

COUNCIL ASSESSMENT REPORT TO PANEL

SYDNEY EASTERN CITY PLANNING PANEL

PANEL REFERENCE & DA NUMBER	PPSSEC-337 – DA-2024/205
PROPOSAL	BATA 2 - Lot F – Removal of trees, excavation, and construction of three (3) 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.
ADDRESS	16 Studio Drive Eastgardens (Lot 34 DP 1312041)
APPLICANT	Karimbla Properties (no.39) Pty Ltd
OWNER	Karimbla Properties (no.39) Pty Ltd
DA LODGEMENT DATE	28/08/2024
APPLICATION TYPE	General Development
REGIONALLY SIGNIFICANT CRITERIA	CIV >\$30 million
CIV	\$132,785,999
CLAUSE 4.6 REQUESTS	FSR – 2.97:1
LIST OF ALL RELEVANT PLANNING CONTROLS (S4.15(1)(A) OF EP&A ACT)	<ul style="list-style-type: none"> • 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 • Bayside DCP 2022
TOTAL & UNIQUE SUBMISSIONS	31 submissions, 12 unique submissions

DOCUMENTS SUBMITTED FOR CONSIDERATION	Architectural & Landscape Plans Statement of Environmental Effects
HOUSING PRODUCTIVITY CONTRIBUTION (S7.24)	Applicable. Conditioned.
RECOMMENDATION	Approval subject to conditions.
DRAFT CONDITIONS TO APPLICANT	Yes
PLAN VERSION	Various
SCHEDULED MEETING DATE	1 May 2025
PREPARED BY	Marta Gonzalez-Valdes – Coordinator Development Assessment
DATE OF REPORT	01/04/2025

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>	N/A
Conditions Have draft conditions been provided to the applicant for comment? <i>Note: in order to reduce delays in determinations, the Panel prefer that draft conditions, notwithstanding Council's recommendation, be provided to the applicant to enable any comments to be considered as part of the assessment report</i>	Yes

EXECUTIVE SUMMARY

The 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, known as BATA 2.

The subject site was previously rezoned from IN1 General Industrial to R3 Medium Density Residential and R4 High Density Residential and granted substantial uplift in height and FSR. The BATA 2 site applicable FSR is 2.35:1.

Lot F is located in the north-eastern corner of the overall precinct and comprises a total site area of 7,568sq.m.

Lot F has an allowance under the Concept Plan for a FSR of 0.25:1 or 24,010sq.m. gross floor area (GFA). However, following the subdivision of the land to incorporate roads and parkland as envisaged by the Concept Plan, the site area of Lot F was reduced from 89,570sq.m. to 7,568sq.m. As a result, whilst achieving the maximum envisaged GFA of 22,500sq.m., the proposed FSR is 2.97:1.

Therefore, the proposal does not comply with the FSR development standard. A Clause 4.6 contravention request has been submitted by the applicant. The CI4.6 request has been assessed and is found to be acceptable in this case. The proposed contravention is supported for the reasons stated further in this report.

The height development standard for Lot F is partly 37m and partly 69 metres. The proposal complies with the maximum building height standard prescribed by Clause 4.3 of the BLEP 2021.

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. As demonstrated in this report, the proposal is generally consistent with the Concept Plan relevant conditions.

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.

The Design Excellence provisions of Clause 6.10 of BLEP 2021 apply. Specifically, the proposal is subject to Clause 6.10(5)(a), which requires a design competition for developments involving a building higher than 40 metres or 12 storeys. However, 6.10(6) provides a concession to the design competition when the consent authority so authorises. In this case, Council's Director City Futures authorised a waiver to the design competition subject to review by the Design Review Panel (DRP).

The proposal was peer reviewed by the DRP on two 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.

A total of 31 submissions were received during the public notification of the proposal. Of this, 12 are unique submissions. 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-2024/205 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.

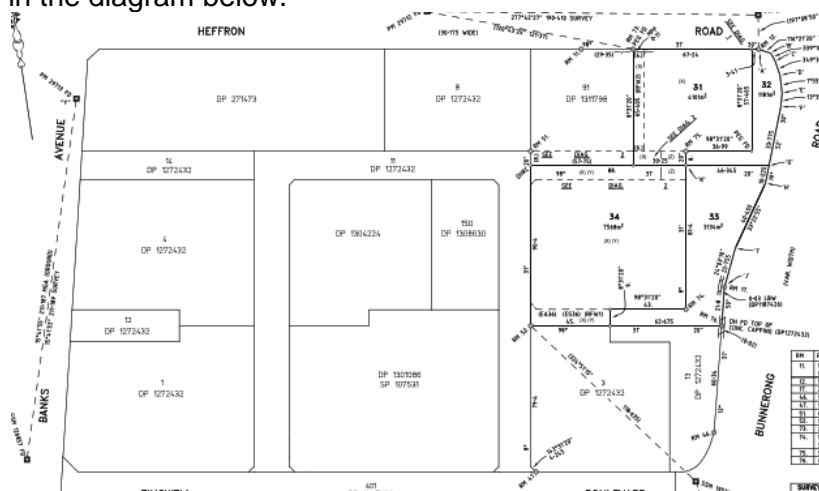


Fig 1 - Registered subdivision plan of precinct

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.



Fig 2 - 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.

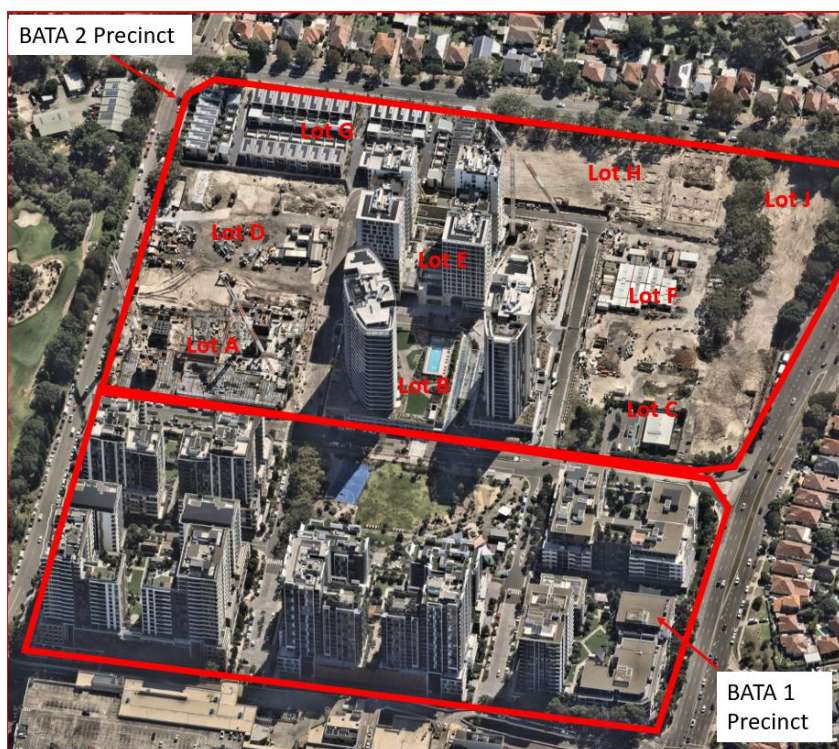


Fig 3 - Aerial context of both precincts

The site subject of this application is located within the BATA 2 precinct. It is colloquially known as Lot F, legally identified as Lot 34 DP1312041 and is located in the northeastern corner of the Precinct, fronting Bunnerong Road. Lot F is bounded by Lots J and H to the north, a public park to the east and Lot C to the south. The lot is regularly shaped, has an overall site area of 7,568 sq/m and its dimensions are identified in an excerpt of the submitted survey below. The site is currently vacant.

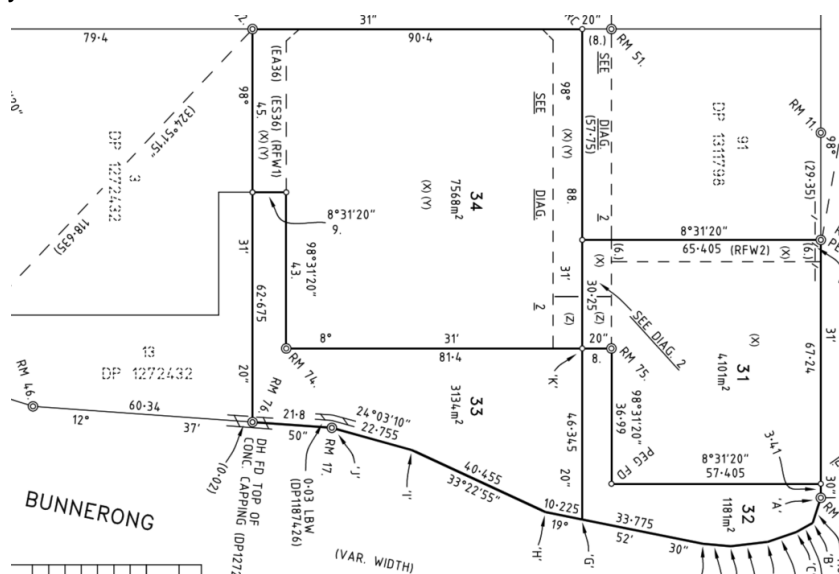


Fig 4 - Lot F identified as Lot 34 in the subdivision plan

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



Fig 5 - Dwellings on eastern side of Bunnerong Road

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

- Potential Contamination
- Flooding

2. 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;

Lot B – Construction Completed

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.

Lot E – Nearing Completion

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.

Lot A – Under Construction

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

Lot G – Completed

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.

Lot H & Open Space 3 – Under Construction

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)

Lot C – DA-2024/172 - Under Assessment

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.

Lot D – DA-2024/190 - Approved

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

Lot J – DA-2024/169 – Under Assessment

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.

Lot F – DA-2024/205 – Subject application

Removal of trees, excavation, and construction of three (3) 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 undertake the removal of trees, and construction of a residential flat building development comprising three (3) connected towers over a podium level. The height of the towers varies from 6-13 levels. The podium comprises two (2) levels over a basement carparking level. Communal recreation facilities are provided at roof top level as shown in the roof plan below.

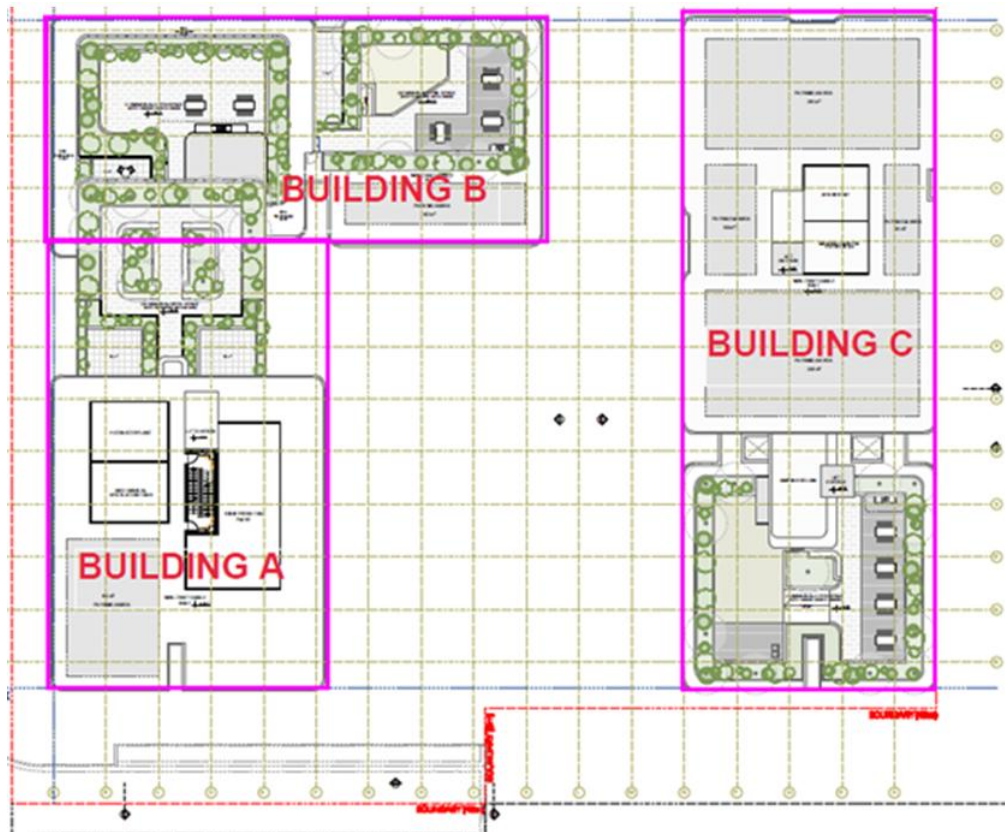


Fig 6 - Communal roof top areas and buildings footprint



Fig 7 – View of north-eastern corner (left) and south-western corner (right)

A summary of the statistics of the proposal is below:

SUMMARY STATISTICS	
Site Area	7,568sq/m
GFA	22,500 sq/m
FSR	2.97:1
Apartments	
1 Bed Units	52 (23.21%)
2 Bed Units	118 (52.6%)
3 Bed Units	47 (20.98%)
4 Bed Units	7 (3.13%)
Total Units	224

It is noted that a development application for site excavation and shoring in Lot F (DA-2024/234) has been approved by Council under delegated authority on 21 February 2025. Further, a development application for the design of the park located between the subject site and Bunnerong Road known as Open Space 07 is currently under assessment.

A detailed description of the development is below:

Tree Removal

The proposal seeks to undertake the removal of all trees within the site.

Basement 2

141 residential car spaces, residential lift cores, fire stairs, residential storage, sewer pump out room, carpark exhaust and vehicular and pedestrian circulation.

Basement 1

123 residential car spaces, 4 visitor spaces, 2 carwash spaces, residential lift cores, fire stairs with adjoining lobbies, residential storage, various plant rooms, carpark exhaust and vehicular and pedestrian circulation.

Ground Floor Level

The layout of the ground floor involves location of residential units along the perimeter of the site all with street frontages. The residential units are connected internally via a corridor, which connects the units to the lift shafts and the lobbies. There are 17 residential units at ground level. The main lobby is located on Studio Drive. Additional lobbies are proposed on the eastern boundary fronting the park.

Most residential units have direct access to the road and the park.

Within the centre of the floor layout, the proposal includes services rooms such as waste, mail rooms, fire room, fire pump room, bicycle storage room, pool pump room and OSD tank.

Carparking is provided for 8 visitor spaces, 5 carshare spaces and 4 service bays.

Vehicular access to the site is provided via the southern boundary shared with Lot C.

Level 1

This is the podium level characterised by amenity facilities for the residents such as swimming pool, gymnasium, BBQ and seating areas. The total number of residential units on this level is 22.

Level 2

Level 2 contains a total of 26 residential units. Planters are located along the perimeter of the buildings on the northern, western and southern elevations.

Level 3-5

Similar to level 2, levels 3-5 comprise a total of 26 residential units each.

Level 6

Level 6 comprises 22 residential units. A communal area is also proposed on the southwestern side.

Level 7

Level 7 comprises 15 residential units and a communal area on the roof top of the southwestern tower.

Levels 8-9

A total of 11 residential units are located at Level 8 and Level 9. An additional communal area is also located on the northern building.

Level 10-12

Levels 10, 11 and 12 comprise 6 residential units each. A communal area is also proposed on the northern side.

Level 13

Level 13 comprises 4 residential units and a communal area on the roof top facing north.

Roof Plan

Additional terraces are provided along the northern and southeastern boundaries to be used as communal areas.

Road

Extension and embellishment of private road to form part of Lot J and C which requires the realignment of Lots.

Materials / Finishes

The proposal incorporates a range of contemporary materials to provide colour, texture and visual interest to the proposed development. Materials and treatments are depicted below. The facades comprise painted finishes, face brick walls and aluminium window trim reveals. The horizontal expression is defined by concrete banding. The proposed building achieves a cohesive relationship with the overall aesthetic characterised by the precinct whilst achieving its own identity.

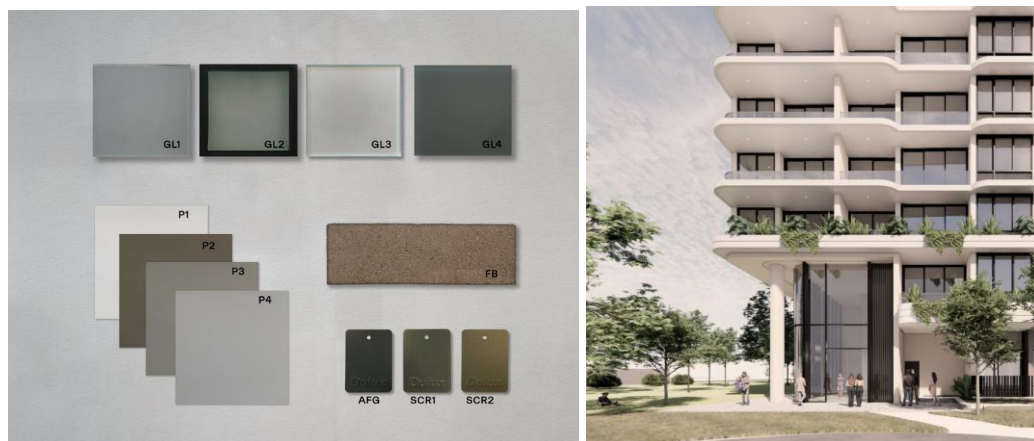


Fig 8 - Materials Palette and façade detail

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 that 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.

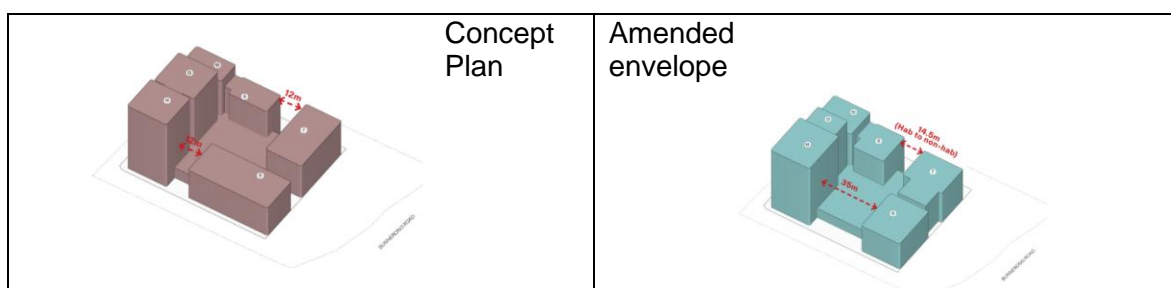
The subject Lot F forms part of an overall precinct of which is subject to the requirements of a Concept Plan approved on 26 November 2020 by the Sydney Eastern City Regional Planning Panel.

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

Condition 1

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



As indicated above, whilst the number of storeys remain consistent with the Concept Plan, the proposal involves changes to the footprint of the towers. The most noticeable change

involves a deeper footprint to the northern tower and a slight increase in setbacks along the northern elevation. Further, the footprint of the south-eastern tower has been reduced significantly to allow a greater setback between with the south-western tower.

Consistent with this condition, the proposal also involves the construction and embellishment of the private road located between Lots J and F.

Additionally, the gross floor area (GFA) remains consistent with the allocated GFA in the Concept Plan.

Condition 4 – Approved documents

The proposal is generally consistent with the documents listed in this condition except as otherwise identified in this report.

Condition 9 – Design Excellence

The proposal was peer reviewed by the Bayside Design Review Panel (DRP) on two(2) occasions. At the last meeting in February 2025, the DRP concluded the proposal achieves design excellence subject to minor amendments that the final scheme. As stated earlier in this report, the amendments to the proposal have addressed the issues raised by the DRP and as such the proposal is considered to achieve design excellence in compliance with this condition.

Condition 10 - Local Contributions

The proposal is to be conditioned accordingly to ensure relevant contributions are payable because of the increase in density on site, in accordance with the executed Planning Agreement for the site.

Condition 11 – Contamination

Refer to assessment under SEPP Resilience and Hazards of this report.

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 F adheres to the anticipated overall GFA for the lot, which was envisaged at Concept Plan Stage. i.e. 22,500sq/m GFA anticipated, 22,500sq/m as proposed. Targets are achieved by the current and subsequent applications with respect of maximum GFA on site as below.

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	38,494.91sq/m Proposed	N/A	38,494.91sq/m Proposed
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	19,879sq/m Proposed	459.16sq/m Proposed	20,338.16sq/m Proposed
TOTAL				208,725.07sq/m

Condition 13 - Minimum Non Residential Gross Floor Area

Lot F is not identified as requiring non-residential gross floor area.

Condition 14 - Maximum Residential Gross Floor Area

The maximum proposed residential gross floor area (GFA) for Lot F of 22,500sq.m. is consistent with the GFA envisaged under this condition of the Concept Plan.

Condition 17 – Materials, Finishes and Treatment of Built Forms

The applicant has submitted detailed colours and finishes of the building. As required by Condition 17(b), 'two (2) sample boards containing original samples and swatches of all external materials and colours' shall be submitted. A condition of consent is proposed to require the submission of physical samples post determination prior to the issue of any construction certificate.

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 setback along the western boundary has been improved in the amended submission to incorporate deep soil. The building's interface with the public domain has been supported on design excellence grounds.

The proposal provides an appropriate interface with the public domain and finished RL for the development.

Condition 20 – Finished Ground Floor Level

Proposed finished ground floor levels are positioned up to a maximum of 0.5m above the 1% AEP flood level to ensure the development is safeguarded against any potential future flooding inundation. Non habitable levels shall be set 0.3m above the 1% AEP flood level and basements shall be protected to 0.5m above the AEP flood level.

The approximate ground floor level nominated in the Concept Plan for Lot F was RL 23.40. The proposed development minimum habitable floor level is RL 22.86. The levels have been assessed by Council's engineers to ensure the development is future proofed against potential flooding. The proposed levels are found to be acceptable.

Condition 21 – Height of Buildings

The proposed development adheres to the maximum height standard permitted for the site. i.e. 37m maximum as indicated under condition 1 above.

Condition 22 – Floor to Floor Heights

This condition requires compliance with ADG floor to floor heights. The ADG recommends 3.1m floor to floor heights. The proposed floor to floor heights for the ground level is 5.31m. Residential levels floor to floor heights are 3.16m. The proposal is satisfactory in this regard.

Condition 23 – Basement Levels

As per the requirements of this condition, basement levels must not encroach into street setback areas as depicted in various shades of blue within A0105 Rev 14— Site Setbacks Plan as approved in the Concept Plan and illustrated below. The blue line indicates a setback of 4 metres and the pink line indicates a required deep soil setback of 2m.

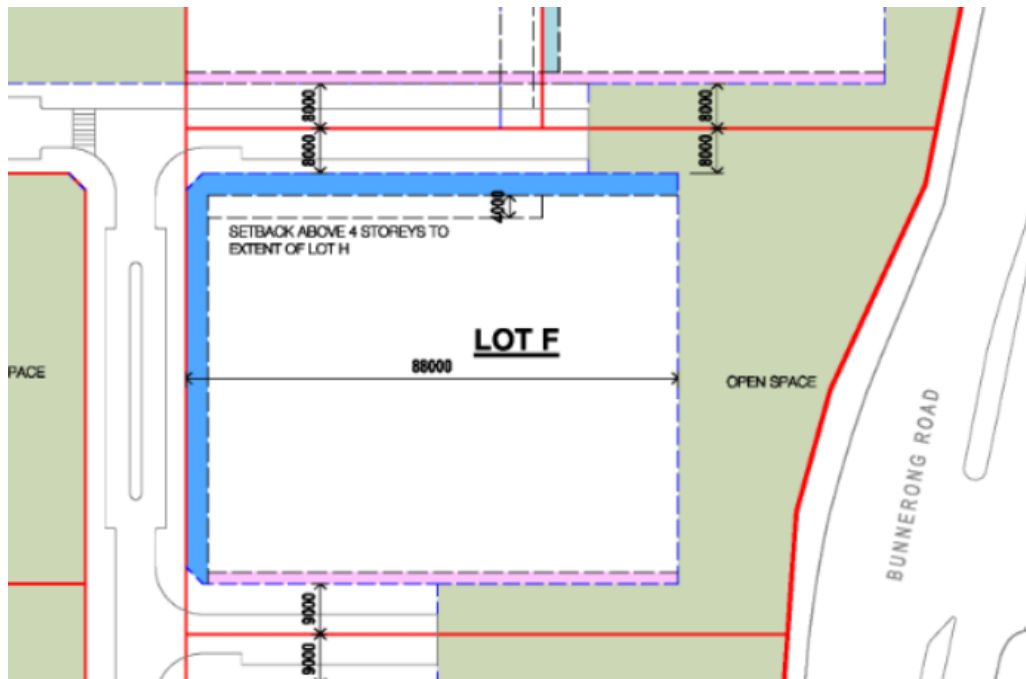


Fig 9 - Setbacks

The proposal complies with the required setbacks and provides appropriate deep soil zones along the frontages of the developable lot to facilitate appropriate landscaped planting and ensure an appropriate interface with the public domain.

Condition 25 – Wind Report

A Pedestrian Wind Environment Statement prepared by Windtech dated July 11, 2024, was submitted with the application. The report nominates recommended wind mitigation measures to protect communal areas and balconies from wind impacts and to improve the amenity of these areas.

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

Condition 26 – Reflectivity Report

A Reflectivity Assessment Report prepared by SLR dated 3 July 2024 was submitted with the application. The report provides an assessment of the reflectivity and glare impact analysis for motorists and pedestrians as impacted by the proposed development.

The report establishes that the geometry of the buildings and the vegetation surrounding the site, would assist in minimising glare to motorists and pedestrians.

However, the report is in draft form and therefore to ensure no impacts, a condition of consent is proposed requiring an updated Reflectivity Report prior to the issue of the Construction Certificate.

Subject to conditions, as recommended, the proposal is satisfactory in this regard.

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. Sufficient turning areas and circles are provided within the site to facilitate access for such vehicles. The proposal is satisfactory in this regard.

Condition 28 – CPTED

The proposal was accompanied by a Crime Prevention Through Environmental Design (CPTED) Assessment prepared by Meriton and dated 8 August 2024. The report identifies elements of the design of the building, including landscaping, fencing, lighting, building design and access control, which are consistent with CPTED principles. The recommendations of the report are proposed as a condition of consent.

Subject to the implementation of the recommendations of the CPTED report, the proposal is satisfactory with respect of CPTED and condition 28 of the Concept Plan.

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 includes the realignment and construction of a private road as required.

The proposal is satisfactory in this regard.

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.

Condition 33 – Public Art

Nil public art is proposed as part of this application. Relevant public art will be the subject of future applications.

Condition 34 – Wayfinding Signage Strategy

Nil detail is required as part of this application with respect of this condition.

Condition 35 – Public Domain Bicycle Parking

This condition requires the provision of publicly accessible bicycle parking within open space areas. The open space areas are not within the scope of Lot F.

Trees – Condition 41

Refer to State Environmental Planning Policy (Biodiversity and Conservation) 2021 Assessment.

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 is satisfactory with regards to the subject conditions of the concept plan.

Condition 42(a) and (b) – Deep Soil Zones

Condition 42(a) and (b) stipulates as follows:

- a. *All site setbacks as depicted in various shades of blue within A0105 Rev 14 — Site Setbacks Plan, with the exception of the 3m setback adjoining Lot J to the west and those identified in Green within A0109 Rev 14— Deep Soil Plan prepared by SJB Architects, shall comprise deep soil zones.*
- b. *Soft landscape treatment with canopy cover is to be maximized within deep soil zones. Deep soil zones shall not be covered by buildings, hard surfacing or structures, except for footpaths / driveways / fire egress leading into / from buildings, plant / services required by relevant service providers and the like, of whose extent shall be minimized. Details shall be determined in Stage 2 Development Applications.*

The above requires the retention of ground level building setbacks as deep soil zones, with such areas not to include hard surfacing or structures, except for areas providing access. Plans as submitted comply with this condition.

Condition 42(c) - Planters

The intent of Condition 42(c) is the incorporation of planters to upper levels of towers above 2-4 storey podium setbacks 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.’

Planters are provided at level 2 podium as illustrated in the elevations. The proposal is satisfactory with regards to this condition.

Condition 45 – ESD

An Ecologically Sustainable Design Report (Issue H), prepared by SLR Consulting, dated 12/08/2022 was submitted with this application. This ESD 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.
Composting facilities	Worm farm available for resident use to be provided within podium level community spaces
Electric Vehicles	100% of all residential parking spaces will be ‘EV Ready’. Publicly accessible EV will be fast charging. 5% of all bicycle parking within the mix-use development –

	excluding bicycle parking within the parkland will have access to electric charging.
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. Refer to the Landscape Report.
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.
Utility lot parking bays for 50% of the additional spaces	50% of the additional parking spaces (over and above the approved rate) will be utility lots, able to be purchased with a unit.

The proposal is satisfactory with respect of this condition and has further been conditioned to ensure the above ESD commitments are delivered as part of the redevelopment of the site.

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.

Condition 47 - Car Parking

The proposal complies with the maximum car parking rates specified within this condition of the concept plan consent and provides suitable carparking numbers on site for the proposed development.

A maximum permissible number of carparking spaces under the Concept Plan for Lot F is 278 and a total of 264 car parking spaces are provided on site. As such, the proposal complies with this condition. Refer to table below. As recommended by Council's engineer, a condition of consent will require minor design amendments to increase the numbers to 268 spaces to improve efficiency in the basement layout.

Category	Development Type	Relevant Development Yield	Approved DA-2019/386/A Parking Rate		Provided
Residential Car parking	Studio/1 bedroom/1 bed + S residential	52	Maximum 1 space per unit	52	264 complies To be increased to 268 spaces via design amendment
	2 bedroom residential	118	Maximum 1 space per unit	118	
	3 or more bedroom residential	54	Maximum 2 spaces per unit	108	
	Residential sub-total for 224 units			Max 278	
	Residential visitors	224 units total	1 space per 20 units	12	12 complies
	Car Wash Bays	290 residential car spaces	1 space per 200 residential car parking spaces (3.5m wide)	2	2 dedicated complies
Car Share	Residential	224 dwellings	1 space per 50 dwellings	5	5 complies
Bicycle Parking	Residential	224 dwellings	1 space per 1.5 dwellings	150 spaces	171 complies
		12 visitor car parking spaces	1 space per 5 visitor car parking spaces	3 spaces	
Motorcycle Parking	All types	290 car spaces	1 space per 15 car spaces	20	20 complies
Service Vehicle	Residential	228 units	4 + 1 per 100 units above 200 units (at least half MRV)	2 MRV 4 Van	2 MRV 4 Van complies

Condition 48 – Loading / Unloading

The development proposes 2 MRV loading bay which is acceptable. On site waste collection is provided. A condition of consent is proposed requiring a Loading Dock Management Plan. Headroom clearance of 4.5m to be provided on ground floor within the parking area inclusive of services.

Under this condition the development would require 4 service bays with 2 bays being able to accommodate a MRV or larger.

Condition 49 – Car Wash Bays

This condition requires the provision of 1 car wash space per 200 car spaces provided. Given a total of 264 car spaces are proposed, a minimum of one car wash bay is required. Plans indicate the provision of 2 car wash bays. The proposal is satisfactory in this regard.

Condition 50 – Car Share

Five (5) car share spaces are provided by the requirements of this condition. The proposal is satisfactory in this regard.

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, to facilitate the simple installation of an electric vehicle charger, if the future owner / occupant has an electric vehicle. This condition further requires that a minimum of one (1) non-residential car space be fully equipped with relevant infrastructure inclusive of a fast charger unit.

The Traffic Impact Assessment report, prepared by Genesis Traffic dated 5 July 2024 submitted with the proposal confirms the commitment to provide all residential car parking spaces EV-Ready. The proposal is satisfactory in this regard and has been conditioned accordingly.

Condition 52 – Bicycle Facilities

This condition requires the provision of bicycle facilities for the residential dwellings and that they be in safe, convenient and well illuminated locations.

A total of 151.7 bicycle spaces as required, and 171 spaces are provided for the development. The proposal is satisfactory in this regard.

Condition 53 – Motorbike Facilities

This Condition requires the provision of 1 space per 15 car parking spaces equating to a minimum of 18.4 spaces. Plans illustrate 20 motorbike spaces, and the proposal is satisfactory in this regard.

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, 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 224 residential units of various sizes and layout to allow flexibility as required by this condition. Further, 46 units are provided as adaptable and 46 units are designed as silver level units, as per the Liveable Housing Design Guidelines.

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.

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.

Condition 57, 58 – Flood Planning and Flood Risk Management

The subject conditions require 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.

The proposal was accompanied by a Site Flood Assessment Report for Lot F prepared by WMA Water, dated 24 July 2024 which concludes that the proposal meets the adopted flood-related planning requirements.

The Flood model has been updated to reflect the changes to the overall grading of the site since the flood modelling was first undertaken in the masterplan, where detailed design for the park was not present.

This report was reviewed by Council's engineers, who advised:

The applicant's floodplain engineer states the FPL (1% AEP + 500mm freeboard) has NOT been met in the development. Varying the 1% AEP + 500mm freeboard requirement for the residential units is not accepted, a design change is required to provide 500mm freeboard which means units G10-G17 and lobby C shall be raised RL23.19m AHD (22.69m + 0.5m).

WMAwater assessed the Stage 2 DA for Lot C, according to best practice guidance from Australian Rainfall and Runoff (Reference 10) and the NSW Floodplain Development Manual (Reference 8) with regards to the following flood related planning controls:

- *Minimum floor level requirements, and*
- *Flood emergency management.*

A flood risk management plan shall be prepared for the development in accordance with condition 58 of DA-2019/386 – it is not voided because of the building design. Flood risk management plan to be conditioned with particular attention placed onto flood awareness.

Condition 59 – Stormwater Management

A Stormwater Management Strategy has been submitted providing on-site detention within the basement. This information has been reviewed by Council's engineers, who advised:

The OSD volume is as per the masterplan which was modified to redistribute volume from LOT G and LOT H to other lots. The OSD design is consistent with the requirements of the masterplan (DA-2019/386).

Some matters associated with the design shall be addressed via conditions. The discharge pipe is to be revised to not traverse through the council park.

The water quality requirements (pollution reduction targets) have not been fully met by a minor amount and the plans are missing the nature WSUD elements in the private road.

Subject to conditions, the proposal is consistent with condition 59 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 which was referred to Water NSW for review.

On 18 September 2024 Water NSW provided their General Terms of Approval (GTA) for the proposal and raised no objections. GTAs 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. \$132,785,999 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 1758557M_03. 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

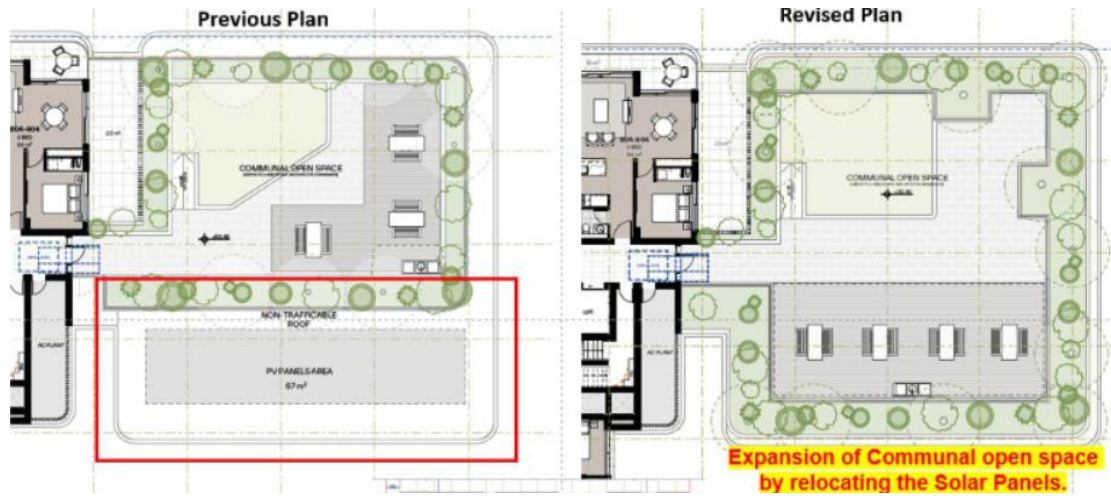
This chapter applies to development for the purposes of constructing a residential flat building, as such it applies to the proposal in Lot F. In accordance with Section 145, before determining a development application, the consent authority must refer the application to the design review panel for advice on the quality of the design of the development. The proposed development has been reviewed by the Bayside Design Review Panel (DRP) on two occasions.

Section 145 Referral to Design Review Panel (DRP)

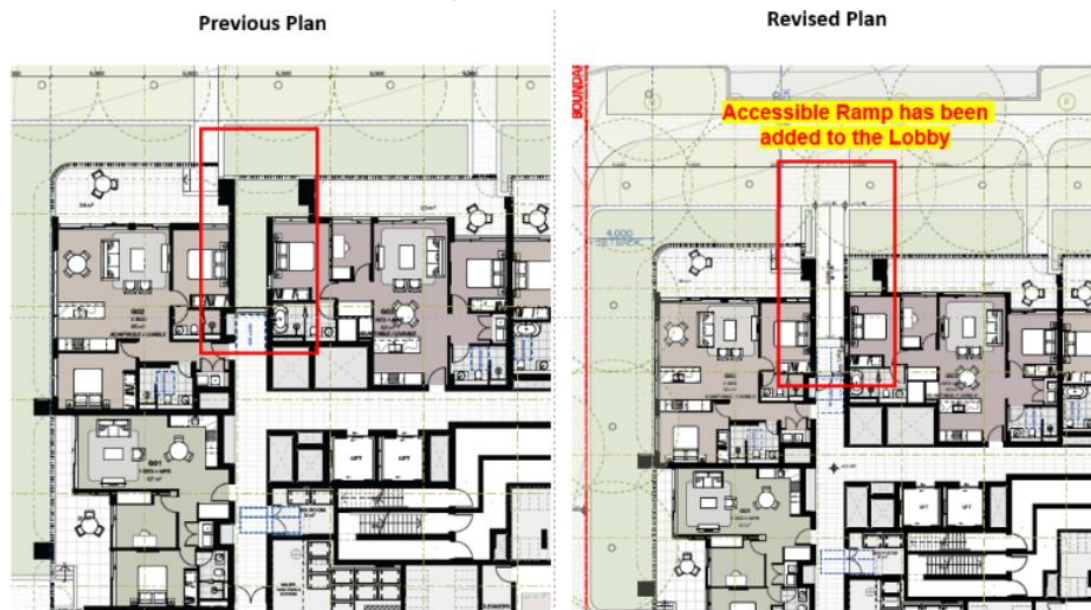
The proposal was considered by Councils Design Review Panel on two occasions, with the final review in February 2025. At its final review the Panel deemed, subject to minor modifications to the scheme that the proposal satisfied the design excellence provisions of

BLEP 2021 and achieves design excellence subject to resolution of the following:

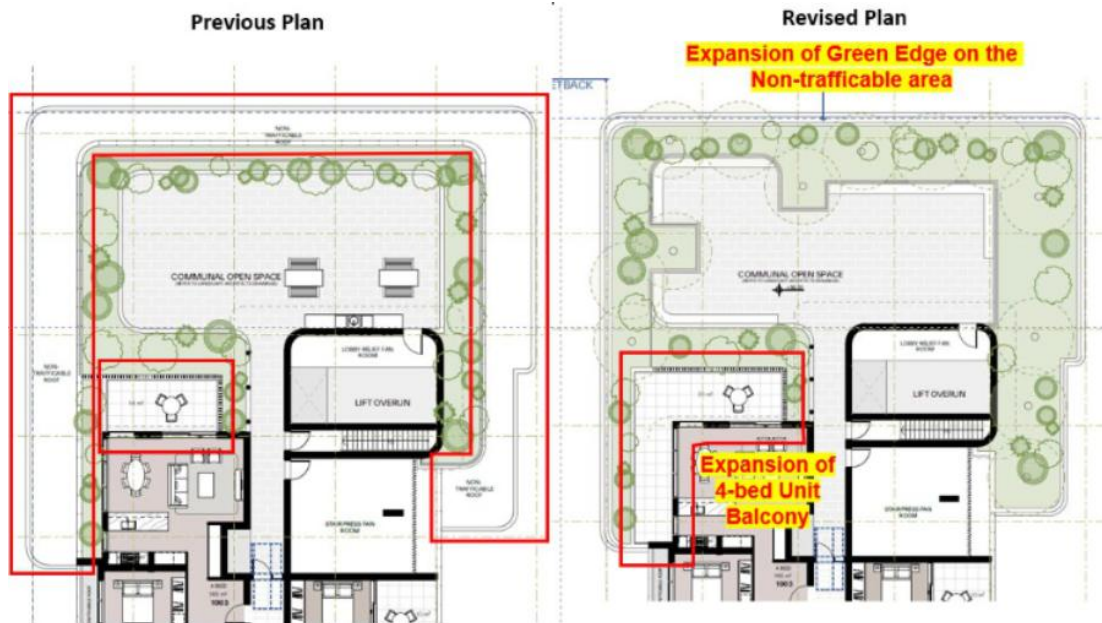
- Relocate solar panels on Level 8 to the roof (L15). This will allow the enlargement of the communal roof terrace on L8.



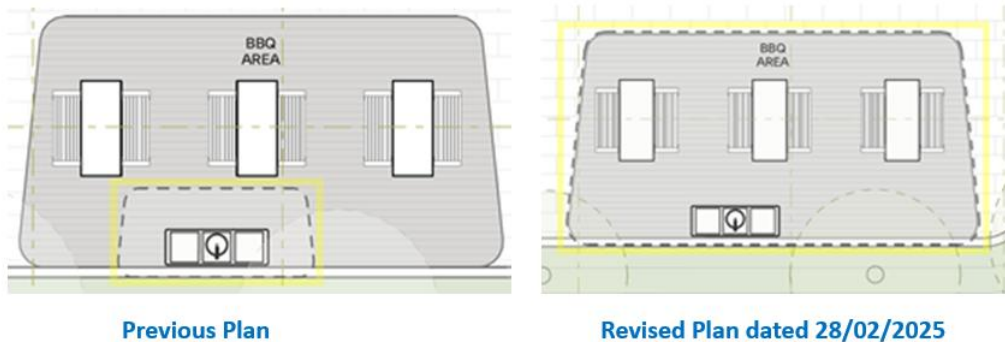
- Add accessible ramp entry into the main lobby from the north (through the gap between unit G02 and G03 if the levels permit).



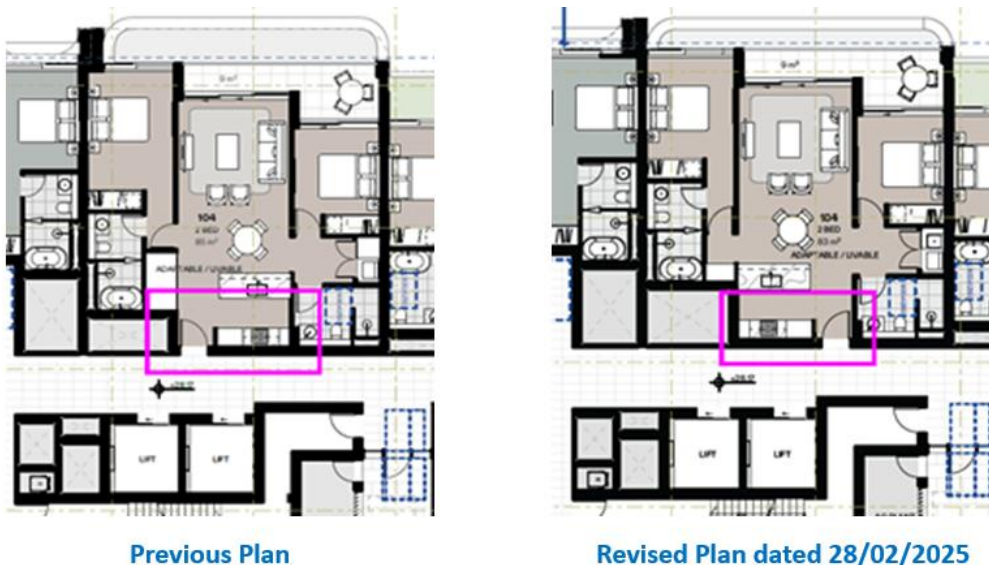
- Balcony of unit 1003 to wrap around the western side of the façade. It could extend into the non-trafficable zone to allow larger balcony depth commensurate with it being a 4-bedroom unit.



- The pergola's over the BBQ's should cover the adjacent seating area in all instances. The plans show small, dashed areas that only seem to cover the BBQ.



- Reposition doorway entries to units that are near lift entry exit access locations



- Provide WC facilities to the communal open space area to Level 6

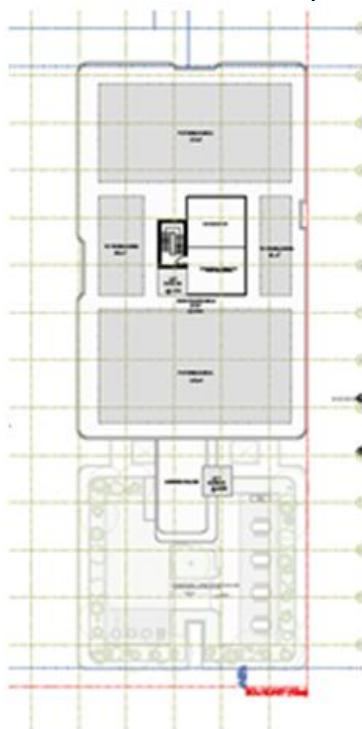
The applicant has provided a justification for not following this recommendation as below:

The Level 6 communal open space is a small area being located towards the top of the building. The area will be used more for short times and from our experience residents will

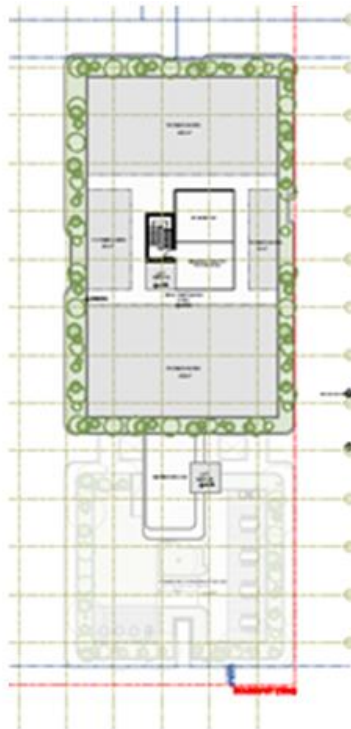
use their own toilet facilities, as the location of this communal open space area will only draw residents from the immediate Level 4-6 at most. In comparison, we have provided WC facilities on Level 1, which contains the principal communal open space area with an outdoor swimming pool, seating, gardens, barbeque areas, landscaped areas, indoor gym and spa facilities. We know demand will be required for toilet facilities on the podium levels where the main communal open space areas are located at podium levels/ground floor levels and not the smaller roof top communal open space areas.

The provision of WC facilities within the Stage 1 of the Pagewood masterplan developments and within Lots A, B, and E of the Stage 2 Pagewood Green precinct did not require the provision of WC facilities on the roof top communal open space areas, and we continue to follow this precedent. In addition to this, we note that there is no requirement for WC facilities in communal open space under Part 3D – Communal & Public Open Spaces the Apartment Design Guidelines, the conditions of the Concept Plan approval, Bayside LEP or DCP. We also bring to your attention that in accordance with the Council's DCP, there are also no requirements to provide WC facilities for communal open space, other than Part 3.7.3 Communal and Private Open Space. Under this provision, the relevant provisions state the following.

- Provide a continuous planter of at least 1000mm soil width to achieve a green edge to the rooftop of the eastern tower currently dedicated to solar panels and services to ameliorate visual impact



Previous Level 7 Plan



Revised Level 7 Plan dated 27/03/2025

Comments:

As shown above, the amended plans have generally addressed the issues raised by the DRP except for the provision of additional WC facilities in Level 6 communal area. It is noted; however, WC facilities are provided in the communal area at podium level as shown below. The justification by the applicant is accepted in this instance.



Level 1 Plan

Section 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.

- a. *the quality of the design of the development, evaluated in accordance with the design principles for residential apartment development set out in Schedule 9,*
- b. *the Apartment Design Guide,*
- c. *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 site is located within the BATA 2 Precinct, and the R4 high density residential zoning. A Concept Plan has been approved for the precinct.

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.

The proposal as designed responds to and provides an appropriate transition in building form, height and typology upon the subject site, taking into account existing, approved and emerging built forms within the BATA 2 precinct.

The development has been designed with façade indentations to provide visual interest and depth, vertical and horizontal elements, solid spandrels, soft curved elements, balcony articulation and fenestration to provide a contemporary building form which is consistent with

the desired future character of the precinct as envisaged by the approved Concept Plan for the site.

Principle 2 – Built Form and Scale

The bulk, form, massing, scale, height, building separation and setbacks of the proposed development are generally consistent with the numerical requirements and objectives established by the Concept Plan approval for the site. The width of the 6-storey building has been reduced to improve solar access to Lot C, reduce the number of south-facing units and create better connection between the podium communal open space and the streetscape. The Panel supported the revised built form, massing and scale of the proposal.

Principle 3 – Density

The proposed density of the development is appropriate and consistent with the Concept Plan approval.

Principle 4 – Sustainability

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. Communal corridors at residential levels are provided with natural light and opportunity for natural ventilation. Sustainable measures such as natural cross ventilation, compliant sun light, lowE glazing and sun shading have been incorporated into the design.

Recommended conditions of consent will require sensor controlled and zoned internal lighting within the building's car park and common areas, use of a mixture 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.

Further to the above, sustainability measures proposed within the development have been previously detailed within *Condition 45 – ESD* of this report. ESD initiatives include the provision of community gardens, solar panels, electric vehicles, car sharing services, bicycle facilities and low-VOC finishes.

The proposal is satisfactory with regards to this principle.

Principle 5 – Landscape

A deep soil area without obstructions has been provided along the western, northern and southern boundaries as required by the Concept Plan. This creates better opportunities for planting of canopy trees and creating a more sustainable environment. Consistent with the DRP recommendations, a condition of consent is proposed requiring the following:

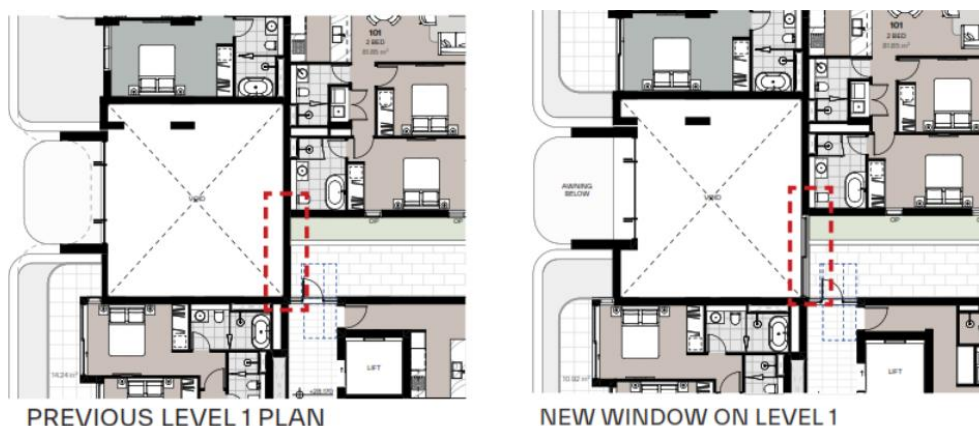
- (i) A minimum 30% canopy cover to be provided within the site.
- (ii) Pathways to adjacent park should be stepping stones to mitigate the disruption to planting areas
- (iii) All landscaped areas on site to facilitate accessible paths of travel
- (iv) Provide for a cohesive mix of Australian endemic, native and low water use plant material
- (v) At least 50% of shrubs and groundcovers used in landscaped areas comprise native vegetation.
- (vi) Provide opportunities for interaction and recreation for a diverse community i.e. herb gardens incorporating, rosemary, sage, thyme and basil.
- (vii) To deliver a variety of pavement treatments, including pervious surfaces, granite pavers, exposed / washed aggregate concrete, composite timber, grass crete etc.
- (viii) To incorporate water sensitive urban design elements i.e. low water and low

maintenance plant species.

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

Principle 6 – Amenity

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, by replacing solid walls with windows as per figure below.



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. frangipani, blueberry ash, crepe myrtle, dwarf magnolia 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 6, 7, 8, 10 and 13. These areas accommodate a community garden and worm farm, small canopy trees, BBQ pavilion and seating areas.

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

Principle 7 – Safety

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 well lit with clearly defined and legible pathways.

The proposed design is satisfactory in this regard.

Principle 8 - Housing Diversity and Social Interaction

A greater number of larger sized apartments has been provided to accommodate a varied demographic and different household types, specifically catering for larger families and family types given the unit mix provided. Future residents will benefit from existing public transport routes and local community facilities.

The proposal incorporates a variety of unit sizes and layout to cater for a wide range of households.

Further to the above, 46 units are provided as adaptable, with level transition between indoor / outdoor areas and sufficient circulation space to accommodate mobility aids. A total of 46 units are also designed as Silver level units, as per the Liveable Housing Design Guidelines. 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. Dwellings as proposed allow for ageing in place.

The development provides well landscaped areas on site, with communal amenities including bbq, kitchenette and toilet facilities, which will encourage social interaction and the wellbeing for future occupants. As recommended by the DRP, the pergola area in the main COS at level 1 has been extended to improve amenity.

The assessing officer is supportive of the proposal regarding this principle.

Principle 9 – Aesthetics

The proposed use of contemporary materials creates a distinctive building within the precinct whilst complementing the character envisioned by the Concept Plan.

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 proposal is satisfactory regarding this principle.

Section 148 Non-discretionary development standards for residential apartment development

This section identifies development standards, which if complied with, prevent the consent authority from requiring more onerous standards. The non-discretionary development standards relate to:

Car parking – Must be equal to or greater than, Part 3J of the ADG – The proposal complies with this requirement.

Internal area – Must be equal to or greater than, the recommended minimum internal area for apartments as specified in Part 4D of the ADG – The proposed apartment sizes comply.

Ceiling heights – Must be equal or greater than, the recommended minimum ceiling heights specified in Part 4C of the ADG – The proposed ceiling heights comply.

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	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	Consistent with the Concept Plan	Yes
	Mailboxes located in lobbies or integrated into front fence	Mailboxes integrated into lobby	Yes
	On sloping sites protrusion of car parking above ground level to be minimised by using split levels to step underground car parking	Basement not visible from public domain	Yes
3D - Communal Open Space	25% of site area(1,892 sq.m.)	38.49% (2,913 sq.m.)	Yes
	50% of principal useable area to receive 2 hours solar access in midwinter 9am - 3pm	All roof top COS receive more than 2 hours solar access in mid winter between 10:00am and 12 noon.	Yes
3E - Deep Soil Zone	15% (1135.2sq/m) of site area Minimum Dimensions 3m	1468sq.m. (19.4%)	Yes
3F - Visual Privacy	<u>Up to 12m (4 storeys)</u> Hab. Rooms / Balconies – 6m	Supported by DRP	Yes
	<u>Up to 25m (5-8 Storeys)</u> Hab. Rooms / Balconies – 9m		
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 the southern 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	Provided as recommended by the Concept Plan		Yes
4A – Solar and Daylight Access	Living rooms + POS of at least 70% (156.8 of 224) of apartments receive min 2hrs direct sunlight b/w 9am and 3 pm mid-winter	174 provided (77.7%)	Yes
	Max 15% (33.6 of 224) apartments receive no direct sunlight b/w 9am and 3pm mid-winter	20 Units apartments (8.9%)	Yes
4B – Natural Ventilation	Min 60% (115.6 of 224) of apartments are naturally cross ventilated in the first nine storeys of the building.	118 apartments (62%)	Yes
	Depth of cross-over / cross-through 18m max. measured glass line to glass line.	Complies	Yes
4C – Ceiling Heights	Habitable – 2.7m Non Habitable - 2.4m	2.7m habitable	Yes
4D – Apartment Size and Layout	1 bed – 50sq/m	Min 63sq.m.	Yes
	2 bed / 1 bath – 70sq/m	Min 80 sq.m.	Yes
	2 bed / 2 bath – 75sq/m		
	3 bed / 2 bath – 95sq/m	Min 100sq.m.	Yes
4E – Private Open Space and Balconies	1 bed – 8sq/m 2m min depth	Min 15sq.m.	Yes
	2 bed – 10sq/m / 2m min depth	Min 10sq.m.	Yes
	3 bed – 12sq/m / 2.4m min depth	Min 12sq.m.	Yes
	Ground level /Podium - min 15m ² / min depth 3m.	Complies	Yes
4F – Common Circulation Spaces	Max apartments off a circulation core on a single level is eight.	Complies	Yes

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

State Environmental Planning Policy (Biodiversity & Conservation) 2021

The SEPP applies to the proposal as the site contains trees of which consent is required for their removal given, they are not exempted by Bayside DCP 2022.

The proposed removal of on-site trees was considered as part of the assessment of the DA for excavation DA-2024/234.

Council's Tree Management Officer reviewed the submitted arborist report for DA-2024/234 and concurred with the recommendation of the applicant's arborist.

To compensate for the removal of trees, conditions of consent are proposed which ensure that trees lost are offset at a tree replacement ratio of 3:1. Accordingly a total of 30 trees at a minimum are to be planted on site. The proposal has been conditioned accordingly and is satisfactory with respect of 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 suitability of the site from a contamination perspective was assessed as part of the excavation development application DA-2024/234. The reports and documents submitted, have been reviewed by Council's environmental scientist who provided the following comments:

The newly supplied Lot 34 RAP addresses Council's concerns about the depth of capping layer to be placed above the asbestos-impacted fill (below SAC) to be relocated to Open Space 07, hence addressing Condition 21 requirements. Relocated fill must not be placed under hardstand or in any other lots. The layer of clean and validated soil must be at least 1.5m in thickness as specified in the RAP. The finished levels of Open Space 07 must be compatible with the adjoining public domain level and the finished level of Lot F construction works. Condition 23 is no longer necessary either as Condition 56 at the completion of excavation and shoring works is sufficient.

Condition 20 is still required, however. The 'Asbestos delineation assessment', according to section 7 of Lot 34 RAP, is pending completion. The test pit investigation must be completed in accordance with WA DoH guidelines and the RAP. An addendum to the RAP must be made presenting the assessment results, and the remediation extent of the RAP must be updated as necessary. The site auditor must endorse the completion of this assessment and any updates to the RAP. In addition, I have removed the 'Asbestos' condition related to site demolition as the pre-existing structures have been demolished.

Following successful implementation of the RAP measures, the site will be made suitable for the proposed mixed-use development and residential land use.

Further, Council's environmental scientist confirmed, no objection to the application subject to compliance with conditions, which have been included in the draft consent.

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 for review. No objections were raised to the proposed development subject to the imposition of conditions, which have been incorporated within the recommended conditions of consent.

2.118 – Development on proposed classified road

The proposal is fronting Bunnerong Road, which is a classified road. IN accordance with this clause, the proposal was referred to TfNSW for concurrence. TfNSW has no objection to the proposed development subject to conditions.

2.119 – Development with frontage to classified road

In accordance with this clause, the proposed vehicular access to the site is from a local road, therefore it can be established that the safety, efficient and ongoing operation of the classified road is not adversely affected by the proposed development.

2.120 – Impact of road noise or vibration on no-road development

The submitted acoustic report have assessed the impacts of traffic noise from Bunnerong Road on the amenity of the apartments. Mitigation measures are proposed to reduce

impacts, which are included as conditions of consent.

The application is consistent with the provisions of the SEPP and is acceptable in this regard.

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 accommodation / Centre-based child care facilities permissible with consent	Yes
4.3 – Height of Buildings	Part 37m (Buildings B and C) and Part 69m (Building A)	Building A - Max RL 72.6 (lift) = 49.74m high Building B – Max RL 50.130 (top of stairs) = 27.27m high Building C – Max RL 48.97 (lift) = 26.11m high	Yes Yes Yes
4.4 – FSR	Concept Plan 2.35:1 Lot F 0.25:1 or 22,500sq.m.GFA	22,500sq/m GFA proposed. 2.97:1 proposed Lot F	No CI 4.6 submitted
5.10 – Heritage Conservation	To conserve the environmental heritage of Bayside	Lot F is unlikely to result in any adverse impact upon the heritage item Jellicoe Park 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 – conditioned.

Clause	Requirement	Proposal	Compliance
6.2 – Earthworks	Ensure earthworks will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land.	Conditions of consent have been imposed to ensure minimal impacts on the amenity of surrounding properties, drainage patterns and soil stability. The proposal meets the objectives of this clause.	Yes
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 max RL 72.6 AHD Proposal conditioned accordingly.	Yes
6.10 - Design Excellence	Deliver the highest standard of sustainable architectural and urban design.	Waiver to design competition granted. Design Excellence confirmed by Councils Design Review Panel	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.	Yes
6.17 - 128 Bunnerong Road, Pagewood and 120 Banks Avenue, Eastgardens—general	Specifies requirements to be considered by the consent authority	Lot F has no allocation of non-residential floor area. The proposal complies.	Yes

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 which constitutes a permissible development only with development consent.

The objectives of the 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.

4.3 - Height of Buildings

Lot F is subject to a split height development standard as shown on the extract of the LEP below. The western side of the site is restricted to 69 metres (buildings A and B) and the eastern side is restricted to 37 metres (Building C).



In accordance with the BLEP, Buildings A and B achieve a maximum height of 47 metres and Building C has a maximum height of approximately 26 metres. As such, the proposal complies with the relevant height standard.

4.4 – Floor Space Ratio

A maximum FSR standard of 2.35:1 applies to the overall Concept Plan site. However, the allocation of FSR for Lot F under the Concept Plan is 0.25:1 with an allowance of 24,010sq.m. GFA. However, the proposed FSR is 2.97:1 with a maximum gross floor area of 22,500sq.m.

Whilst the proposal complies having a maximum GFA of 22,500sqm, the FSR standard has been varied. Refer to the Clause 4.6 contravention request assessment below.

4.6 – Exceptions to development standards

As stated above, the overall FSR for the Concept Plan site is 2.35:1. Lot F indicative site area was 10,702sq.m., the GFA allowance was 24,010sq.m. and a FSR of 0.25:1. However, following the subdivision of the whole site to allow for the construction of roads and parkland, the site area of Lot F was reduced to 7,568sq.m. Keeping the GFA allocated

under the Concept Plan, means that the proposal's FSR would vary. With a GFA of 2,500sq.m (less than the indicative under the Concept Plan), the resulting proposed FSR is 2.97:1.

The applicant has submitted a Clause 4.6 contravention request (refer to attachment to this report). In their submission, the applicant cites case law relevant to Cl4.6 including the judgements in *Baron Corporation Pty Ltd v Council of the City of Sydney* [2019] NSWLEC 61, *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130 and *Al Maha Pty Ltd v Huajun Investments Pty Ltd* (2018) 233 LGERA 170 [2018] NSWCA 24.

Clause 4.6(3) of the BLEP 2021 requires consideration of the submission by the applicant, specifically:

4.6(3)(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances, and
4.6(3)(b) there are sufficient environmental planning grounds to justify the contravention of the development standard.

The submission by the applicant is assessed as being appropriate within the parameters of Cl4.6 in that the requirements in 4.6(3) have been adequately addressed.

As stated by the applicant, the contravention to the FSR development standard is the result of the land subdivision of the BATA 2 site. Nevertheless, the proposal complies with the gross floor area stipulated in the Concept Plan.

As held by the LEC in *Wehbe*, compliance with the development standard is unreasonable or unnecessary if the:

1. Objectives of the development standard are achieved notwithstanding the non-compliance
2. Underlying objective or purpose is not relevant to the development
3. Underlying objective or purpose would be defeated or thwarted if compliance was required
4. Development standard has been virtually abandoned or destroyed by the council's own actions in granting consents departing from the standard
5. Zoning of the land on which the development is proposed was unreasonable or inappropriate

I concur with the applicant's statement that the objectives of the FSR control have been met, notwithstanding the 'technical' non-compliance. The proposal does not exceed the anticipated density and intensity of land use. Further, the proposed bulk and scale is compatible with the desired future character as envisaged by the Concept Plan approval.

In addressing Cl4.6(3)(b), the applicant argues that there are sufficient environmental planning grounds to justify contravening the development standard as the proposed development:

- Complies with the maximum GFA anticipated in the Concept Plan
- Provides generous landscaping throughout the site
- Delivers a building envelope which is compliant with the Concept Plan
- Complies with ADG criteria.

Based on the above, the consent authority can be satisfied that the contravention to the FSR development standard has been adequately justified in accordance with CI4.6 of BLEP 2021.

6.10 – Design Excellence

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.

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(b), if the development is in respect to a building that is or will be higher than 40 metres or 12 storeys, in accordance with (5)(b)(i), a competitive process is to be held in relation to the development and as per 5(b)(ii), the consent authority takes into account the results of the competitive design process.

In accordance with 6.10(6), a competitive process is not required if the consent authority so authorise in writing.

The applicant applied for the competitive process to be waived in this case. Council's Director City Futures confirmed a competitive process was not required subject to consideration by the DRP.

The proposed development was considered on two occasions by Councils Design Review Panel, firstly on 3 October 2024 and secondly on 13 February 2025. At its final meeting, the Design Review Panel recommended minor changes to the development and confirmed the development achieves design excellence.

A detailed response to the criteria under S6.10 is below:

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

Comment: The proposed materiality and use of architectural elements in the façade of the buildings is of a high standard

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

Comment: The amended plans incorporate additional deep soil area. The DRP is supportive of the proposal regarding this criterion.

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

Comment: The proposed building envelope is generally as anticipated by the Concept Plan and has been supported by the DRP.

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

Comment: The proposal is consistent with the conditions of the Concept Plan (acting as DCP in this case) and the relevant clauses in BDCP 2022.

- e) how the development addresses the following matters:

- (i) the suitability of the land for development,
- (ii) existing and proposed uses and unit 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,

- (v) setbacks, amenity and urban form,
- (vi) bulk, massing and modulation of buildings,
- (vii) street frontage heights,
- (viii) environmental impacts such as sustainable design, overshadowing, wind and reflectivity,
- (ix) the achievement of the principles of ecologically sustainable development,
- (x) pedestrian, cycle, vehicular and service access, circulation and requirements,
- (xi) the impact on, and any proposed improvements to, the public domain,
- (xii) achieving appropriate interfaces at ground level between the building and the public domain,
- (xiii) excellence and integration of landscape design.

Comment: As stated above, the DRP considered the above requirements have been satisfied subject to a few minor amendments.

Amendments as noted by the DRP were incorporated in the final rendition of plans. The proposal is consistent with S6.10 of the BLEP and achieves design excellence.

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.

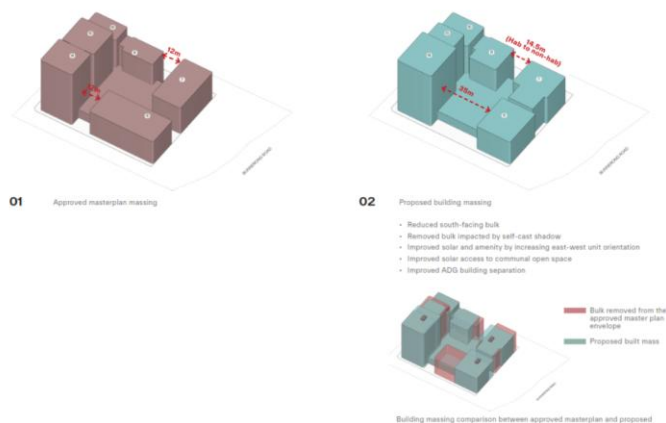
6.16 – Development requiring the preparation of a development control plan

The proposal is consistent with the Concept Plan approval. The following conditions of the Concept Plan are relevant.

Condition 1

The proposal for Lot F is consistent with gross floor area envisaged in the masterplan. The proposed variation to the buildings' envelope has been supported. Refer to diagrams below provided by the applicant. As discussed by the applicant, the proposed variation to the building envelope has the following benefits:

- Reduced south-facing bulk
- Removed bulk impacted by self-cast shadow
- Improved solar and amenity by increasing east-west units
- Improved solar access to communal space
- Improved ADG building separation



The layout of Lot F ensures that all other parameters contained in condition 1 such as parking, open spaces, internal road network and subdivision are delivered as anticipated.

Condition 4 - Approved Plans

Draft plans and documents are generally consistent with plans and documents listed in this condition.

Condition 9 – Design Excellence

The proposal achieves design excellence as confirmed by the Design review Panel.

Condition 10 – Local Contributions

A draft condition is proposed requiring payment of contributions as recommended by condition 10 of the Concept Plan.

Condition 11 – Contamination

The applicant has demonstrated that the site is suitable for the proposed development as required by the SEPP and condition 11.

Condition 12

A maximum of 22,500sq.m. of GFA is proposed as required by the Concept Plan.

Condition 13

Lot F is not identified in the Concept Plan as having non-residential floor space. The proposal is for a residential flat building and therefore complies.

Condition 17

The architectural expression and use of building materials are of outstanding architectural merit and quality. The design of the buildings is supported on design excellence. Additional conditions of consent are proposed to ensure the quality of the building is delivered as expected.

Condition 19 – Ground Level Interface

The amended proposal has removed all structures from the deep soil area on the western elevation. Most ground floor units have direct access to the street. A maximum 1.5m fence height is required as per previous developments. Conditions of consent will be included to ensure fencing is consistent throughout the precinct.

Condition 20 – Finished Ground Floor Level

Structures below open space and northern 4 meters landscape setbacks, have been removed. The proposal complies.

Condition 21 – Height of Buildings

The proposal complies with the stipulated concept plan heights.

Condition 22 – Floor to Floor Heights

Floor to floor heights vary from 3.18m to 3.28m and 3.5m to the last level of the highest tower (Building A). Further the proposed ground floor; floor to floor height is 5.310m.

Condition 23 - Basement Levels

Proposed basement levels are below existing natural ground level as shown on the submitted plans.

Condition 24 – Future Building Adaptability

The design of the buildings in Lot F does not incorporate above ground carparking, as such this condition is not relevant to Lot F.

Condition 25 – Wind Report

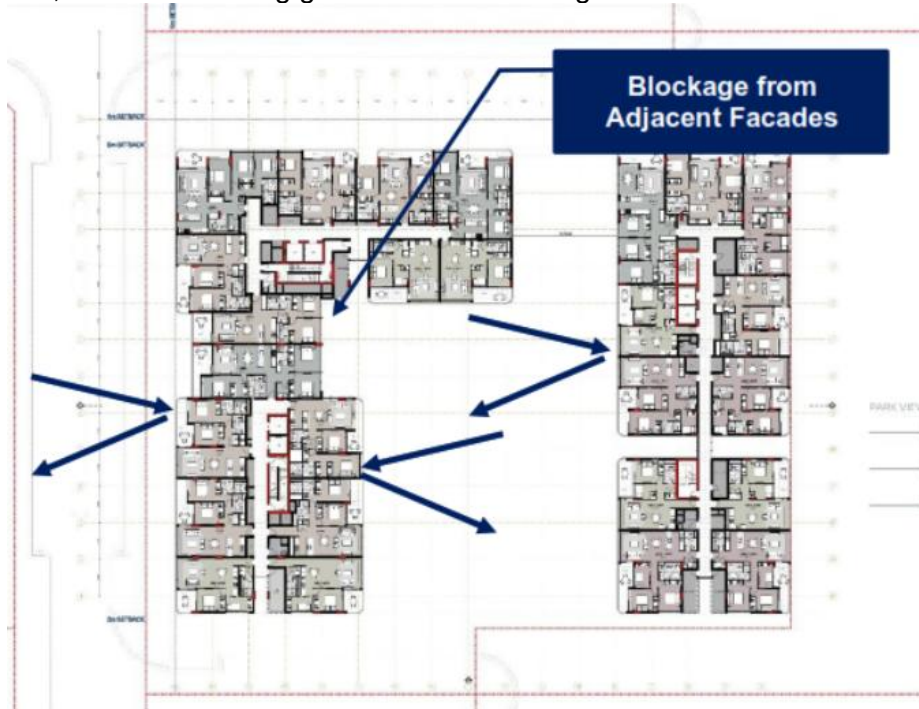
A Wind Assessment Report by *Windtech* was submitted with the application. The report recommends measures to improve the amenity of communal areas. Specifically, the report recommends 1.8m high impermeable screens along the perimeter of all communal areas at roof tops and podium levels.

In addition, a similar screen is proposed for some private balconies as specified in section 5.3 of the Report.

The above recommendations are included in the draft conditions of consent.

Condition 26 – Reflectivity Report

As required by this condition, a Reflectivity Assessment Report by SLR accompanies the application. The report provides a glare analysis and concludes that the introduction of fins, protrusions and shading devices in the façade of the buildings would assist in eliminating the potential for adverse glare. Further, it established that the geometry of facades within the site, assist in blocking glare as shown in diagram below.



Condition 27 – Emergency Services Access & Egress

An Emergency Services Plan has been included in the submission in compliance with condition 27 of the Concept Plan.

Condition 28 – Crime Prevention Through Environmental Design

CPTED principles have been addressed by the CPTED report submitted. The principles recommended in BDCP 2022 have been included. The report identifies the vehicular access to Lot F and the northern and western pedestrian entries via lobbies. However, the report fails to identify the additional lobby fronting the park along the eastern boundary. As such a condition of consent is proposed requiring an update to the CPTED report and consideration of additional measures along the eastern side of the building.

Conditions 29-32 – Public Domain-Services

The proposal complies with these conditions subject to further requirements to be imposed as conditions of consent.

Conditions 33 & 34 – Public Art & Wayfinding Strategy

These conditions are not related to Lot F. Nevertheless, the provision of public art and a wayfinding strategy are subject to future applications.

Condition 35 – Public Domain Bicycle Parking

This condition is not relevant to the subject application for Lot F.

Condition 36 – Public Domain Upgrades

All works within the road reserve, which are subject to approval pursuant to Section 138 of the Roads Act 1993, shall be completed to the satisfaction of Bayside Council at the applicant's expense. Inspection reports for the works on the road reserve shall be obtained from Bayside Council's authorized officer and submitted to the Principal Certifier attesting that this condition has been appropriately satisfied prior to the issue of any occupation certificate for Lots A and D. As such, this condition is not directly relevant to Lot F.

Condition 37 – Public Domain Landscape Plans

The proposal meets the requirements of this condition. Council's landscape architect has recommended additional conditions to ensure compliance with the submitted landscape plan.

Condition 38 – Public Domain External Frontage Works

This condition is not applicable to Lot F application.

Conditions 39-41 – Landscaping

The requirements of these conditions have been satisfied by amended plans and/or conditions of consent.

Condition 42 – Landscape Setbacks / Deep Soil Zones

Condition 42 requires soft landscaping within the setbacks and that "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. The proposal as amended complies.

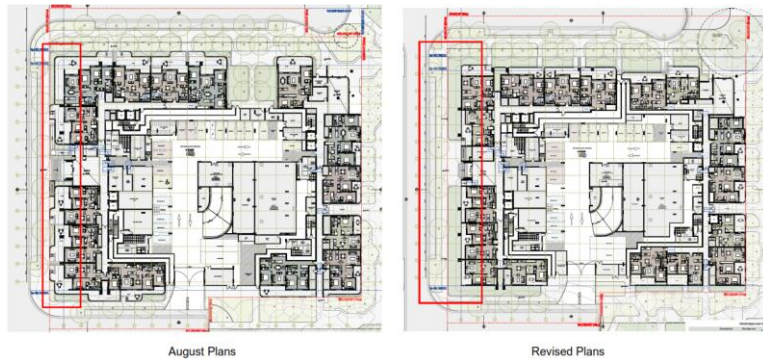
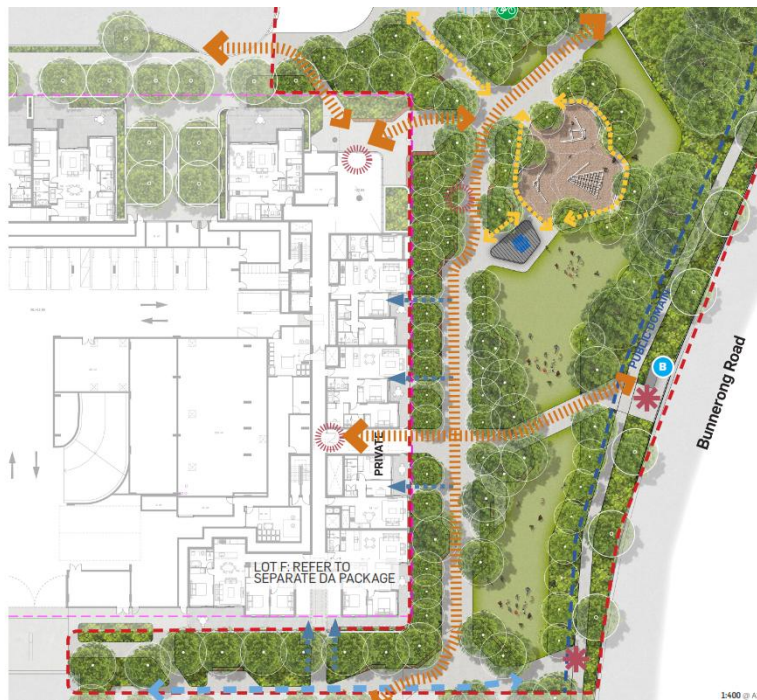


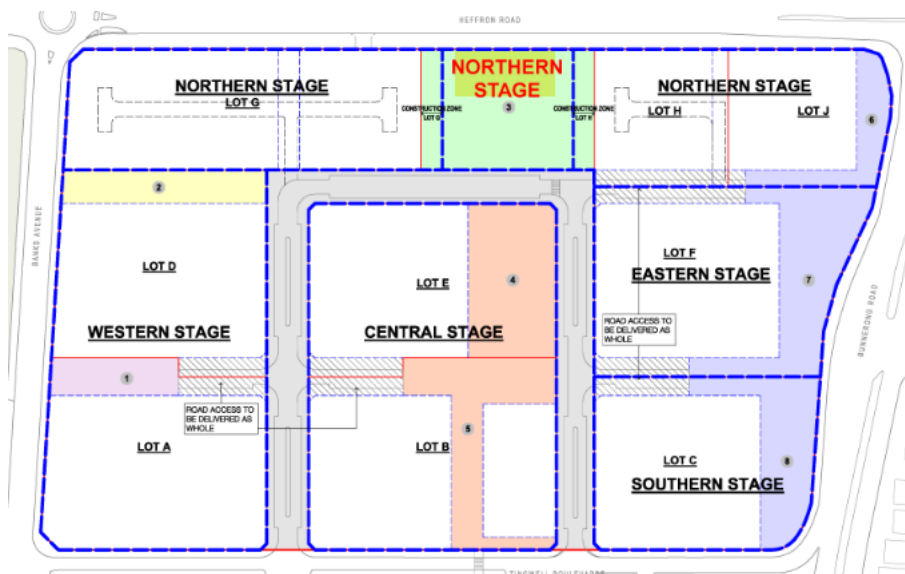
Figure 10: Landscaping within front setback

Other matters - Pedestrian Access – Ground Level Units

Independent pedestrian access is provided to ground level units G01/G02/G03/G05 G09/G10/G11/G12/G17/G18/G19/G20/G21/G22. The park DA is currently under assessment. This is consistent with the Concept Plan as shown below.



6.17 – 128 Bunnerong Road and 120 Banks Avenue, Eastgardens – general



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 sections 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

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

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 Access Report prepared by Design Confidence dated 31 July 2020⁴ confirms that accessibility requirements, pertaining to external site linkages, building access, common area access, sanitary facilities and parking 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 Plan, a Construction Management Plan and an Operational Waste Management Plan have been submitted with the application outlining methods of minimising and managing construction and ongoing waste on site.

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 ground floor plan to facilitate on site collection.

However, Council's waste management officer recommends amendments to the operational waste management to include the following:

- Provide a demolition phase waste management plan, as per Council's Waste Management Technical Specification 2022.
- Provide a construction phase waste management plan, as per Council's Waste Management Technical Specification 2022.
- The applicant must provide a swept path ensuring that council requirements for collection vehicles are met.
- In the Ongoing Waste Management Plan, the applicant has stated that residents will need to "liaise with the building management regarding the transportation of bulky waste items and the availability of the bulky waste storage room", however council requires that the bulky waste storage areas is readily accessible to residents.
- The applicant must provide details of the bin storage rooms, ensuring they meet the requirements outlined in section 4.4 of Council's Waste Management Technical Specifications.

A condition of consent is proposed to address the matters raised above. Subject to compliance with this condition, the proposal is satisfactory regarding waste management.

3.14 - Noise, Wind, Vibration and Air Quality

The proposal was accompanied by an Acoustic Report, prepared by Acoustic Logic dated 18/06/2024. 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.

3.18 - Utilities and Mechanical Plant

Appropriate site facilities are provided within the development on site. The booster assembly is located on the western elevation and is integrated into the building form. Sewer, water and electricity is available for connection and the proposal has been conditioned accordingly. The proposal is satisfactory in this regard.

4.4 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, a contribution of \$4,480,000 applies to the proposal. A condition of consent will ensure payment of the s7.11 contributions in accordance with the Contribution Plan.

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

The Housing and Productivity Contribution (HPC) 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.

4.6 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 F occurs in accordance with the requirements of the executed Planning Agreement.

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

All relevant provisions of the Regulations have been considered in the assessment of this proposal.

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

Shadow Impact to Lot C

The amended footprint ensures a reduction to the overshadowing impact to the southern neighbour. The ultimate impact is not considered unreasonable, and it is what's expected in a high-density area and as anticipated by the Concept Plan.

Construction Impacts

A Construction Management Plan (CMP) has been submitted. Temporary construction-related impacts do affect amenity, and this is partially inevitable from demolition, excavation and constructing new buildings. 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 can be addressed by standard conditions of consent, as recommended, to reasonably manage and mitigate impacts, while allowing rational and orderly construction. The recommendations in the CMP will be incorporated as conditions of consent.

Social impacts

Approval of the development will provide additional housing in an area supplied with adequate services, facilities and public transport, which will deliver amenity and enhanced life style to future residents.

Loading Dock

The Loading Dock Management Plan submitted, outlines the responsibilities of the building manager, contractors and delivery personnel to minimise conflict and mitigate impacts to the residents.

4.9 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.

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

In accordance with Bayside Development Control Plan 2021 the development application was notified to surrounding property owners. Twelve (12) unique submissions were received following the public notification of the original scheme.

Following revisions to plans, the proposal did not require to be re-notified as the amendments do not create additional impacts. A total of 31 submissions were received. The following matters were raised in submissions received during the notification period.

Issue: Inconsistency with approved landscape masterplan – Excessive tree removal, lack of rain and bio-filtration gardens and embellishment beyond wayfinding as required at the south-eastern corner of lot F. Further, reduction in variability and demarcation between different uses and areas within the open space. Further deep soil areas to be included.

Comment: In accordance with the recommendation of Council's tree management officer, the removed trees will be replaced at a ratio of 3:1. Conditions of consent are proposed requiring further detailed design for the public domain works and to ensure the replacement trees are planted as required.

Issue: Lack of articulation in the built form

Comment: The proposed built form has been supported by the DRP. The building is a high-quality building and achieves design excellence.

Issue: Access, Traffic and Parking

Comment: The application has been accompanied by a Traffic Report with analysis of the impact of the development on the surrounding street network. The application has been supported by Council's engineers, TfNSW and the Bayside Traffic Development Advisory Committee. The proposal is consistent with the concept plan and is supported on traffic and parking grounds.

Issue: Infrastructure impacts on Randwick City Council. Whether the level of services at intersections around the development site remains unaffected and parking provisions are sufficient.

Comment: As stated above, the proposal is not found to create additional impacts on the level of service at nearby intersections and complies with on-site parking as per the parking demand rate identified in the Concept Plan approval.

Issue: The development is to provide road access and exit from Bunnerong Road, Heffron Road and Banks Avenue. Relying on Tingwell Blvd as a single traffic channel will cause congestion

Comment: The road network has been identified in the Concept Plan. The proposal is consistent with the Concept Plan approval regarding road layout.

Issue: Impacts on living conditions of existing residents.

Comment: As the proposal is generally consistent with the Concept Plan approval, any impacts are not considered to be significant as to warrant the refusal of the development application on these grounds.

Issue: Impacts on wildlife (birds cannot find a place to nest because of massive development)

Comment: The BATA 2 site Concept Plan was subject to a rigorous strategic planning process. The proposal is consistent with the Concept Plan and does not create additional pressure to wildlife and humans.

Issue: Privacy impacts as the building is in proximity to 8 Studio Drive and safety risks to families.

Comment: The proposal complies with the setbacks stipulated in the Concept Plan and is satisfactory in this regard.

Issue: Loss of natural light and associated consequences such as increased energy costs, potential health issues, decrease in quality of life and property values.

Comment: As above, the building heights are as anticipated by the Concept Plan. The changes to the footprint improve amenity.

Issue: Infrastructure overload will lead to increased accident risks, gridlocked streets, overcrowded and unreliable public transport, compromised pedestrian safety for children and the elderly.

Comment: As stated above, the proposal is supported on traffic grounds.

Issue: A roundabout is necessary at Studio Drive and Tingwell Blvd to improve safety

Comment: This intersection is not relevant to Lot F. However, Council's engineers advised that as part of the public domain design on the southern part of Lot C, improvements to pedestrian safety have been considered.

4.11 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, 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	Comments
Sydney Airport Corporation Limited	Conditions
TfNSW	Conditions
Ausgrid	Conditions
Sydney Water	Conditions
Water NSW	General Terms of Approval

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.

The proposal is supported for the following main reasons:

- The proposal is permissible within the zone with development consent and satisfies the zone objectives.
- The proposed development complies with the relevant environmental planning instruments, except for the height of buildings pursuant S4.3 of BLEP 2021, and the proposed contravention request submitted by the applicant under S4.6 has been accepted.
- The proposal is generally consistent with the Concept Plan requirements which apply to the site, subject to conditions.
- The proposed development has been excluded from a competitive process as the Design Review Panel has supported the design and the development demonstrates design excellence as required by Clause 6.10 of the BLEP 2021.
- 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. RECOMMENDATION

- a) That the Sydney Eastern City Regional Planning Panel, exercising the functions of Council as the consent authority pursuant to s4.16 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-2024/169 for *BATA 2 Lot F – Integrated Development - Removal of trees, excavation, and construction of three (3) 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* at 16 Studio Drive 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: DRP Minutes
- Attachment E: Clause 4.6 – Request by applicant