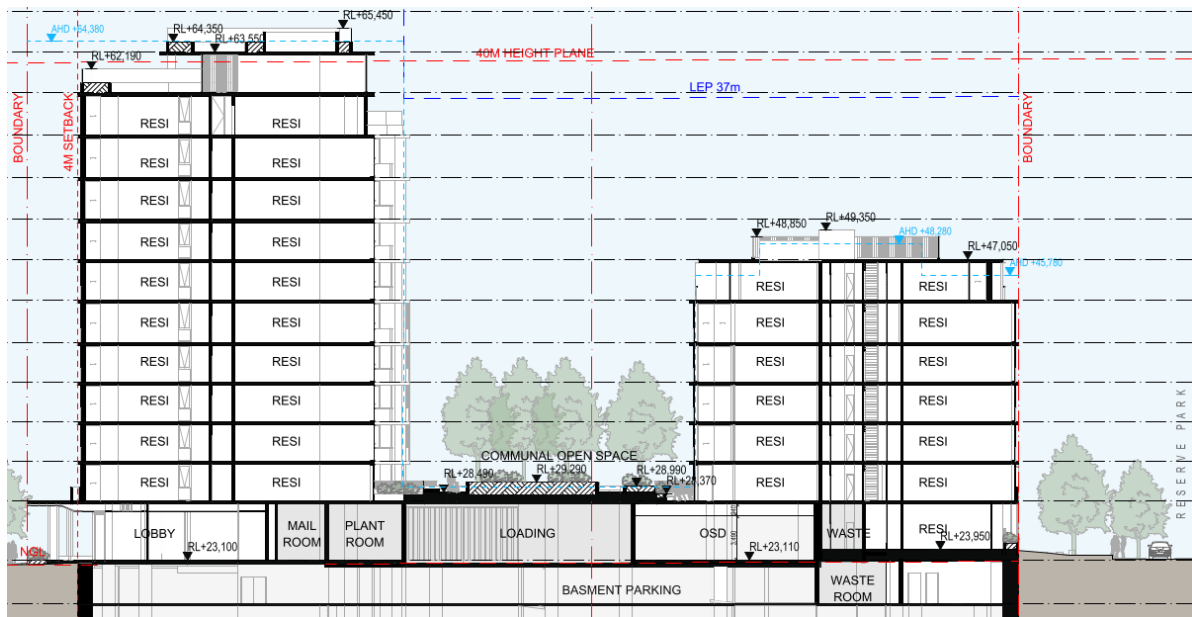
Block Section

The below block section is incorporated in the Concept Plan. This depicts a 13 and 7 storey built form. The lower built form is positioned on the eastern portion of the site in order to ensure nil adverse overshadowing impact onto low density residential dwellings on the eastern side of Bunnerong Road within the Randwick Council local government area.



Concept Plan Excerpt

The proposal as depicted below, comprises a 12 and 7 storey building form and complies with the above block section of the concept plan.



Proposed section

- b) Condition 9 – Design Excellence
The proposal was peer reviewed by the Design Excellence Panel on three occasions as detailed below and it was concluded in February 2025 subject to minor amendments, incorporated by the applicant into the final scheme, that the proposed development demonstrates and achieves Design Excellence.
- c) Condition 10 - Local Contributions
The proposal has been conditioned accordingly to ensure relevant contributions are payable as a consequence of the increase in density on site, in accordance with the executed Planning Agreement for the site.
- d) Condition 11 – Contamination
Refer to assessment under SEPP Resilience and Hazards of this report. The site is suitable for the proposed use.
- e) Condition 12 - Maximum Gross Floor Area
The maximum gross floor area of the entire BATA 2 Precinct is 210,520sq/m. The table below confirms the maximum GFA approved and proposed to date. The proposal for Lot C adheres to the anticipated overall GFA for the lot, which was envisaged at Concept Plan Stage. i.e. 21,900sq/m GFA anticipated, 21,508sq/m as proposed. Targets are achieved by the current and subsequent applications with respect of maximum GFA on site.

DA Number	Lot	Residential GFA	Non Residential GFA	Total
DA-2020/303	B	35,269sq/m Approved	3,428sq/m Approved	38,697sq/m Approved
DA-2021/1	E	31,660sq/m Approved	505sq/m Approved	32,165sq/m Approved
DA-2021/208	G	5,635sq/m Approved	N/A	5,635sq/m Approved
DA-2021/627	A	38,428sq/m Approved	538sq/m Approved	38,966sq/m Approved
DA-2022/268	H	2,390sq/m Approved	N/A	2,390sqm Approved
DA-2024/190	D	38,570sq/m Proposed	N/A	38,570sq/m Approved
DA-2024/205	F	22,500sq/m Proposed	N/A	22,500sq/m Proposed
DA-2024/169	J	9,083sq/m Proposed	450sq/m Proposed	9,533sq/m Proposed
DA-2024/172	C	21,059sq/m Proposed	449sq/m Proposed	21,508sq/m Proposed
TOTAL				209,994sq/m

f) Condition 13 - Minimum Non Residential Gross Floor Area

A minimum of 5,000sq/m of gross floor area for non-residential purposes shall be provided across the entire BATA 2 site. The table below indicates the approved / proposed non-residential GFA to date within the precinct. Targets are achieved by the current and subsequent applications.

DA Number	Lot	Non Residential GFA
DA-2020/303	B	3,428sq/m Approved
DA-2021/1	E	505sq/m Approved
DA-2021/627	A	538sq/m Approved
DA-2024/169	J	450sq/m Proposed
DA-2024/172	C	449sq/m Proposed
<i>Total = 4,471sq/m approved + 449sq/m proposed in Lot C + 450sq/m proposed for Lot J = 5,370sq/m provided within the precinct.</i>		

g) Condition 14 – Maximum Residential Gross Floor Area

A maximum 205,520sq/m of gross floor area for residential accommodation shall not be exceeded upon the subject site. Plans indicate the provision of 20,976sq/m of residential GFA as part of the redevelopment of Lot C. The table below indicates the approved / proposed residential GFA to date. Maximum residential GFA targets are adhered to.

DA Number	Lot	Residential GFA
DA-2020/303	B	35,269sq/m Approved
DA-2021/1	E	31,660sq/m Approved
DA-2021/208	G	5,635sq/m Approved
DA-2021/627	A	38,428sq/m Approved
DA-2022/268	H	2,390sq/m Approved

DA-2024/190		D	38,570sq/m Approved
DA-2024/205		F	22,500sq/m Proposed
DA-2024/169		J	9,083sq/m Proposed
DA-2024/172		C	Proposed 21,059sq/m
			<i>Total = 204,594sq/m</i>

h) Condition 17 – Sample Boards

As per the requirements of 17(b), ‘two (2) sample boards containing original samples and swatches of all external materials and colours’ shall be submitted. Physical samples of proposed colours, finishes and materials are required to be submitted to Council for assessment. Digital sample boards have been provided and are satisfactory with respect of this condition. The proposal has been conditioned to require the submission of physical samples post determination prior to the issue of any construction certificate.

i) Condition 19 – Ground Level Interface

This condition seeks to ensure the provision of an appropriate interface / design treatment with adjoining streets and public domain areas at pedestrian level to ensure an adequate level of privacy to ground level apartments and avoid subterranean spaces.

The proposed development does not incorporate any subterranean spaces and proposes a ground floor RL which is a maximum of 1.17m above existing ground level. The proposal incorporates appropriate ramps where required to provide level and direct access and an appropriate interface with the adjoining public domain.

As conditioned, the proposal provides an appropriate interface with the public domain and finished RL for the development.

j) Condition 20 – Finished Ground Floor Level

Proposed finished ground floor levels are positioned slightly above existing natural ground level (i.e. maximum 1.17mm) to ensure the development is safeguarded against any potential future flooding inundation.

The proposed development adheres to the minimum habitable floor level nominated by Council to ensure the development is future proofed against potential future flooding. i.e. 1 in 100 year flood.

k) Condition 21 – Height of Buildings

Lot C site is subject to a split height standard of 37m to the eastern side and 69m to the western side of the lot. An assessment of height is provided below.

<i>Eastern Portion of Site</i>	<i>Western Portion of Site</i>
24.9m – 28.8m	38.1m - 45.3m



The proposal is satisfactory with respect of this requirement.

l) Condition 22 – Floor to Floor Heights

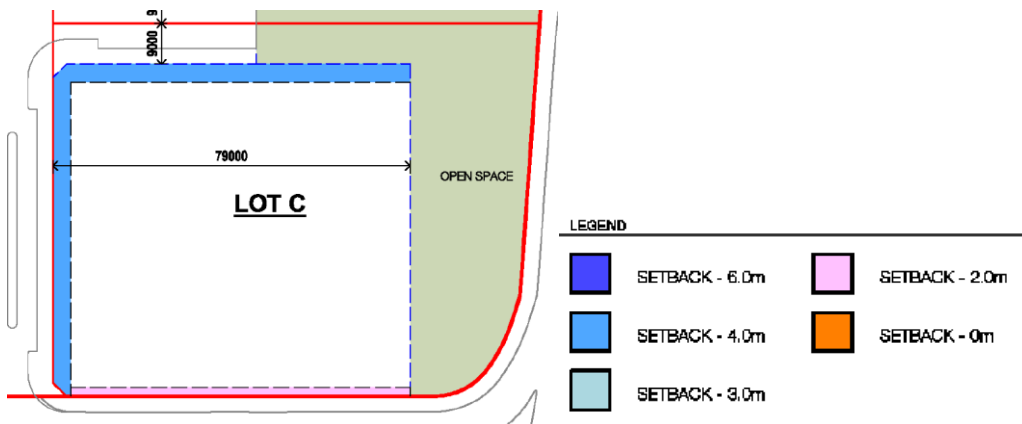
This condition requires compliance with ADG floor to floor heights. Compliance is detailed below;

<i>Level</i>	<i>ADG</i>	<i>Proposed</i>	<i>Complies</i>
Ground	4m for commercial	4.69m	Yes
Residential Levels	3.1m	3.16m – 3.36m	Yes

The proposal is satisfactory in this regard.

m) Condition 23(b)(c) & Basement Levels 42(a)(b) – Landscape Setbacks / Deep Soil Zones

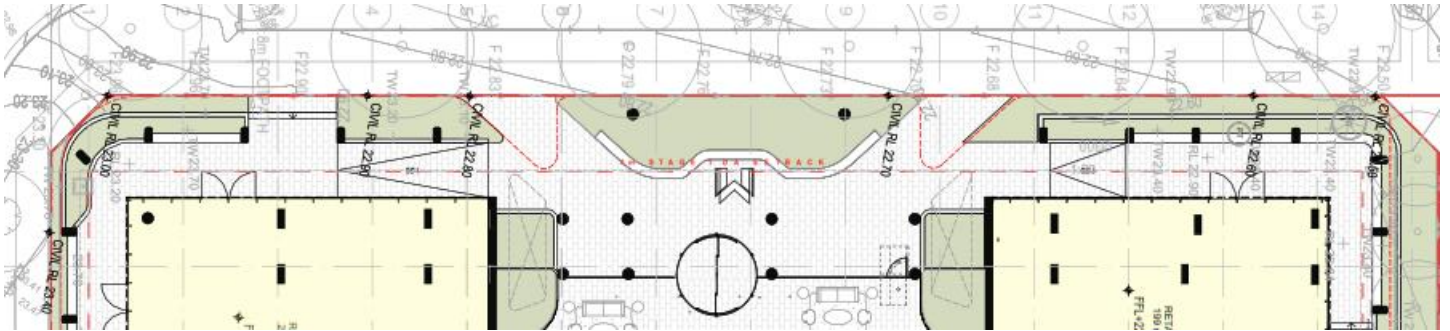
As per the requirements of this condition, basement levels must not encroach into street setback areas as depicted in the Site Setbacks Plan as approved in the Concept Plan. The aforementioned requires deep soil setbacks of 4m to the north and west of Lot C and 2m to the south with a 9m width shared roadway to the centreline of the northern access road.



The proposal complies with the required building setbacks above and provides deep soil zones along the frontages of the developable lot as required to facilitate appropriate

landscaped planting and ensure its longevity into the future. Basement levels are positioned beyond deep soil zones as required.

Whilst hard paving has been minimised along the extent of the northern setback of Lot C, the assessing officer is of the position that the 4m western side setback zone of Lot C incorporates excessive hard paving which minimises landscaping opportunities within deep soil in this location.



Ground level western frontage (red hatched line depicts 4m setback)

A total of 386sq/m of deep soil landscaped area is provided at the ground level periphery of the site. This is equivalent to 6.2% of the site. It is considered that design revisions are warranted specifically to the ground level western front setback in order to increase the aforementioned deep soil provision on site.

Design revisions within the western front setback of the site at ground level are possible, given extensive hard paving is proposed above the basement setback below ground, thus impeding on what can otherwise be provided as deep soil.

As such the proposal has been conditioned to require that the arrangement, layout, and design within the ground-level front setback along the site's western frontage be revised prior to the issue of the construction certificate, to maximise deep soil landscaping opportunities and provide efficient arrangement of pedestrian access to both the retail tenancies and residential lobby.

Further to the above, and as required by 23(c), specific detail and sections regarding 'tree wells' within the spur roads within Lot C shall be detailed.

The submitted Landscape Report, depicts the provision of tree wells within deep soil, 200L trees are proposed to be planted, such trees comprise an 800mm root ball.

As conditioned and discussed above, the proposal satisfies conditions relating to basement setbacks and the provision of deep soil within Lot C.

n) Condition 25 – Wind Report

A revised wind report prepared by Windtech dated, 5 March 2025 was submitted with the application. The report nominates recommended wind mitigation measures as follows.

Ground Level Areas

- Retention of the proposed street tree planting.
- Inclusion of impermeable canopies extending from the Level 01 slab above the lobby entrance area.

Communal Open Spaces

Level 01

- Retention of the proposed raised planters with densely foliating tree planting.
- Inclusion of impermeable balustrades extending to 1.8m above the FFL along the northern and eastern perimeters.

Levels 10, 11, & 12

- Retention of the impermeable balustrades extending to at least 1.2m above the FFL.
- Retention of the proposed raised planters with densely foliating tree planting extending to at least 1.8m above the FFL.

Private Balconies and Terraces

Ground Level

- Inclusion of 1.8m impermeable screening between ground level terraces.
- Retention of the proposed planters with densely foliating vegetation with a total height of 1.2m.
- Retention of the full height impermeable barrier along the western perimeter of the north-westernmost terrace.

Typical Level Balconies

- Inclusion of full height impermeable screening along the short, straight perimeter edges of the designated corner balconies.
- Retention of full height impermeable screening along the short, straight perimeter edges of the designated corner balconies.

Level 06

- Retention of impermeable balustrades extending to 1.2m above the FFL.
- Retention of full height impermeable screening on the north-eastern terrace.

The proposal has been conditioned appropriately to ensure amelioration measures are implemented during construction and is satisfactory in this regard.

o) Condition 26 – Reflectivity Report

An environmental glare and reflectivity assessment prepared by SLR dated July 2024 was submitted with the application. The report provides an assessment of the reflectivity and glare of the proposed development to both traffic and pedestrians.

The report concluded as follows;

‘Noting that the above recommendations have all been implemented with the latest façade design of the proposed development, the detailed reflectivity assessment undertaken in this study shows that the development will cause neither Motorist Disability Glare nor Pedestrian Nuisance Glare on all surrounding public areas.’

The proposal has been conditioned to ensure the recommendations of the report are adhered to i.e. glazing to have a reflectivity coefficient not greater than 20%, landscaping surrounding the development to be retained, façade elements including setbacks, building orientations, articulations and protrusions to be retained etc.

The proposal is therefore satisfactory in this regard.

p) Condition 27 – Emergency Services Access and Egress

Documentation provided with the application confirms that emergency service vehicles can access the site in the event of an emergency situation. Sufficient turning areas and circles are provided within the site to facilitate access for such vehicles. The proposal is satisfactory in this regard.

q) Condition 28 – CPTED

The proposal was accompanied by a CPTED Assessment prepared by Meriton and dated 28 June 2024. The report identifies potential opportunities for crime and the

perceived fear of crime resulting from the design of the development. It considers the proposed built form, land uses and their relationship with the surrounding environment. The aforementioned report outlines the following design measures incorporated in order to ensure CPTED has been integrated into the development.

Territorial Reinforcement

- *Establishment of a comprehensive landscape maintenance plan to ensure landscaping enforces territorial ownership.*
- *Tree planting has been located strategically to minimise opportunities for climbing.*
- *Where necessary, landscaping has been used to restrict points of access*
- *All ground level private residences have fencing to their front boundaries which clearly delineates between public and private space*

Surveillance

- *Lighting is necessary to allow passive surveillance from surrounding residences and public spaces. Lighting will deter potential offenders from committing crime and provide a level of perceived and real safety to people.*
- *Landscaping should not screen or inhibit natural lines of sight.*
- *Proposed planting on private lots, the internal laneway and through site links are compatible with CPTED and allow for passive surveillance from surrounding residential uses.*
- *Buildings are designed to a high standard and promote passive surveillance through the placement of high use areas such as living rooms and kitchens for ground floor apartments. Additionally, bedrooms have windows facing public internal and external areas allowing for all hours surveillance potential.*
- *Additionally, building design allows for constant passive surveillance to the adjoining streets and through site links, deterring any potential perpetrators of crime from entering or loitering in the area*
- *Fencing is low at building frontages to allow outward surveillance. Fencing along property boundaries is 1.8m for resident privacy but allows for surveillance from upper levels.*

Access Control

- *Landscaping has been employed across the site to create clear entry points and through site links.*
- *Landscaping has been designed to act as a boundary device between public and private land.*
- *Fencing, in conjunction with relevant landscaping, create a clear delineation between public and private space and allows for effective perimeter control.*

Space / Activity Management

- *The Strata Management will be responsible for the orderly and timely maintenance of the site.*
- *Landscaping will be maintained in accordance with the landscape management as outlined in the landscape drawings accompanying the DA. All plants will be irrigated.*

The proposal has been designed in accordance with the recommendations above and will further be conditioned appropriately to ensure the safety and security of future residents, visitors and users of the development and community park within the overall site. The proposal is satisfactory with respect of CPTED and condition 28 of the Concept Plan.

- r) Condition 30 – Public Open Space / Public Access / Through Site Links
This condition requires the creation of appropriate legal mechanisms for creating rights of public access to all publicly accessible areas of open space, drainage reserves and through site links.

The proposal incorporates pedestrian links to the north and south via the proposed spur roads, in an east west direction facilitating a pedestrian linkage from the public domain within Bunnerong Road to the village heart and centrally located public open space within the overall BATA 2 precinct adjoining Lot B.

The proposal has been conditioned to ensure publicly accessible though site links and access is provided on site where necessary. The proposal is satisfactory in this regard.

- s) Condition 32 – Services
This condition requires that utility services be provided onsite and further that hydrants, substations and the like be provided within the building footprint.

The proposal incorporates the required substation and hydrant booster within the building footprint and adheres with this requirement. The proposal is satisfactory in this regard.

- t) Condition 33 – Public Art
Nil public art is proposed as part of this application. Relevant public art will be the subject of future applications.

- u) Condition 34 – Wayfinding Signage Strategy
Nil detail is required as part of this application with respect of this condition.

- v) Trees – Condition 41
Refer to State Environmental Planning Policy (Biodiversity and Conservation) 2021 Assessment.

- w) Landscaping - Conditions 39, 40, 43, 44.
Councils Landscape Architect has reviewed the proposal in relation to the conditions of the concept plan referred to above.

The proposal complies with the intent and requirements of the above concept plan conditions, providing 30% tree canopy cover, of which 50% are endemic trees, to public domain landscaped areas, ensuring all landscaped areas on site facilitate accessible paths of travel, a cohesive mix of Australian endemic, native and low water use plant material are incorporated and that 50% of shrubs and groundcovers used in landscaped areas comprise native vegetation. Trees and species selected are proven to perform well in the locality.

As designed, landscaping positively contributes to the proposed building form and enhances environmental performance on site. Accessible private and public landscaped areas are provided as are opportunities for interaction and recreation for a diverse community. i.e. community garden, lawn spaces, native planting etc

The proposal provides a variety of pavement treatments on site including concrete, tiled and decking surfaces. Water sensitive urban design elements are incorporated, ie. low water and low maintenance plant species. The proposal complies with and is satisfactory with regards to the subject conditions of the concept plan.

i. Condition 42(c) - Planters

The intent of Condition 42(c) is the incorporation of planters to upper levels of developments to soften facades. The condition reads as follows;

'Setbacks above 2 or 4 storey podiums shall include soft landscape treatments in the form of built in planter boxes to soften building forms. Built in planters are to be designed to provide soft landscape treatment to improve the general streetscape.'

Plans illustrate the provision of periphery planters incorporating cascading planting to levels 1, 7, 10, 11 and 12 of the development. Such planters incorporate a range of planting of varying height and spread, of which will be visible from the public domain, aid in providing a green element to tower forms and soften the facades of the development. The proposal is satisfactory with regards to this condition.

j. Condition 45 – ESD

This condition states that any future Development Application must demonstrate the incorporation of ESD principles in the design, construction and ongoing operation phases to the satisfaction of Council.

An Ecologically Sustainable Design Report (Issue H), prepared by SLR Consulting, dated 12/08/2022 was submitted with this application. This ESD plan forms part of the concept plan consent for the site.

The report confirms ESD commitments proposed on site as follows for the development.

<u>Initiative</u>	<u>Commitment</u>
Community Vegetable Garden	Garden bed for resident use within podium level community spaces. Proposal has been conditioned accordingly as edible species not provided within proposed community garden.
Composting facilities	Worm farm available for resident use to be provided within podium level community spaces. Proposal has been conditioned accordingly as this is not depicted on plans.
Electric Vehicles	100% of all residential parking spaces will be 'EV Ready'. Proposal has been conditioned accordingly.
Car Share	Car share spaces will be provided at a rate of 1 per 50 dwellings and 1 space per 500sqm non-residential GFA.
Bicycle Facilities	Bicycle racks and end of trip facilities will be provided. 5% of bicycle parking spaces will have access to electric bike charging.
Green Roof Tops	Podium roof tops will be planted.
WSUD	Stormwater run-off will be treated with permeable paving, road swales, car park WSUD bays and share-way WSUD bio-retention links.
Fauna and Flora	Appropriate native and low water plant species will be chosen for the planting on site.
30% Tree Canopy Cover	At least 30% of the public domain areas will have large canopy tree cover.
Solar Power	Solar panels will be provided on the roof tops to serve the common area demand.
Rainwater connected to garden	Rainwater tanks will be connected to the irrigation system, toilets and wash down bays on the ground floor and podium levels.
Embedded Energy Network	Origin Energy has been signed up to provide an embedded energy network.

Building Management System	BMS will be included where practical
Real-time Energy Usage App	Will be provided to residents free of charge.
Lifts with regenerative drives	All lifts will have regenerative drives
Low VOC finishes	Paints, carpets and floor finishes will be low VOC.

Whilst landscape plans indicate the provision of a ‘community garden’ within the level 10 communal open space of the western portion of the development, planting within the nominated ‘community garden’ is ornamental. The proposal has thus been conditioned to require such planting to be replaced with a variety of edible herbs and vegetable species.

Further to the above, landscape plans do not identify composting (worm farm) facilities for future residents. The proposal has been conditioned accordingly. Given the above, the proposal is satisfactory with respect of this condition.

k. Condition 46 – Site Specific Sustainable Travel Plan

A Green Travel Plan and Transport Access Guide is to be provided for each building proposed on site. The application was accompanied by a ‘Green Travel Plan’ (GTP) prepared by Genesis Traffic dated 18 July 2024.

The GTP identifies and proposes initiatives for the development which aim to influence the behaviour of residents and visitors and encourage sustainable transport options and patterns. i.e. identification and promotion of nearby public transport links, bicycle routes, car share options, electric vehicle charging stations, monitor the use of car spaces, surveys / questionnaires of residents etc. The proposal is satisfactory with respect of this condition.

l. Condition 47 - Car Parking

This condition states that any development shall provide on-site parking in accordance with the following rates. Parking provision greater than the maximum rate not permitted.

Category	Development Type	Proposal	Concept Plan Parking Rate		Provided / Complies	
Residential Car parking	1 bedroom/1 bed + S residential	112	Maximum 1 space per unit	112	258 (26 tandem) Complies	
	2 bedroom residential	94	Maximum 1 space per unit	94		
	3 or more bedroom residential	26	Maximum 2 spaces per unit	52		
	Residential sub-total for 232 units				Max 258	
	Residential visitors	232 units total	1 space per 20 units	12	12 Complies	
	Car Wash Bays	258 residential car spaces	1 space per 200 residential car parking spaces (3.5m wide)	2	2 dedicated Complies	
Non-residential Car parking	Retail	449m2	1 space per 80m2	6	6 Complies	
Car Share	Residential	232 dwellings	1 space per 50 dwellings	5	6	

	Non-residential	459m2 GFA	1 space per 500m2 GFA	1	Complies
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The proposal complies with the car parking requirements of the concept.

m. Condition 48 – Loading / Unloading

Plans identify appropriately sized and located loading and unloading areas for the development at ground floor level for 2 x medium rigid vehicle and 1 x small rigid vehicle.

Sufficient head height clearance is provided in order to enable waste collection on site. The proposal is satisfactory in this regard and the proposal has been conditioned to require the provision of a Loading Dock Plan of Management prior to the issue of any Occupation Certificate.

n. Condition 49 – Car Wash Bays

This condition requires the provision of 1 car wash space per 200 car spaces provided. Given a total of 289 car spaces are proposed, a minimum of 1.4 car wash bays are required. Plans indicate the provision of 2 car wash bays in basement 1. The proposal is satisfactory in this regard.

o. Condition 50 – Car Share

A total of six (6) car share spaces are required to be provided by the requirements of this condition. The proposal indicates the provision of 6 car share spaces within the development. The proposal is satisfactory in this regard.

p. Condition 51 - Electric Vehicle Charging

This condition requires that all residential car parking spaces for future occupants be equipped with the necessary cabling and infrastructure, so as to facilitate the simple installation of an electric vehicle charger, in the event that the future owner / occupant has an electric vehicle.

The Traffic and Transport report dated 7 February 2025 prepared by Genesis Traffic submitted with the proposal confirms the intention to ensure all residential car parking spaces be provided as EV-Ready. The proposal is satisfactory in this regard and has been conditioned accordingly.

q. Condition 52 – Bicycle Facilities

This condition requires the provision of bicycle facilities for the development, in addition to end of trip facilities for cyclists. A total of 162 bicycle spaces as required, are provided for the development.

A total of 4 lockers, 2 showers and 2 change room facilities are necessitated for the proposed development. Such are not depicted upon plans. The proposal has been conditioned accordingly. As conditioned the proposal is satisfactory in this regard.

r. Condition 53 – Motorbike Facilities

This Condition requires the provision of 1 space per 15 car parking spaces equating to a minimum of 20 spaces. Plans illustrate 24 car spaces, and the proposal is satisfactory in this regard.

s. Condition 54 – Unit Mix / Dual Key / Aging in Place

The intent of this condition is to ensure a range of housing options are provided within the development, in order to accommodate various household types i.e. single, couple, family, extended family etc and facilitate aging in place allowing residents to stay living in their own homes for as long as possible.

The development incorporates 232 residential units, being 112 x 1 bed / 94 x 2 bed / 26 x 3+ bed dwellings. Of the aforementioned mix provided, 46 units are provided as adaptable / silver level, with level transition between indoor / outdoor areas and sufficient circulation space to accommodate mobility aids. Silver level units incorporate design elements which accommodate ageing in place and people with higher mobility needs. i.e. more generous dimensions, benches to enable future adaptation, windows sills installed at a height that enables home occupants to view the outdoor space from either a seated or standing position etc. The proposal as designed is satisfactory with respect of this condition.

t. Condition 55 – Residential Amenity

An assessment against the relevant requirements of the Apartment Design Guide has been undertaken further in this report. The proposal is satisfactory in this regard.

u. Condition 56 – Groundwater Management

This condition requires a report prepared by a qualified Geotechnical Engineer that models the potential consequences of any proposed basement construction onto groundwater flow, flooding, building stability and groundwater levels.

A Geotechnical Investigation, prepared by Douglas Partners and dated June 2024 was submitted with the application. The report assessed subsurface conditions across the site to inform the planning and design of the proposed development. The investigation included the drilling of boreholes, cone penetration testing, installation of groundwater monitoring wells, in situ testing and laboratory testing of selected samples.

The recommendations relevant to the proposed development are include requirements for dilapidation surveys, ground water monitoring, placement of granular material for trafficability, working platforms etc.

The aforementioned report was peer reviewed by Councils Development Engineer and nil objections on findings or recommendations were raised. Based on the above, this Condition has been satisfied.

v. Condition 57, 58 – Flood Planning and Flood Risk Management

This condition requires that the development be designed in accordance with the Flood Study Report prepared by WMA water, titled “*Site Flood Assessment for Concept Development Assessment*” and dated 9 October 2020. Further that a Flood Risk Management Plan be prepared for the site.

This site is located in the south eastern corner of the precinct and is affected by potential flood inundation. Accordingly, minimum habitable floor levels are required for the development.

The proposal was accompanied by a Site Flood Assessment Report prepared by WMA Water, dated 27 June 2024 which concludes as follows;

“The proposal meets the adopted flood-related planning requirements. Proposed floor levels meet the minimum floor level requirements and are protected from inundation up to the PMF. The proposed development is designed in a way that there is no requirement for an awareness strategy, active emergency response management plan, flood monitoring/warning, or an evacuation plan for the site, as the flood risks and hazard are fully mitigated to typical urban standards by the design of the buildings and roadways around the site.”

The proposal was peer reviewed by Councils Development Engineer who raised no objection to the flood modelling which has been updated to reflect the changes to the

overall grading of the site since the flood modelling the original concept plan was approved.

The proposed development has been designed in accordance with the relevant flood levels required by Council and is satisfactory with respect of the relevant concept plan conditions.

w. **Condition 59 – Stormwater Management**

A Civil and Stormwater Report and Stormwater plans were submitted with the application, dated February 2025. Stormwater for the development will drain via an On-Site Detention (OSD) tank which will be located at ground level. Stormwater will subsequently drain via water quality filtration devices within the OSD prior to discharging into existing drainage on Studio Drive.

Council's development engineer reviewed the aforementioned plans and report and noted that further revisions and information are warranted to ensure consistency with submitted MUSIC modelling and the concept plan.

The proposal has been conditioned to ensure that stormwater from the proposed development can be managed in accordance with Council requirements and the approved concept plan. As conditioned the proposal is satisfactory with respect of this condition.

x. **Condition 62 – Staging and Timing of Works / Dedication of Public Open Space**

This condition requires that works related to Open Space 08 to the north east and east of the proposed development are to be completed prior to the issue of the Occupation Certificate of the building in Lot C. The proposal has been conditioned accordingly to ensure compliance with this requirement.

The proposal generally satisfies the requirements of the Concept Plan.

S4.46 – Development that is Integrated Development

The development application has been lodged as Integrated Development, as an approval under the *Water Management Act 2000* is required, and specifically the development involves a temporary construction dewatering activity.

The application was referred to Water NSW for concurrence. In January 2024 Water NSW requested further information with respect of the proposed basement level of the development, its proposed depth and whether groundwater or seepage will be required.

The applicant submitted additional information as required which was referred to Water NSW for review. In September 2024 Water NSW provided their General Terms of Approval (GTA) for the proposal and raised no objections. GTA have been incorporated within the recommended conditions of consent.

4.1 S4.15 (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 (Housing) 2021*
- *State Environmental Planning Policy (Biodiversity and Conservation) 2021*
- *State Environmental Planning Policy (Resilience & Hazards) 2021*

- *State Environmental Planning Policy (Transport and Infrastructure) 2021*
- *Bayside LEP 2021*

State Environmental Planning Policy (Planning Systems) 2021

In accordance with Schedule 6 subclause 2 of the SEPP, as the proposed development has a capital investment value of greater than \$30 million i.e. \$ \$130,922,276.61 it is thus referred to the Regional Planning Panel for determination.

State Environmental Planning Policy (Sustainable Buildings) 2022

The applicant has submitted a BASIX Certificate for the proposed development, being Certificate number 1756416M_02. Commitments made within BASIX certificates result in reductions in energy and water consumption on site post construction. A condition has been recommended to ensure that the stipulated requirements are adhered to. The proposal is satisfactory in this regard with respect of Chapter 2 of the SEPP.

State Environmental Planning Policy (Housing) 2021

State Environmental Planning Policy Amendment (Housing) 2023 (Housing Amendment SEPP) came into effect on 14 December 2023, consequently repealing State Environmental Planning Policy No 65 - Design Quality of Residential Apartment Development.

Relevant provisions relating to the design of residential flat development, and the application of the Apartment Design Guide are now integrated into Chapter 4 – Design of Residential Apartment Development of State Environmental Planning Policy (Housing) 2021.

Chapter 4 – Design of Residential Apartment Development

145 Referral to Design Review Panel (DRP)

The proposal was considered by Councils Design Excellence Panel on three occasions, with the final review in February 2025. At its final review the Panel deemed, subject to minor modifications to the scheme that the proposal satisfied the design excellence provisions of BLEP 2021, that the scheme was an appropriate contextual response, consistent with the intended future desired character of the locality and demonstrated design excellence subject to the recommended minor modifications.

147 Determination of development applications and modification applications for residential apartment development

The provisions of this section state that development consent must not be granted unless the consent authority has considered the following;

- *the quality of the design of the development, evaluated in accordance with the design principles for residential apartment development set out in Schedule 9, the Apartment Design Guide,*
- *any advice received from a design review panel within 14 days after the consent authority referred the development application or modification application to the panel.*

An assessment has been undertaken below.

Principle 1 – Context and Neighborhood Character

The Panel generally supported the proposal with respect of this principle and noted that consideration of existing residents within development to the south of the site should be undertaken.

Comment

The site is located within the BATA 2 Precinct, benefits from an R4 high density residential zoning, a 37m, 69m height limit and 2.35:1 FSR. A Concept Plan has been approved for the precinct, as previously stated.

It is reiterated that the Concept Plan established parameters for the future development of the entire site, including numerical requirements and objectives and incorporated building envelopes, indicative heights, numerical setbacks, maximum gross floor area, materiality of building forms, public domain interface, concept landscaping / public domain provision, car parking rates, public open space and a myriad of other design measures to facilitate the achievement of the future desired character for the site.

The proposed development has been designed in accordance with the requirements of the Concept Plan and complies with regards to the relevant concept plan conditions as previously referred to in this report.

In the design of the proposed development, consideration has been given to the constraints and opportunities of the site, the context of existing and emerging development in the locality and the future desired character of the area.

The proposal as designed responds to and provides an appropriate transition in building form and typology upon the subject site, taking into account existing high rise residential development to the south within the BATA 1 precinct and ensuring that a minimum of 70% of dwellings within the development at 8 Studio Drive directly to the south of Lot C retain a minimum of 2 hours of solar access in midwinter. The proposal further does not result in adverse shadow impacts onto dwellings on the eastern side of Bunnerong Road as required by the provision of Bayside LEP 2021 nor onto existing public open space to the south i.e. Chauvel Green.

The proposal provides a contemporary building form which contributes to and is consistent with the future desired character of the BATA 2 precinct, as envisaged by the Concept Plan and applicable planning controls. The proposal as designed is satisfactory with respect of this principle.

Principle 2 – Built Form and Scale

The Panel raised nil objection to the final scheme with respect of built form, massing, scale, height and bulk.

Comment

The bulk, form, massing, scale, height, building separation and setbacks of the proposed development are consistent with the numerical requirements and objectives established by the Concept Plan approval for the site.

Deep soil setbacks to the perimeter of Lot C are provided as required by the Concept Plan and conditioned where considered to be insufficient, facilitating the planting of trees and landscaping in these locations at ground level which will aid in softening the development.

The development has been designed with appropriate architectural expression and 3.5m minimum width breaks to tower forms, in order to reduce the scale, width and length of towers above the base of the building,. The proposal incorporates a sculptural form with curved balcony extensions. Tower forms of the development are differentiated by their overall massing, separation, position and materials.

The step in building height ensures a reduced mass and scale to the eastern and southern sides of the site, with height increasing towards the centre of the precinct along the western edge. Rooftop periphery cascading planting will aid in softening the building form when viewed from the public domain.

The proposal as designed is consistent with the requirements of the concept plan and general principles of this part and is therefore satisfactory in this regard.

Principle 3 – Density

The Panel did not object to the density of the proposal.

Comment

The subject site benefits from a maximum FSR of 2.35:1 as per Bayside LEP 2021. The proposal incorporates a proposed gross floor area of 21,508sq/m which is equivalent to a maximum FSR of 3.47:1 across Lot C. The aforementioned indicates a surplus GFA of 6,942.7sq/m, being 1.1:1 FSR beyond the standard permitted.

Whilst the FSR sought to be accommodated upon Lot C does not strictly comply with the FSR standard of Bayside LEP 2021, the variation is a direct consequence and result of the Torrens title subdivision of the BATA 2 precinct into the creation of smaller lots, roads and future open space, replacing the two large lots that previously existed.

Whilst it may appear that surplus density is proposed, this is not technically the case, as the total maximum gross floor area for Lot C and the overall gross floor area within the BATA 2 precinct remain consistent with that envisaged and allocated for developable lots within the approved concept plan. i.e. 21,900sq/m envisaged by approved Concept Plan for Lot C. In this regard the variation is supported.

It is noted that Council is maintaining a register of GFA utilized on site to date to ensure relevant conditions of the approved concept plan are adhered to, as outlined previously in this report. The proposal is satisfactory with regards to density.

Principle 4 – Sustainability

The Panel raised no objection to proposed sustainability measures proposed on site.

Comment

The development is oriented and designed to maximise the number of units which benefit from direct sunlight and cross ventilation and incorporates solar panels at rooftop level.

The proposal incorporates a 20,000kl litre rainwater tank which is conditioned to be connected to all ground floor toilet flushing, the cold water tap that supplies all ground floor clothes washing machines, the car wash bays, and the entire landscape irrigation system.

Recommended conditions of consent will require sensor controlled and zoned internal lighting within the building's car park and common areas, use of admixtures in concrete to minimise cement and reduce embodied carbon, separate circuiting for temporary power to minimal stair and corridor lighting and use of LEDs and other low energy flicker free lighting resources.

As noted in '*Condition 45 – ESD*' previously within this report, a revised ESD report prepared by efficient living dated 04/11/2022 was submitted as part of this application. This report is consistent with and prepared by the same consultancy which prepared the ESD report approved as part of the Concept Plan DA.

The report confirms proposed ESD commitments sought to be implemented on site and clarifies measures within a statement of commitments. The proposal was reviewed by the Panel who noted that ESD commitments in relation to vehicular charging and future provision have been adhered to by the applicant as required by the Concept Plan approval.

Due consideration has been given to ESD as part of this assessment, in order to ensure the development is sustainably designed, reduces reliance on technology, consequentially minimising operational costs for future occupants, encourages alternative transportation methods in lieu of private car ownership and provides extensive deep soil zones for groundwater recharge and vegetation. The proposal is satisfactory with regards to this principle.

Principle 5 – Landscape

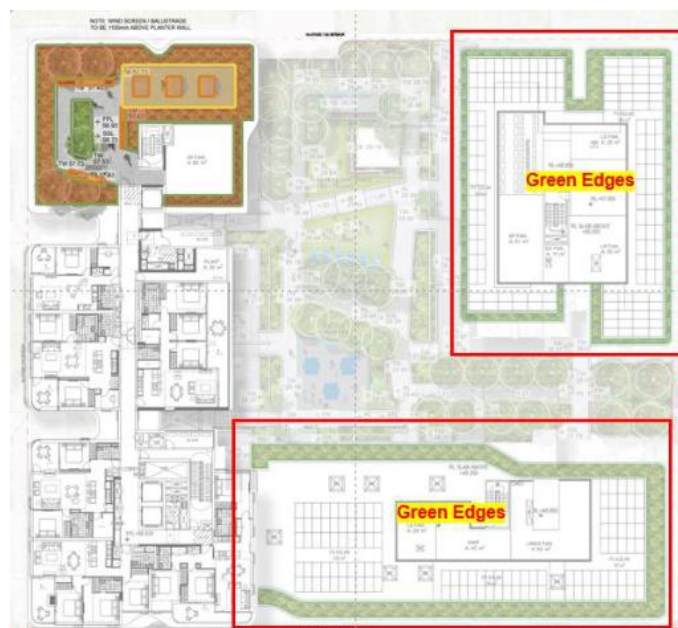
The following comments were provided by the Panel with respect of this principle.

- i. *Provide communal open space to the Level 07 rooftop and, in addition, provide a continuous planter of at least 1000mm soil width to achieve a green edge to the rooftops where solar panels and services are located and visible from upper floors of the development to ameliorate visual impact.*
- ii. *The communal open space of the gym and pool area can be better integrated into the design with a stronger internal sense of arrival, visibility and connection to and from the corridor.*
- iii. *External space outside western lobby to have designated and fixed seating and landscaping. This area has great opportunity to offer residents external overflow space from the oversized lobby and a good meeting point between retail spaces*

Comment

A response to the above matters is provided below.

- i. The proposal incorporates generous communal open space on site which exceeds the requirements of the Apartment Design Guide. Additional communal open space at level 7 is not deemed to be essential. Final revised plans have however incorporated green edges to the rooftop levels as recommended by the Panel.



- ii. Final revised plans incorporate glazed walls/doors to this area at ground level, to improve visibility and connectivity to and from the internal corridor. Skylights have also been introduced to afford natural light into this space.
- iii. Final revised plans incorporate additional landscaping and seating adjacent to the western ground level entry of the proposed development.

It is reiterated that a total of 386sq/m of deep soil landscaped area is provided at the ground level periphery of the site. This is equivalent to 6.2% of the site.

As previously stated in *Condition 23(b)(c) & Basement Levels 42(a)(b) – Landscape Setbacks / Deep Soil Zones* of this report, design revisions have been conditioned to facilitate an increase in deep soil provision on site within the western frontage.

Further to the above, the proposal delivers as follows.

- Tree canopy cover on site including a range of native trees i.e. Sydney Red Gum, Coastal Banksia, Illawarra Flame, Spotted Gum and Tuckeroo.
- Landscaped areas on site with accessible paths of travel
- A cohesive mix of Australian endemic, native and low water use plant material
- 50% of shrubs and groundcovers used in landscaped areas comprise native vegetation.
- Incorporates water sensitive urban design elements i.e. low water and low maintenance plant species.

Sufficient, well designed and oriented communal open space areas are provided on site, which are attractively designed and landscaped so as to maximise amenity for future occupants. i.e. visual amenity, shade, equitable access, opportunities for social interaction etc.

The proposed development incorporates communal open space internally at ground floor level, levels 1, 10, 11 and 12 of the development. A range of facilities and spaces, incorporating, indoor pool, sauna, gym, change facilities, seating, tables, bbq facilities, recreational lawns etc are provided for future occupants.

Where unit balconies adjoin the level 1 communal open space area, a buffer of planters is provided, with small to medium trees i.e. scaly tree fern, with mature height up to 10m and a range of shrubs, which provide privacy and an appropriate interface.

Upper level communal open spaces are provided at levels 10-12. These areas accommodate a community garden, small canopy trees and seating areas. Aluminium framed awning structures, 3m in overall height are proposed above bbq areas, these comprise 45 degree angled timber look aluminium louvres to provide a canopy for weather protection.

Communal open space areas have been designed to incorporate a range of groundcovers, shrubs and trees, permeable pavers with suitably designed planters, subsurface drip systems, in built irrigation, automatic timers with rainwater / soil moisture sensor controls and appropriate soil depths.

Given the above, the proposal as revised is satisfactory with respect of this principle.

Principle 6 – Amenity

The Panel noted the following matters with regards to amenity.

- a. *Review lobby entries on east and south to remove dogleg corridors. Consider approach directly from streets*

- b. *Long corridors require reviewing and need to provide better amenity for residents. This could include:

 - i. *Glazing to gym and relocating of areas to provide more glazing space*
 - ii. *Ensuring apartment doors are far from lift openings*
 - iii. *Potential to provide additional access from north to lifts to reduce dog leg corridor length*
 - iv. *All lobby spaces are of similar importance as are paths of travel through the building at ground level. Careful attention is needed to ensure these are light filled, wider and more approachable spaces**
- c. *Review north and southern ground floor retail spaces with carefully considered outdoor seating /landscaping and concealed kitchen exhaust and services. These spaces have the potential to be activated and sun filled places for the residents and require sensitively planned entry approach, indoor/outdoor seating and bathroom amenity locations*
- d. *External space outside western lobby to have designated and fixed seating and landscaping. This area has great opportunity to offer residents external overflow space from the oversized lobby and a good meeting point between retail spaces*
- e. *Ensure visual privacy is protected between upper level apartments to ensure a good outlook to residents*
- f. *Review slots housing A/C. Window opposite this space will be compromised unless it is adequately protected and angled away from heat load. Consider ADG 2:1 separation distance*
- g. *The podium would benefit from a more consistent brick materiality, rather than a segmented brick and concrete form. The brickwork could relate better to the materiality of the proposed tower with a darker more muted brickwork*
- h. *Roof facades still require attention. A great number of apartments are overlooking these hardscapes with solar panels. A consistent landscaped edge will soften the perimeter of the roof form and provide a greener outlook / relief to residents*
- i. *Ground floor architectural plans to be updated to proposed adjacent park DA with access ways not aligning with proposed entry exit points*
- j. *The retail as an F & B proposal is generally supported. The development proposal should include an intended indicative layout for outdoor dining to each tenancy to ensure access and egress pathways, spatial layout and arrival to the proposed lobby are not in conflict*
- k. *Provide communal open space to the Level 07 rooftop and, in addition, provide a continuous planter of at least 1000mm soil width to achieve a green edge to the rooftops where solar panels and services are located and visible from upper floors of the development to ameliorate visual impact.*
- l. *The communal open space of the gym and pool area can be better integrated into the design with a stronger internal sense of arrival, visibility and connection to and from the corridor.*

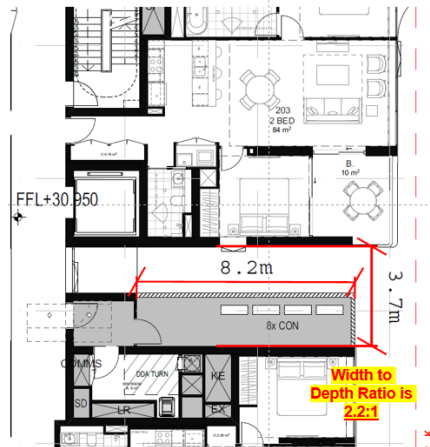
Council Comment

The above matters are addressed below;

- a. *The north-eastern lobby entry has been expanded and now provides direct access from the street. Similarly, the southern lobby entry has been revised to provide direct access from Tingwell Boulevard.*
- b. *The corridor on the ground floor level has been revised to improve amenity to future residents;

 - i. *Glazing has been provided to the gym.*
 - ii. *Unit doors have been located away from lift entries.*
 - iii. *Lobby entrance has been expanded to the north,*
 - iv. *Lobby entrances are clearly identifiable, provide for direct entry and skylights have been incorporated above to provide solar access.**

- c. Ground floor retail spaces have been revised to facilitate a future outdoor seating zone. Bathroom amenities are now provided within retail tenancies.
- d. Additional landscaping and seating areas have been provided outside the western lobby entrance.
- e. Balconies have been revised and privacy is maximized.
- f. Proposed tower breaks provide a separation distance of 2.2:1, which is greater than the ADG requirement of 2:1. The AC plant room is not enclosed other than the louvers along the edges. Similar indents have already been approved for Lot A within the BATA 2 Precinct.



- g. The podium has been updated to provide more consistent brick materiality as suggested by the Panel.
- h. Green periphery landscaped edges have been added to level 7 rooftops of eastern and southern buildings to improve visual amenity of residents and upper levels when looking down.
- i. The ground floor level of the development has been updated to align with the adjacent park DA currently under assessment by Council.
- j. Indicative outdoor seating zones to ground level retail tenancies are identified.
- k. Green edges have been provided to Level 7 rooftops. Such rooftop levels are not provided as COS as sufficient COS is provided within the development.
- l. Glazed walls/doors have been provided for improved visibility and connectivity to and from the corridor to the gym and pool area at ground level.

In addition to the above, the proposal satisfies the solar access and ventilation requirements of the Apartment Design Guide (ADG). Natural light and ventilation are also provided to communal corridors within the development, ensuring a high quality space for future occupants.

In general, unit layouts are well designed, with appropriately dimensioned living areas and private open spaces. The configuration, layout and design of units, their overall size, spaces and rooms are practical and will allow future users to furnish their homes in a variety of ways. Appropriate storage is also provided within units, with supplementary at basement level. Security parking is provided at basement level with direct lift access.

The proposal incorporates sufficient, well designed and oriented communal open space areas on site, which are attractively designed and landscaped so as to maximise amenity for future occupants. i.e. visual amenity, shade, equitable access, opportunities for social interaction etc.

Where unit balconies adjoin the level 1 communal open space area, a buffer of planters is provided, with small to medium trees i.e. scaly tree fern, with mature height up to 10m and a range of shrubs, which provide privacy and an appropriate interface.

Upper level communal open spaces are provided at levels 1 0 - 1 2 . These areas accommodate a community garden, small canopy trees and seating areas. Aluminium framed awning structures, 3m in overall height are proposed above bbq areas, these comprise 45 degree angled timber look aluminium louvres to provide a canopy for weather protection.

The proposal is satisfactory with respect of amenity and satisfies this principle.

Principle 7 – Safety

The Panel supported the proposal with respect of this principle.

Comment

The proposal has been conditioned to ensure monitored security cameras are incorporated at residential / vehicular entries and within basement levels and to require the provision of clear directional signage to advise users of security measures in place.

With respect to the development overall, the proposal provides for clearly identifiable and prominent communal lobbies, with dwellings, communal open space and car parking areas on site to be accessible via a secure electronic system. Common areas will be illuminated with clearly defined and legible walkways.

Places of concealment have been minimised and clear signage will be incorporated within the development. Walkways at the periphery of the site and within the northern spur road provide a clear visual link to the wider context. Planting will maintain clear sight lines through the use of clear trunked trees and lower level understory planting.

All pathways within and surrounding the development are overlooked from upper level dwellings and private open spaces in addition to adjoining buildings which will provide a high level of passive surveillance. The proposed design is satisfactory in this regard.

Principle 8 - Housing Diversity and Social Interaction

The Panel supported the proposal with respect of this principle.

Comment

The development incorporates 232 units of an appropriate mix, being 112 x 1 bed / 94 x 2 bed / 26 x 3+ bed dwellings. A varied range and size of units is provided within the development which will accommodate a varied demographic and different household types, specifically catering for larger families and family types given the unit mix provided.

The subject site is located close to existing public transport routes and local community facilities and is capable of sufficiently accommodating the proposed increase in density.

Further to the above, 46 units are provided as adaptable / silver level as previously discussed in *Condition 54 – Unit Mix / Dual Key / Aging in Place* of this report.

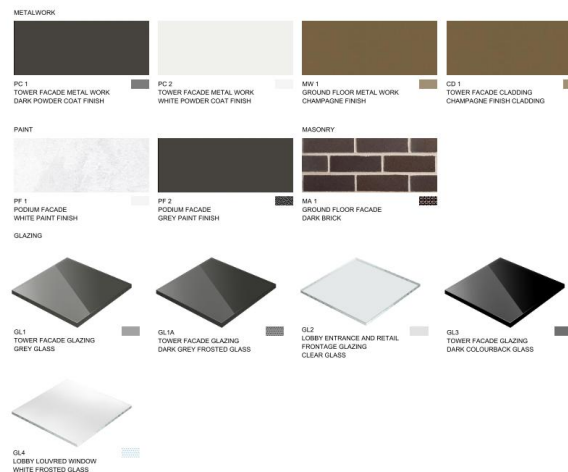
The development provides well landscaped areas on site, with communal amenities including bbq, kitchenette and toilet facilities, which will encourage social interaction and resident well being for future occupants. The assessing officer is supportive of the proposal in regards to this principle.

Principle 9 – Aesthetics

The Panel supported the proposal with respect of this principle.

Comment

The proposal will integrate contemporary materials as follows, including masonry brickwork, metalwork cladding, rendered paint finish and aluminum framed windows with clear and dark colour back frosted glazing. Selected materials are strategically located so as to differentiate the various elements of the development.



Materials as proposed are satisfactory, and the aesthetic design of the proposal is well resolved. Materials will provide a modern, contemporary, high quality and visually appealing development on site. The materiality of the proposal is considered to be appropriate and the proposal is satisfactory in regards to this principle.

148 Non-discretionary development standards for residential apartment development—the Act, s 4.15

The object of this section is to identify development standards for particular matters, if complied with, prevent the consent authority from requiring more onerous standards for the matters. The following are non-discretionary development standards.

- the car parking for the building must be equal to, or greater than, the recommended minimum amount of car parking specified in Part 3J of the Apartment Design Guide,*
- the internal area for each apartment must be equal to, or greater than, the recommended minimum internal area for the apartment type specified in Part 4D of the Apartment Design Guide,*
- the ceiling heights for the building must be equal to, or greater than, the recommended minimum ceiling heights specified in Part 4C of the Apartment Design Guide.*

Council Comment

- The proposal adheres to the car parking requirements of the Concept Plan.
- The proposal adheres to the minimum internal area requirements of the ADG.
- The proposal adheres to the minimum ceiling height requirements of the ADG.

149 Apartment Design Guide prevails over development control plans

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.

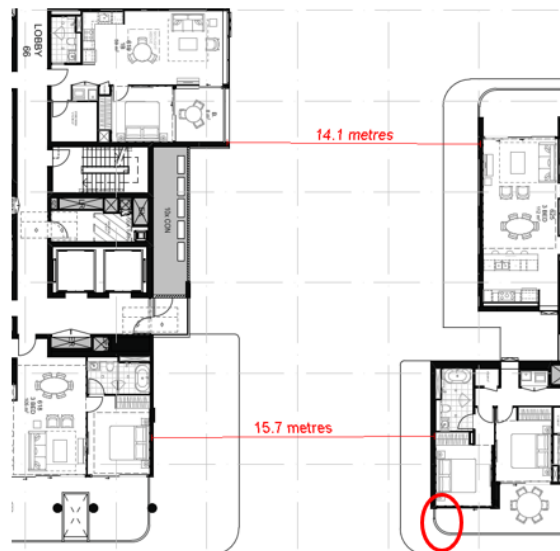
CLAUSE	DESIGN GUIDANCE	COMMENTS	COMPLIES
3C – Public Domain Interface	Max 1m level change from footpath to ground floor level of building. Landscaping to soften building edge and improve interface.	Ground floor level with adjoining public domain and periphery landscaping provided at interface.	Yes
	Courtyard units to have direct street entry, where appropriate.	Direct independent access to units at ground level	Yes
	Solid element of front fences / walls along street frontage to be limited to 1m	Nil front fencing at ground level.	Yes
	Mailboxes located in lobbies or integrated into front fence	Mail room integrated into lobby within building at ground floor level.	Yes
3D - Communal Open Space	25% (1,549.75sq/m) of Site Area	Ground Level - 396sq/m (Pool / gym etc) Level 1 – 972sq/m Level 10 – 409sq/m Level 11 – 201sq/m Level 12 – 240sq/m Total = 2,218sq/m	Yes
	50% (774.5sq/m) of principle useable area to receive 2 hours solar access in midwinter 9am - 3pm	Upper level COS (levels 10-12) 850sq/m COS in total receives in excess of 2 hours solar in midwinter	Yes
3E - Deep Soil Zone	7% (433.9sq/m) of site area Minimum Dimensions 3m	386sq/m of deep soil, equivalent to 6.2% of the site.	No – refer to discussion in <i>Condition 23(b)(c) & Basement Levels 42(a)(b) – Landscape Setbacks / Deep Soil Zones</i> of this report.
3F - Visual Privacy	<u>Up to 12m (4 storeys)</u> Hab. Rooms / Balconies – 6m Non Hab – 3m	Habitable to habitable - 14.1m – 23.3m	Yes
	<u>Up to 25m (5-8 Storeys)</u> Hab. Rooms / Balconies – 9m	<u>Levels 5 and 6</u> Habitable to habitable - 14.1m – 15.7m & 23.3m	Partial – conditioned accordingly refer to discussion

			below.
3G – Pedestrian Access and Entries	Multiple entries provided to activate street edge	Communal residential entries activate street edge	Yes
	Building access clearly visible from public domain / communal spaces	Clear and recognisable building access points	Yes
	Steps / ramps integrated into building and landscape design	Level accessible entry provided	Yes
	Electronic access to manage access	Secure electronic access to be provided.	Yes
3H – Vehicular Access	Car park access integrated with building facade.	Car park access behind building line and integrated into facade	Yes
	Car park entries behind building line		
	Car park entry / access located on secondary street / lane where available	Car park access via spur road.	Yes
	Garbage collection, loading and servicing areas screened	Waste storage and loading areas internalised	Yes
	Pedestrian / vehicle access separated and distinguishable.	Clearly identifiable and delineated pedestrian / vehicular access.	Yes
3J - Bicycle and Car Parking	Refer to previous discussions in report.		Yes
4A – Solar and Daylight Access	Living rooms + POS of at least 70% (162 of 232) of apartments receive min 2hrs direct sunlight b/w 9am and 3 pm mid-winter	70% (162 of 232)	Yes
	Max 15% (34 of 232) apartments receive no direct sunlight b/w 9am and 3pm mid-winter	14% (32 of 232)	Yes
4B – Natural Ventilation	Min 60% (124 of 208) of apartments are naturally cross ventilated in the <u>first nine storeys</u> of the building.	61.5% (128 of 208)	Yes
	Depth of cross-over / cross-through 18m max. measured glass line to glass line.	>18m	Yes
4C – Ceiling Heights	Habitable – 2.7m	2.4m non habitable	Yes
	Non Habitable - 2.4m	2.7m habitable	

4D – Apartment Size and Layout	1 bed – 50sq/m	Satisfactory	Yes
	2 bed / 1 bath – 70sq/m	Satisfactory	Yes
	2 bed / 2 bath – 75sq/m	Satisfactory	
	3 bed / 2 bath – 95sq/m	Satisfactory	Yes
4E – Private Open Space and Balconies	1 bed – 8sq/m 2m min depth	Satisfactory	Yes
	2 bed – 10sq/m / 2m min depth	Satisfactory	Yes
	3 bed – 12sq/m / 2.4m min depth	Satisfactory	Yes
	Ground level /Podium - min 15m ² / min depth 3m.	Units 120 / 121 / 122 at level 1 adjacent to communal open space do not comprise 15sq/m POS as required. i.e. 11sq/m	No – Conditioned to comply.
4G – Storage <i>50% is located within apartment</i>	1 bed - 6 cubic metres	Sufficient storage internally with supplementary at basement level.	Yes
	2 bed - 8 cubic metres		
	3 bed - 10 cubic metres		
4H – Acoustic Privacy	Noise sources i.e. driveways, service areas, plant rooms, communal open spaces located at least 3m away from bedrooms	Service areas / rooms located away from residential / habitable areas	Yes
4K – Apartment Mix	Variety of apartment types provided	Variety of unit sizes and layouts provided	Yes
	Flexible apartment configurations to support diverse household types and stages of life	Range of flexible apartment options provided	Yes
	Larger apartment types located on ground / roof level where there is potential for more open space and corners where more building frontage is available	Larger units located at corner locations with generous private outdoor spaces	Yes
4L – Ground Floor Apartments	Direct street access to ground floor apartments	Direct independent access provided to units at ground floor level.	Yes

3F – Visual Privacy

As required by the Apartment Design Guide, a minimum building separation of 18m is required between habitable rooms to units at levels 5 and above. Plans indicate a partial variation to the aforementioned between units at levels 5 & 6 between the eastern and southern wings of the development as depicted below.



The above depict units 522 / 525 / 622 / 625 at levels 5 and 6 within the eastern wing and units 518 / 519 / 618 / 619 within the southern wing of the development as non compliant with the 18m separation distance and devoid of appropriate screening to mitigate any potential visual privacy impacts.

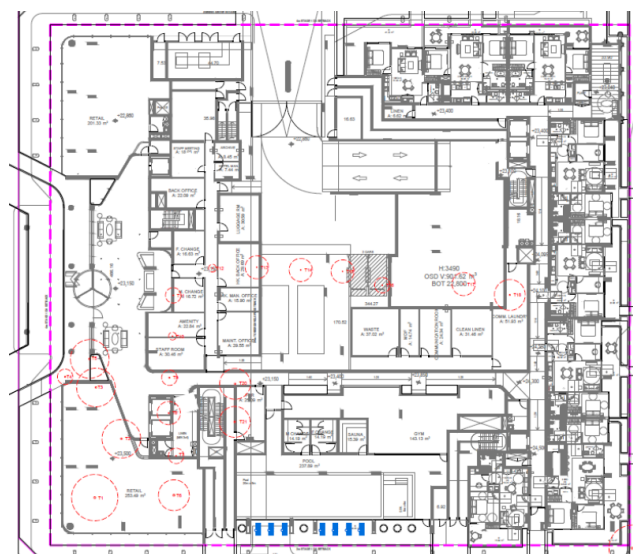
In order to resolve the above, the proposal has been conditioned to require the provision of full height privacy screening to the southern edge of balconies of units 522 / 525 / 622 / 625 at levels 5 and 6 within the eastern wing of the development.

As conditioned suitable visual privacy will be retained between proposed residential dwellings.

State Environmental Planning Policy (Biodiversity & Conservation) 2021

State Environmental Planning Policy (Biodiversity and Conservation) 2021 applies to the proposal. The application seeks consent for the removal of 21 trees in total within the boundaries of Lot C to facilitate the proposed development.

It is noted that 5 of 21 trees were self sown and the remaining were planted by the applicant at the time the site was previously utilised as a display showroom for the BATA 2 precinct.



Excerpt from Arborist Report

Council's Tree Management Officer has considered the proposed removal of the subject trees and does not object to their removal given landscaping proposed as part of the proposed redevelopment. Subject to compliance with the imposed conditions of consent, the proposal is satisfactory in relation to the SEPP.

State Environmental Planning Policy (Resilience & Hazards) 2021

Chapter 4 – Remediation of Land / 4.6 - Contamination and remediation to be considered in determining development application

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

The subject site has a history of industrial uses i.e. tobacco factory. The site has a long industrial history with the General Motors Holden (GMH) manufacturing facility opening in 1940 and operating until 1982. Following this time, the site was owned and operated by British American Tobacco (BATA) until July 2014 for the manufacture of cigarettes. The applicant provided the following reports associated with the application:

1. 'Report on Geotechnical Investigation' ref 85009.05.001.Rev0, by Douglas Partners, dated 4 June 2024;
2. 'Dewatering Management Plan', ref 85009.05.R.005.Rev1, by Douglas Partners, dated 17 July 2024;
3. 'Statement of Environmental Effects' (SEE), no ref, by Meriton Property Services, dated 22 July 2024;
4. 'Report on Detailed Site Investigation' (DSI), ref 85009.03.R.055.Rev0 - DSI, by Douglas Partners, dated 6 August 2024; and
5. 'Remediation Action Plan' (RAP), ref 85009.03.R.056.Rev0 - RAP Lot C, by Douglas Partners, dated 27 August 2024.

The reports demonstrate that the site can be made suitable for the proposed residential use subject to remediation and the implementation of an unexpected finds protocol. The application was referred to Council's Environmental Scientist who raised no objections to the proposal subject to conditions within the draft consent. The proposal satisfies the requirements of the SEPP.

State Environmental Planning Policy (Transport & Infrastructure) 2021

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

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

The application was referred to Ausgrid on 19/08/2024 for comment. No objections were raised to the proposed development subject to the imposition of conditions of consent which have been incorporated within the recommended conditions of consent. The application is consistent with the provisions of the SEPP and is acceptable in this regard.

Section 2.122 – Traffic Generating Development

The proposed development is deemed to be traffic generating development as per Schedule 3 of the Transport and Infrastructure SEPP as there are in excess of 200 car parking spaces and 75 dwellings, with access to any road.

The application was referred to Transport for NSW (TfNSW) and feedback provided on 5

November 2024 confirmed that the proposed development is not expected to have a significant impact on the classified road network. The proposal satisfies Section 2.122 of the SEPP.

Bayside Local Environmental Plan 2021

The following table outlines the relevant sections of Bayside Local Environmental Plan 2021 ("the LEP") applicable to the proposal.

Clause	Requirement	Proposal	Compliance
2.3 – Zone	R4 – High Density Residential	Residential / commercial premises	Partial – Refer to discussion below.
4.3 – Height of Buildings	37m – Eastern Portion of Site 69m – Western Portion of Site	Tower A - 24.9m – 28.8m Tower B – 38.1m - 45.3m	Yes
4.4 – FSR	2.35:1 (14,565.3sq/m GFA Maximum)	3.47:1 21,508sq/m GFA	No – Refer to discussion below
5.10 – Heritage Conservation	To conserve the environmental heritage of Bayside	Lot C is sufficiently distanced from the nearby heritage item Jellicoe Park. The northern boundary of the precinct which adjoins Heffron Road is in excess of 120m from this item. Given the aforementioned building forms on Lot C are unlikely to result in any adverse impact upon the item or its curtilage.	Yes
5.21 – Flood Planning	(a) To minimise the flood risk to life and property associated with the use of land, (b) to allow development on land that is compatible with the flood function and behaviour on the land, taking into account projected changes as a result of climate change, (c) to avoid adverse or cumulative impacts on flood behaviour and the environment, (d) to enable the safe occupation and efficient evacuation of people in the event of a flood.	Appropriate flood mitigation measures proposed	Yes – conditions imposed
6.2 – Earthworks	Ensure earthworks will not have a detrimental impact on	Conditions of consent have been imposed to ensure	Yes

Clause	Requirement	Proposal	Compliance
	environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land.	minimal impacts on the amenity of surrounding properties, drainage patterns and soil stability. The proposal meets the objectives of this clause.	
6.3 - Stormwater and WSUD	Minimise impacts of urban stormwater to adjoining properties, native bushland and receiving waters.	Stormwater mitigation measures proposed. WSUD incorporated into development i.e. rainwater used for irrigation etc.	Yes
6.7 - Airspace Operations	The site is within an area defined in the schedules of the Civil Aviation (Building Control) Regulations that limit the height of structures to 50 feet (15.24 metres)	Approval to a maximum overall height of 91m AHD. Proposal has a maximum RL of 69.1RL and overall height as stated above. The proposal adheres to the aforementioned.	Yes
6.10 - Design Excellence	Deliver the highest standard of sustainable architectural and urban design.	Design Excellence confirmed by Councils Design Review Panel in February 2025	Yes
	Architectural Design Competition, unless otherwise certified by NSW Government Architect Office	Design Competition waiver granted 30 August 2024	Yes
6.11 – Essential Services	Essential services are or will be available	Existing sewer, water, electricity and gas connections are available.	Yes
6.16 - Development requiring the preparation of a development control plan	To ensure that development on certain land occurs in accordance with a site-specific development control plan	Assessment against Approved Concept Plan undertaken previously in this report. <i>no additional overshadowing to the residential buildings in Zone R2 on the eastern side of Bunnerong Road between 9am and 3pm on 21 June in each year.</i>	Yes
6.17 - 128 Bunnerong Road, Pagewood and 120 Banks Avenue, Eastgardens— general	The consent authority must not grant consent to development unless it is satisfied the development will provide for a minimum of 5,000 square metres of gross floor area on the land for non-residential purposes, not including any of	Refer to discussion in Condition 13 - Minimum Non Residential Gross Floor Area previously in this report.	Yes

Clause	Requirement	Proposal	Compliance
	<p>the following—</p> <p>(a) residential accommodation,</p> <p>(b) car park,</p> <p>(c) telecommunications facility.</p>		

2.3 - Zone

The subject site is zoned R4 – High Density Residential under the provisions of Bayside Local Environmental Plan 2021 (BLEP 2021). The proposal is defined as a ‘*residential flat building*’ and ‘*commercial premises*’.

A ‘*residential flat building*’ constitutes permissible development only with development consent, with “*commercial premises*” whilst prohibited in the zone, permitted via the provisions of s6.17 - 128 Bunnerong Road, Pagewood and 120 Banks Avenue, Eastgardens—general of Bayside LEP 2021, which facilitates the provision of “non residential” uses within the BATA 2 precinct.

The objectives of the R4 zone are:

- *To provide for the housing needs of the community within a high density residential environment.*
- *To provide a variety of housing types within a high density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To ensure land uses are carried out in a context and setting to minimise impact on the character and amenity of the area.*
- *To enable residential development in accessible locations to maximise public transport patronage and encourage walking and cycling.*

The proposed development satisfies the objectives of the zone and is satisfactory in this regard.

4.3 - Height of Buildings

Lot C site is subject to a split height standard of 37m to the eastern side and 69m to the western side of the lot. An assessment of height is provided below.

<i>Eastern Portion of Site</i>	<i>Western Portion of Site</i>
24.9m – 28.8m	38.1m - 45.3m



The proposal is satisfactory with respect of this requirement

4.4 – Floor Space Ratio

A maximum FSR standard of 2.35:1 applies to the entire precinct, this equates to a maximum gross floor area of 14,565.3sq/m for Lot C. The proposal incorporates a proposed gross floor area of 21,508sq/m which is equivalent to a maximum FSR of 3.47:1 across Lot C. The aforementioned indicates a surplus GFA of 6,942.7sq/m, being 1.1:1 FSR beyond the standard permitted.

The proposal does not comply with the FSR standard. The applicant has submitted a 4.6 – Exception to Development Standards with respect to the proposed variation. The non-compliance is discussed in Clause 4.6 – Exceptions to Development Standards below.

4.6 – Exception to Development Standard

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

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

Section (3)(b)- that there are sufficient environmental planning grounds to justify the variation.

In considering the applicant's submission, the consent authority must be satisfied that the applicants written request has satisfactorily addressed the aforementioned requirements.

Amendments to Clause 4.6 made on 1 November 2023, no longer require the applicant to demonstrate that the proposal is in the 'public interest', nor that the secretary's concurrence is provided.

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).

Further to the above, consideration has been given to the principles established by the Chief Judge in *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118* where it was observed that:

- *in order for there to be 'sufficient' environmental planning grounds to justify a written request under section 4.6, the focus must be on the aspect or element of the development that contravenes the development standard and the environmental planning grounds advanced in the written request must justify contravening the development standard, not simply promote the benefits of carrying out the development as a whole; and*
- *there is no basis in Section 4.6 to establish a test that the non-compliant development should have a neutral or beneficial effect relative to a compliant development.*

In *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90*, Plain J observed that it is within the discretion of the consent authority to consider whether the environmental planning grounds relied on are particular to the circumstances of the proposed development on the particular site.

The applicant's Clause 4.6 contravention request argues that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case there and are sufficient environmental planning grounds to support the non-compliant FSR.

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

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

Applicant Arguments (summarised):

1. *This variation arises from the new subdivision of each development lot, which separates public open spaces, roads, and residential super lots within the BATA 2 Precinct.*
2. *When Lot C is considered in isolation for the calculation of the FSR, the FSR doesn't comply. For this reason alone, a Clause 4.6 variation is required due to the recent subdivision of the Pagewood Green site into super lots.*
3. *Compliance with the FSR standard is unnecessary in this instance because the proposed development aligns with the approved Concept DA (DA-2019/386). The development meets the objectives of the FSR standard and the zoning requirements under the LEP. Therefore, the intent of the FSR standard is achieved, despite the non-compliance.*
4. *The Concept DA approved a maximum total GFA of 210,390 sqm, including a minimum of 5,000 sqm of nonresidential GFA, resulting in an overall FSR of 2.35:1 for the entire Pagewood Green site.*
5. *The site, previously under single ownership and used for industrial purposes, is now being transformed into a residential hub featuring supermarkets, specialty stores, restaurants, cafes, Childcare centres, public roads and public open spaces.*
6. *The Concept Plan allocated 21,900 sqm of GFA to Lot C, equating to an FSR of 0.24:1 across the entire Pagewood Green site.*

Officer Comment

The applicant has satisfied the first test outlined within *Wehbe v Pittwater Council* in that the non-compliance as proposed satisfies the objectives of the standard. The objectives of the FSR standard are as follows.

- a. to establish standards for the maximum development density and intensity of land use,
- b. to ensure buildings are compatible with the bulk and scale of the existing and desired future character of the locality,
- c. to minimise adverse environmental effects on the use or enjoyment of adjoining properties and the public domain,
- d. to maintain an appropriate visual relationship between new development and the existing character of areas or locations that are not undergoing or likely to undergo a substantial transformation,
- e. to ensure buildings do not adversely affect the streetscape, skyline or landscape when viewed from adjoining roads and other public places such as parks and community facilities.

The proposal is consistent with the objectives of the FSR standard as the maximum density and intensity of use for Lot C were established under the Concept Plan approval for the site on 26 November 2020.

Whilst the FSR sought to be accommodated upon Lot C does not strictly comply with the FSR standard of Bayside LEP 2021, the variation is a direct consequence and result of the Torrens title subdivision of the BATA 2 precinct into the creation of smaller lots, roads and future open space, replacing the two large lots that previously existed.

Whilst it may appear that surplus density is proposed, this is not technically the case, as the total maximum gross floor area for Lot C and the overall gross floor area within the BATA 2 precinct remain consistent with that envisaged and allocated for developable lots within the approved concept plan. i.e. 21,900sq/m envisaged by approved Concept Plan for Lot C, 21,508sq/m gross floor area proposed by this application.

The proposed development is generally consistent with the approved height, bulk and scale of development envisaged for Lot C as per the approved Concept plan.

The proposed development has been designed to minimize adverse environmental impacts upon the site itself, adjoining properties and the public domain and further maintains an appropriate visual relationship with existing surrounding development and that emerging within the locality.

Further to the above the proposed development does not adversely affect the streetscape, skyline or landscape when viewed from adjoining roads and public places. The proposal is consistent with the objectives of the FSR standard.

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

Applicant Arguments (summarised):

- 1) *The proposed development will not result in any excessive undue environmental impacts upon the adjoining properties and the public domain. The proposed development being entirely compliant with the Concept DA, is therefore compliant with the objectives of Clause 4.4 of the BLEP.*
- 2) *The proposed development will not be out of context with the built form anticipated by the approved Concept Plan DA for the site. In this regard, the proposed development will:*
 - a. *Deliver an FSR which complies with the maximum permitted by the BLEP and Concept Plan DA approval for the overall Pagewood Green Site;*
 - b. *Provide generous landscaping throughout the site;*
 - c. *Deliver a building envelope which is compliant with that approved under the Concept DA; and*
 - d. *Maximises compliance with ADG criteria*

Officer Comment

The proposal as designed is generally consistent with the future desired and emerging character of the precinct as envisaged by the Concept plan approval for the BATA 2 site as a whole. The proposed development is representative of the intended density for Lot C and the overall site, as formalised by the approved concept plan in 2020.

It is agreed that there are sufficient environmental planning grounds to justify the contravention of the FSR standard as the approved Concept Plan for the site has restricted the overall gross floor area intended for Lot C, i.e. 21,900sq/m. The proposal adheres to this limitation, providing a maximum gross floor area of 21,508sq/m maximum.

The proposed development is generally consistent with the approved envelope controls under the Concept Plan with relation to building setbacks, separation and overall building height and accommodates deep soil within ground level setbacks as previously discussed within this report.

The proposed development demonstrates compliance with the Apartment Design Guide and provides a considered built form response which will deliver a positive urban design outcome.

In conclusion the assessing officer is of the view that strict compliance with the FSR standard will not result in an improved planning outcome for the site. Given the aforementioned, strict compliance with the FSR standard in this instance is unreasonable and unnecessary and the applicants objection is considered to be well founded.

6.7 – Airspace Operations

The objective of this clause is to protect airspace around airports. The provisions of this clause state;

“The consent authority must not grant development consent to development that is a controlled activity within the meaning of Division 4 of Part 12 of the Airports Act 1996 of the Commonwealth unless the applicant has obtained approval for the controlled activity under regulations made for the purposes of that Division.”

The proposal does not exceed the 91AHD maximum airport height restriction for the site. Approval by relevant authorities has been obtained and the proposal has been conditioned accordingly.

6.10 – Design Excellence / Design Competition

As per the provisions of this section, development consent must not be granted to development to which this section applies unless the consent authority considers that the development exhibits design excellence.

Additionally given the proposal exceeds 12 storeys and/or 40m in overall height, a design competition is required to have been undertaken.

The Design Excellence section applies to the proposal and requires that the development deliver the highest standard of architectural, urban and landscape design. Pursuant to subsection 5(a), development consent must not be granted unless a design excellence panel reviews the development and the consent authority takes into account the findings of the panel.

With respect of Design Competition requirements, the applicant requested a waiver in correspondence dated 21 August 2024. Council’s Director of City Planning provided a written waiver to the applicant on 30 August 2024 advising that a design competition was not required as it was unlikely to result in a better outcome for the site, given the approved

concept plan has been established for the precinct, ongoing liaison and successful review of the DRP process for the overall BATA 2 precinct so far.

The proposal was peer reviewed by the Design Excellence Panel on three occasions. The Panel confirmed in February 2025 that the revised scheme as presented satisfies the Design Excellence requirements of BLEP 2021 subject to minor amendments discussed in this report.

Amendments as noted by the panel were incorporated in the final rendition of plans where possible and the revised final scheme has been considered against the design excellence provisions below.

- a) *whether a high standard of architectural design, materials and detailing appropriate to the building type and location will be achieved,*
- b) *whether the form, arrangement and external appearance of the development will improve the quality and amenity of the public domain,*

Comment

The design review panel was supportive of the proposed built form on site, its design, form, materiality and streetscape response. The design of the development is responsive to its orientation and locational context. The form and appearance of the development are consistent with the intended future desired character as per the relevant planning requirements for the site and context. Landscape works along the periphery of the site and as conditioned to be required within the adjoining public domain will improve the existing quality and amenity surrounding the site.

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

Comment

There are no significant identified views or vistas which are detrimentally impacted by the proposed development.

- d) *The requirements of any development control plan made by the Council and as in force at the commencement of this section*

Comment

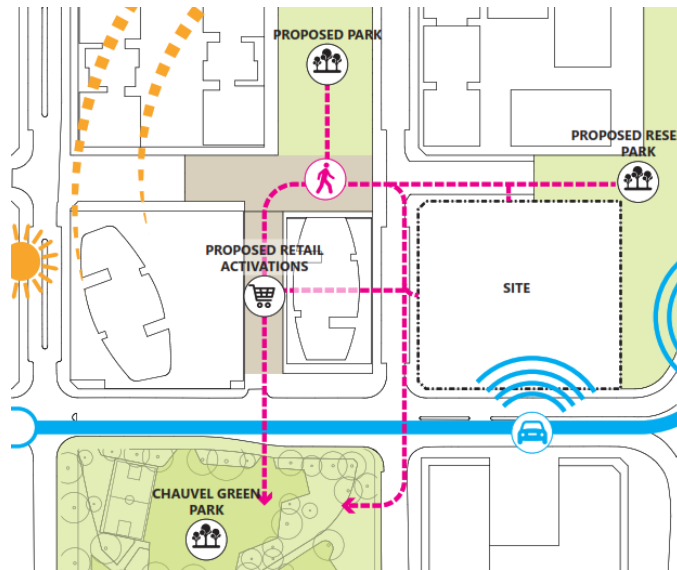
An assessment of the proposal with the relevant requirements of Bayside DCP 2022 has been undertaken further in this report. The proposal is satisfactory in this regard.

- e) *How the development addresses the following matters:*
 - i. *The suitability of the land for development,*
 - ii. *Existing and proposed uses and use mix,*
 - iii. *Heritage issues and streetscape constraints,*
 - 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,*
 - v. *Bulk, massing and modulation of buildings,*
 - vi. *Street frontage heights,*

- vii. *Environmental impacts such as sustainable design, overshadowing, wind and reflectivity,*
- viii. *The achievement of the principles of ecologically sustainable development,*
- ix. *Pedestrian, cycle, vehicular and service access, circulation and requirements,*
- x. *The impact on and any proposed improvements to, the public domain,*
- xi. *The achieving appropriate interfaces at ground level between the building and the public domain,*
- xii. *Excellence and integration of landscape design.*

Comment

- i. The suitability of the site has been discussed and previously demonstrated within this assessment report.
- ii. The proposed development is permissible and satisfies the objectives of the zone as previously stated.
- iii. There are nil adverse heritage issues associated with the proposal or site. The proposal appropriately responds to the existing and future desired streetscape character as envisaged by the relevant planning controls for the site.
- iv. The proposal was peer reviewed by Councils Design Review Panel. The proposal provides an appropriate and sympathetic response and building form to existing and emerging neighbouring buildings, provides appropriate physical separation, setbacks, urban form and good amenity as discussed previously in this report.
- v. The revised bulk, massing and modulation of the proposal was supported by the Design Review Panel.
- vi. The proposal provides an appropriate street frontage heights and is consistent with building envelopes established by the approved concept plan for the site. The development provides an appropriate transition in height to the eastern and southern sections of the site.
- vii. Due consideration has been given to potential environmental impacts. The proposal does not generate adverse overshadowing impacts to dwellings to the south within 8 Studio Drive or to the eastern side of Bunnerong Road. Conditions have been imposed to minimise the reflectivity of materials and sustainability measures have been incorporated into the development.
- viii. Sustainability measures have been discussed within Condition 45 – ESD of the concept plan assessment of this report. The proposal is satisfactory with respect of the achievement of the principles of ecologically sustainable development.
- ix. Consideration has been given within the design of the development to pedestrian, bicycle and vehicular access points, circulation requirements and visibility to and from these areas.



The above diagram depicts the primary retail core of the precinct, Lot C (SITE) and pink hatching which identifies key pedestrian desire lines within the BATA 2 precinct.

As a result of the proposed development, which includes retail uses along the western frontage of Studio Drive, Council’s Development Engineers have imposed conditions to enhance pedestrian safety and connectivity. These conditions require minor intersection works at the junction of Tingwell Boulevard and Studio Drive as follows;

- Median realignment within Tingwell Boulevard along the southern frontage of Lot C, akin to that along the southern frontage of Lot B. To possibly include landscaping, trees and additional public car parking spaces to support the retail precinct. Subject to design consultation with Council Engineers.



Existing median within Tingwell Boulevard at southern frontage of Lot B



Existing median within Tingwell Boulevard at southern frontage of Lot C

- Pedestrian connectivity through the addition of a refuge island and pram ramps.

Noting the above and as conditioned, the proposal is satisfactory in this regard.

- x. The proposal has been conditioned to require public domain improvements along the frontage of the site to Tingwell Boulevard. A frontage works application is required post determination. The aforementioned includes the installation of lighting, landscaping and footpath works etc.
- xi. The proposal provides for an appropriate interface at ground level to Heffron Road and the surrounding public domain.
- xii. Refer to discussion in '*Landscaping - Conditions 39, 40, 43, 44*' of the Concept Plan assessment section of this report.

The provisions of this section are deemed to be satisfied given the aforementioned and it has been demonstrated that design excellence has been achieved. The proposal is satisfactory in this regard.

6.11 – Essential Services

Services are generally available on site to facilitate to the proposed development. Appropriate conditions have been recommended requiring approval or consultation with relevant utility providers with regard to any specific requirements for the provision of services on the site.

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

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

4.3 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.

Relevant Parts	Compliance with Objectives	Compliance with Standard / Provision
PART 3 – GENERAL DEVELOPMENT PROVISIONS		
3.6 Social Amenity, Accessibility and Adaptable Design	Yes - see discussion	Yes - see discussion
3.12 Waste Minimisation and Site Facilities	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 3 – GENERAL DEVELOPMENT CONTROLS

3.6 – Social Amenity, Accessibility and Adaptable Design

Equitable access is provided to, within and throughout the development including basement car parking levels, ground level and communal open space areas allowing equitable access for persons with a disability / mobility impairment. Accessible car parking spaces and amenities are also provided within the proposal.

An Accessibility Capability Statement prepared by Design Confidency Pty Ltd dated 01/07/2024 confirms that accessibility requirements, pertaining to external site linkages, building access, common area access, sanitary facilities, parking and the like can be readily achieved.

The proposal is consistent with the requirements and objectives of this part and has been conditioned to ensure the development is capable of compliance with the relevant requirements of the Access to Premises Standards, Building Code of Australia and AS4299 – Adaptable Housing.

3.12 – Waste Minimization and Management

A Waste Minimisation and Management Plan dated January 2025 prepared by Elephants Foot was submitted with the application outlining methods of minimising and managing construction and ongoing waste on site. Separately defined waste storage areas are provided for the residential and retail components of the proposed development.

A garbage chute system is incorporated into the building design for the reception of waste material. Waste and Recycling Compartments are located on all residential floors of the building for residents to place their waste (into the chute) and their recyclables (into a 240-litre recycling bin next to the chute).

The proposal includes waste storage rooms at basement level and waste holding areas at ground floor, to facilitate on site waste collection via a medium rigid vehicle.

Representatives of the Owners Corporation will be responsible for transferring full and empty waste bins from under the chute and for transporting recycling bins from each level of the building to the waste storage room for servicing.

Waste removal will be undertaken by on site private waste collection twice weekly with recycling collected weekly, via a dedicated loading bay for a Medium Rigid Vehicle within the development.

The size, location and head height clearance provided for the loading / unloading area is satisfactory and compliant with Council requirements. The proposal was reviewed by Councils Waste Officer who raised no objections to the aforementioned. The proposal is satisfactory with respect of the requirements of this part.

3.14 - Noise, Wind, Vibration and Air Quality

The proposal was accompanied by an Acoustic Report, prepared by prepared by Acoustic Logic dated 25/06/2024. The report considered the potential impact of external noise intrusion i.e. traffic, mechanical plant and transfer of noise within the development between units.

The report concludes that the requirements of this part and the BCA can be achieved and appropriate residential amenity provided, subject to adherence to the recommendations made within the aforementioned report. Such recommendations include insulation to the walls, glazing and ceiling / roof of the development.

Given the above, the proposal has been conditioned to ensure recommendations of the aforementioned report are implemented on site.

The matter of wind amelioration has been addressed previously in *Condition 25 – Wind Report* of this report. The proposal has been conditioned to ensure proposed wind amelioration measures are illustrated upon construction certificate drawings prior to the issue of any Construction Certificate and implemented on site. The proposal as conditioned satisfies the requirements and objectives of this provision.

3.18 - Utilities and Mechanical Plant

Appropriate site facilities are provided within the development on site. Plans indicate the provision of a substation integrated into the building form to the northern façade and a fire hydrant located adjoining the southern façade to Tingwell Boulevard. Sewer, water and electricity is available for connection and the proposal has been conditioned accordingly. The proposal is satisfactory in this regard.

Section 7.11 - Development Contributions

The proposed development will increase demand for public amenities given the increase in residential density on site. In accordance with Council's contributions plan, the proposal has been conditioned to require the payment of relevant s7.11 contributions.

Environmental Planning and Assessment (Housing and Productivity Contributions) Order 2024

The Housing and Productivity Contribution was introduced on 1 October 2023. Contributions will go towards the provision of state and regional infrastructure needed to unlock development and support forecast growth, such as roads, parks, hospitals and schools.

The HPC applies to the proposed development given the establishment of new residential dwellings on site. The HPC requires the payment of \$10k per dwelling. Given transition

arrangements implemented by the Department, a 25% discount will benefit the developer. The proposal has been conditioned accordingly.

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

In accordance with the provisions of Section 7.4 of the EPA Act 1979 (as amended), the developer has entered into a Planning Agreement (PA) upon the subject site, with the following community benefits.

- i. Dedication of 45 Affordable Housing Units (AHU's), with a total of 100 bedrooms.
- ii. Embellishment and dedication for public use of 14,337sq/m sqm of open space.
- iii. Dedication of public roads.
- iv. Monetary contribution of \$23,900,000 (GST exclusive), over three payments.
- v. Monetary contribution that was part of the BATA I PA but was not realized due to the development payment trigger being deferred to the BATA II development which consists of \$2,478,000 indexed in accordance with CPI from 2 March 2018.
- vi. Payment of local Infrastructure contributions.
- vii. Change in land tenure and further embellishment of open space land.
- viii. Public access easement to be applied over land remaining in private ownership to ensure enduring right of the public to use this area for access, leisure and recreation purposes.

The Planning Agreement was executed on 28 October 2021 and amended in May 2023 and December 2024. Conditions have been imposed to ensure the redevelopment of Lot C occurs in accordance with the requirements of the executed Planning Agreement.

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

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

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

Traffic / Car Parking

As part of the assessment of previous applications for the precinct, including the now approved Concept Plan and subsequent modifications which increased residential car parking provision on site, the applicant has previously demonstrated through traffic modelling conducted by ARUP, that traffic modelling is not dependant upon parking provision, that traffic generation rates are overstated and the impact of the development upon the surrounding road network is minimal.

The proposal was subsequently reviewed by TfNSW who raised no objections to the development with respect of traffic generation, access or safety.

The proposal for Lot C was subsequently reviewed by Councils Development Engineers whom raised no concerns with regards to the level of car parking proposed or traffic generation likely to be generated.

Further to the above, a round a bout is currently under construction at the intersection of Tingwell Boulevard and Banks Avenue, which will assist in traffic flows into the BATA 2 precinct.

The proposal is satisfactory with respect of traffic and car parking and is unlikely to generate adverse traffic or car parking impacts within the local and classified road network which surrounds the periphery of the overall site and is capable of accommodating a high level of vehicular movement.

Roof Plant Equipment

Plant at rooftop level is recessed from the edge of the building insofar as is practical, partially concealed from view by the integrated building façade parapet design and plant screens / enclosures. Roof plant is within the maximum height limit for the site and is satisfactory in this regard.

Construction Impacts

Temporary construction-related impacts do affect amenity and this is partially inevitable from demolition, excavation and constructing new works. However, these are not anticipated to unduly affect surrounding businesses or residents, with some localized impacts of relatively likely short duration. These construction-related impacts are able to be addressed by standard conditions of consent, as recommended, to reasonably manage and mitigate impacts, while allowing rational and orderly construction.

4.7 Section 4.15(1)(c) - Suitability of the Site

The proposed development is permissible, satisfies the objectives of the R4 high density residential zone and is consistent with the relevant development standards. The proposal satisfies the objectives and requirements with respect of the relevant planning instruments and there are no other known circumstances or site conditions which would deem the proposal unsuitable for the subject site.

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

In accordance with Bayside Development Control Plan 2022 the development application was notified to surrounding property owners. 36 (two x pro forma letters & 12 unique submissions) submissions were received and the following matters were raised;

- i. Inadequate building separation / Adverse Visual privacy / Overlooking to units on southern side of Tingwell Boulevard (8 Studio Drive)*

Comment – The southern building alignment of the proposed development is positioned in excess of 28m from the existing building at 8 Studio Drive. The separation provided is well in excess of that required by the Apartment Design Guide and thus it is not considered that the proposal will result in adverse visual privacy impacts to existing dwellings within 8 Studio Drive.

- ii. Overshadowing to units on southern side of Tingwell Boulevard (8 Studio Drive) / Creation of dark and mouldy areas to existing units / Reduction in access to natural light and lack of ventilation*

Comment – The matter of potential overshadowing onto dwellings within 8 Studio Drive has been addressed previously within this report.

It is reiterated that elevational shadow, sun eye view, shadow diagrams and floor plan analysis confirm that with the construction of the proposed development, a total of 118 or 167 of units within 8 Studio Drive will retain a minimum of 2 hours solar access in midwinter, being 70.6% of dwellings within this development.

It is reiterated that dwellings within 8 Studio Drive also benefit from easterly / westerly orientation and thus satisfactory solar access and ventilation is retained to dwellings within this existing building.

iii. *Additional pressure on public transport, pedestrian crossings and infrastructure / Precinct doesn't have capacity to deal with population increase*

Comment – The matter of pedestrian safety and connectivity has been addressed previously in this report. It is reiterated that the proposal is consistent with the requirements of the approved concept plan for the site and the future desired character for the BATA 2 precinct.

It is further noted that investigations are ongoing with Westfield, Transport for NSW and Council with a view to the renewal, upgrade and improvement of the existing public transport interchange adjoining Westfield Eastgardens as part of a current draft Planning Proposal for the Westfield Eastgardens site. The aforementioned may result in additional public transport capacity for the locality.

Further to the above the TfNSW website as at 7 March 2025 notes the following improvements to existing bus infrastructure in the locality.

“As part of Transport’s plan to deliver a better bus network, we are looking for ways to improve bus journeys across South East Sydney. This includes additional services on key routes, more seats, timetable changes, and route changes to help provide a better-connected public transport experience.



TfNSW website excerpt

On Monday 3 March 2025, there will be timetable changes designed to provide passengers in South East Sydney with better connections and a more reliable bus network. The changes will also make it easier for commuters to access stations along the new Metro line to provide alternatives to driving and offer a smoother combined commute.

What's changing?

Bus services in South East Sydney are being adjusted to better align to the community's public transport needs. This will improve connections with Sydney Metro.

Key changes include:

- *new trial service route 393 Matraville to Eastgardens*

- *timetable changes on 309, 377X, 390X, 392, 392X, 396, 396X, 397, 397X.”*

iv. Adverse traffic impacts / Roads are narrow and congested as existing

Comment – Matters with respect of traffic and car parking have been addressed previously in this report.

v. Adverse car parking issues

Comment – The proposal complies with the car parking requirements of the concept plan in full and provides sufficient on site car parking for the proposed development.

vi. Council should commission an independent study on cumulative impact of recent and proposed developments on local infrastructure and quality of life / Implement a comprehensive infrastructure improvement plan before approving any further high density developments.

Comment – The proposal is consistent with the requirements of the approved concept plan for the site and the future desired character for the BATA 2 precinct.

It is further noted that investigations are ongoing with Westfield, Transport for NSW and Council with a view to the renewal, upgrade and improvement of the existing public transport interchange adjoining Westfield Eastgardens as part of a current draft Planning Proposal for the Westfield Eastgardens site. The aforementioned may result in additional public transport capacity for the locality.

vii. Lack of trees means birds cant find somewhere to nest

Comment – The proposal includes substantial landscaping within the proposed development including a range of native trees including Sydney Red Gum, Coastal Banksia, Illawarra Flame, Spotted Gum and Tuckeroo. Such trees will aid in assisting the nesting of local wildlife.

viii. Residents want traffic lights at intersection of Tingwell Boulevard and Studio Drive as it is dangerous

Comment – The matter of pedestrian safety and connectivity at this intersection has been discussed previously in this report. The proposal has been conditioned accordingly.

ix. Residents want a roundabout or traffic lights at intersections of Finch Drive and Tingwell Boulevard and also Studio Drive and Tingwell Boulevard

Comment – The installation of traffic lights are governed by TfNSW. Council is not in a position to require traffic lights at the said intersections. TfNSW raised no objection to the proposal or the operation of the said intersections.

Councils engineers have considered the suggestion of roundabouts at the said intersections and these are not deemed to be warranted.

x. Residents request independent traffic and road network impact study to be carried out by Council and Transport for NSW with input from residents. Report should cover

current and future impacts over a 10 year period, factoring in population growth. All DA's should be put on hold until this is prepared and put forward for community consultation and input.

Comment – Traffic modelling and assessment of demand and potential impact was undertaken as part of the original concept plan as previously stated in this report. This factored in population growth for the entire BATA 2 precinct. A subsequent assessment as suggested by the objector is not warranted.

- xi. Vehicular access should be provided to BATA 2 precinct from Heffron Road, Bunnerong Road and Banks Avenue*

Comment – The location of vehicular access is as per the approved concept plan. Vehicular access via state roads i.e. Bunnerong and Heffron Roads is not supported by TfNSW. Access via Banks Avenue does not form part of the concept plan approval.

- xii. Lot F should be the 'serviced apartments' not Lot C, with vehicular access via Bunnerong Road*

Comment – Serviced apartments are no longer proposed as part of this application. The location of vehicular access is as per the approved concept plan. Vehicular access via a state road is not supported by TfNSW.

- xiii. Lot C & Lot F should have vehicular access from Bunnerong Road*

Comment – The location of vehicular access is as per the approved concept plan. Vehicular access via a state road is not supported by TfNSW.

- xiv. Lot D should have vehicular access via Banks Avenue*

Comment – This matter is beyond the scope of this application.

4.9 Section 4.15(1)(e) - Public Interest

The proposal has been assessed against the relevant planning instruments and controls applying to the site, also having regard to the applicable objectives of the controls. As demonstrated in this assessment of the development application, the proposal is suitable for the site and has acceptable environmental impacts, subject to recommended conditions. Impacts on adjoining properties have been considered and addressed. As such, granting approval to the proposed development will be in the public interest, subject to the recommended conditions which help manage and mitigate environmental or potential environmental impacts.

5. REFERRALS AND SUBMISSIONS

5.1 Agency Referrals and Concurrence

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

Agency	Concurrence/ Referral Trigger	Comments (Issue, resolution, conditions)	Resolved
Referral / Consultation Agencies			
Sydney Airport Corporation Limited	<i>Bayside LEP 2021</i> • <i>Obstacle Limitation Surface</i>	General Approval for max height of 91AHD across entire precinct. Proposal is below this height.	Yes
TfNSW	<i>SEPP (Transport and Infrastructure) 2021</i> • <i>2.122 - Traffic Generating Development</i> • <i>2.119 – Development with frontage to classified road</i>	Nil objection. Standard conditions imposed.	Yes
Ausgrid	<i>SEPP (Transport and Infrastructure) 2021</i> <i>s2.48 - Determination of development applications - other development</i>	Nil objection. Standard conditions imposed.	Yes
Sydney Water	<i>Sydney Water Act 1994</i> <i>S78 - Consent authority to notify Corporation of development and building applications</i>	Nil objection. Standard conditions imposed.	Yes
Integrated Development (S 4.46 of the EP&A Act)			
Water NSW	<i>Water Management Act 2000</i> <i>s90(2) water management work approval</i>	Nil objection. Standard conditions imposed.	Yes

5.2 Council Referrals

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

Officer	Comments	Resolved
Environmental Scientist	Nil objection. Standard conditions imposed.	Yes
Development Engineer	Nil objection. Standard conditions imposed.	Yes
Landscape	Nil objection. Standard conditions imposed.	Yes
Waste	Nil objection. Standard conditions imposed.	Yes
7.11 Contributions	Nil objection. Standard conditions imposed.	Yes

6. CONCLUSION

The proposed development has been assessed in accordance with Section 4.15 of the *Environmental Planning and Assessment Act 1979* including relevant environmental planning instruments and Bayside Development Control Plan 2022.

The proposed development is a permissible land use within the zone with development consent. In response to the public notification all submissions received have been reviewed and issues raised considered in this assessment. Matters raised in submissions do not warrant refusal of the proposal.

The proposal is supported for the following main reasons:

- The proposed development generally complies with the relevant environmental planning instruments and Concept Plan requirements which apply to the site.
- The proposal is permissible within the zone with development consent and satisfies the zone objectives.
- The proposal achieves and demonstrates design excellence as required by requirements of Clause 6.10 of the BLEP 2021 and was supported by the Design Excellence Panel.
- Notwithstanding the technical FSR non compliance as discussed in this report, the proposal is of appropriate height, bulk, scale and form for the site and is consistent with the emerging desired future character of the area as envisaged by the concept plan approval.
- The proposed development is a suitable use for the subject site and its approval is in the public interest.

7. RECCOMENDATION

- a. That the Sydney Eastern City Regional Planning Panel, exercising the functions of Council as the consent authority pursuant to section 4.16 of the *Environmental Planning and Assessment Act 1979* agrees with the applicant's written request justifying the contravention to clause 4.4 - Floor space ratio development standard of the Bayside Local Environmental Plan 2021. The Panel is satisfied that the applicant's written request has addressed the matters required to be demonstrated by clause 4.6 of the Bayside Local Environmental Plan 2021 and has established that compliance with the development standard would be unreasonable or unnecessary in the circumstances and that sufficient environmental planning grounds have been provided to justify the contravention of the development standard.
- b. That the Sydney Eastern City Regional Planning Panel, exercising the functions of Council as the consent authority pursuant to s4.16 and s4.17 of the *Environmental Planning and Assessment Act 1979*, determine Development Application DA-2024/172 - BATA 2 - Lot C – Integrated Development - Tree removal, excavation, construction of a mixed-use development including three buildings comprising 7 to 13 storeys, 3 basement levels for car parking, 232 residential apartments, 2 retail premises, and associated communal recreational facilities, landscaping and servicing infrastructure at 2 Tingwell Boulevard, Eastgardens by GRANTING CONSENT subject to the recommended conditions of consent attached to this report.

The following attachments are provided:

- Attachment A: Draft Conditions of consent

- Attachment B: Architectural Plans
- Attachment C: Landscape Plans
- Attachment D: Clause 4.6 – Exception to Development Standards.