

COUNCIL ASSESSMENT REPORT

SYDNEY EASTERN CITY PLANNING PANEL

PANEL REFERENCE & DA NUMBER	PPSSEC-339 – DA-2024/152
PROPOSAL	Integrated Development - Demolition of existing structures and construction of a 11 storey residential flat building with 94 units (16 affordable) and 3 levels of basement parking
ADDRESS	41-51 Duncan Street Arncliffe Lot 33 in Section 2 in DP 1633 (No. 41), Lot 32 (No. 43), Lot 31 (No. 45), and Lot 30 in Section 2 in DP 1633 (No. 47) and Lot C in DP 186303 (No. 49) and Lot D in DP 186303 (No. 51).
APPLICANT	T F R Pty Ltd
OWNER	Duncan Street Pty Ltd
DA LODGEMENT DATE	22 July 2024
APPLICATION TYPE	Development Application
REGIONALLY SIGNIFICANT CRITERIA	General Development with an estimated development cost of more than \$30 million.
CIV	\$32,028,277.40 (excluding GST)
CLAUSE 4.6 REQUESTS	No <u>Floor Space Ratio / Height of Building</u> <i>Proposal exceeds the maximum FSR & Height of Building Standards of Bayside LEP 2021 but complies with the bonus FSR controls in the Housing SEPP 2021 thus a 4.6 is not required.</i>
KEY SEPP/LEP	• State Environmental Planning Policy (Planning Systems) 2021 • State Environmental Planning Policy (Resilience and Hazards) 2021 • State Environmental Planning Policy (Housing) 2021 • State Environmental Planning Policy (Transport and Infrastructure) 2021 • State Environmental Planning Policy (Biodiversity and Conservation) 2021 • State Environmental Planning Policy (Sustainable Buildings) 2022 • Bayside Local Environmental Plan 2021 • Bayside Development Control plan 2022.

TOTAL & UNIQUE SUBMISSIONS KEY ISSUES IN SUBMISSIONS	Twelve (12) submissions – all unique
DOCUMENTS SUBMITTED FOR CONSIDERATION	Architectural / Landscape plans, Statement of Environmental Effects, 2 x Clause 4.6 variations, Photomontage, Shadow diagrams, Wind report, Traffic and Parking report, Waste Management Plan, Stormwater plans, Geo-technical report, etc.
SPECIAL INFRASTRUCTURE CONTRIBUTIONS (\$7.24)	Yes
RECOMMENDATION	Approval by way of Deferred Commencement
DRAFT CONDITIONS TO APPLICANT	No
SCHEDULED MEETING DATE	11 December 2025
PLAN VERSION	5 November 2025 Version No. V
PREPARED BY	Michael Maloof – Senior Development Assessment Planner
DATE OF REPORT	24 November 2025

EXECUTIVE SUMMARY

Development application (DA-2024/152) seeks consent for the demolition of existing structures and construction of a 11 storey residential flat building with 94 units and 3 levels of basement parking ('the proposal'). The proposal includes 19 adaptable units (20.2%) and 16 affordable housing units (17%) as part of the overall development.

The site at 41–51 Duncan Street comprises six lots, including a corner lot with a side boundary to Kyle Street, forming a regular rectangular area of 3,070.3m² with five existing vehicle access points to Duncan Street. The site is currently occupied by single-storey dwellings, four detached houses (Nos. 41–47) and a semi-detached pair (Nos. 49–51).

The applicant previously constructed the existing multi storey development on the adjoining property to the west at 2 Kyle Street, Arncliffe (formerly 96-102 Princes Highway) and is proposing to use the vehicular access from Kyle Street. The proposal includes direct access to the adjoining property over the common boundary within the three basement levels. The previous approval on the site did not include the property at No. 41 Duncan Street which has now been purchased and included in the development. As such, an easement is required over No. 41 Duncan Street, and a Deferred Commencement condition has been included in this regard.

The immediately surrounding locality is undergoing transition, with low density two storey housing opposite the site and along lower Kyle Street, and higher density development adjoining and nearby, including mixed use buildings on the Princes Highway, a 10 storey building opposite on Kyle Street, and an 8 storey residential flat building under construction at 35–39 Duncan Street to the north.

The site is located in the R4 – High Density Residential zone pursuant to Clause 2.2 of the *Bayside Local Environmental Plan 2021* ('LEP 2021'). The proposed demolition and the construction of a residential flat building is permissible with consent in the R4 High Density Residential zone.

The principal planning controls applicable to the proposal include State Environmental Planning Policy (Housing) 2021, which contains the Affordable Housing and Design Quality of Residential Apartment Development provisions. The application seeks to rely on the affordable housing incentives under the SEPP, including additional FSR and height bonuses. These matters are discussed in detail throughout this report, and the proposal complies with the relevant provisions of the SEPP.

The provisions of *Bayside Local Environmental Plan 2021* ('BLEP 2021') and *Bayside Development Control Plan 2022* ('DCP') subsequently apply to the proposal.

The following non compliances are highlighted with respect of the proposal.

- Front Setback
The provisions of the Apartment Design Guide require a front setback to be consistent with the established pattern in the street and refers to the DCP. Council's DCP stipulates the same control unless in a special precinct, which in this instance does not mandate a front setback control (Figure 72 built form and Character Map). A front setback of 3m is proposed. An assessment of this variation has been undertaken and is discussed further in this report. The variation as proposed is satisfactory in the circumstances.
- Ground Level POS to Duncan Street
The proposed increase in the size of private courtyards along Duncan Street, which subsequently reduced the extent of landscaped front setback, shall be amended to allow for increased deep soil planting along the street frontage. This requirement has been addressed through a condition of development consent and
- Waste Management
Waste management shall be managed through the basement levels of the adjoining building to the west at Nos. 96-102 Princes Highway and be limited to low height trucks being privately operated on the site. This has been addressed through the imposition of a condition of development consent.

The proposal is Integrated Development as given the proposed excavation depth, penetration of the water table is anticipated during construction, thus triggering a concurrence requirement from Water NSW. General Terms of Approval were issued by Water NSW.

Due to the overall height of the proposal and the site's location below prescribed airspace, the Airspace Operations provisions of BLEP 2021 triggered referral to Sydney Airport. No objections were raised by the authority, and the proposal is satisfactory in this regard.

The application was placed on public exhibition from 2 August 2024 to 2 September 2024, with twelve (12) submissions being received. These submissions raised issues relating to building height, bulk and scale, views, noise, overdevelopment, and privacy, amenity and overshadowing impacts, traffic, manoeuvring and lack of on street parking spaces. The single vehicular access point from Kyle Street with the adjoining building and road safety were issues of concern. These issues are considered further in this report.

A briefing was held with the Panel on 28 January 2025 where key issues were discussed, including the fall of the land, vehicular access to parking via an easement over the adjoining property, building setbacks varied, floor to ceiling heights, lobby configuration and landscaping and the relocation of open space to the roof top terrace.

The key issues associated with the proposal included:

1. *Permissibility* - The proposed residential flat building is permissible within the R4 High Density Residential zone under the Bayside LEP 2021.
2. *Urban Design* - The proposed built form has been amended and improved to achieve a sympathetic response to the existing and desired future context. The building facades will make a positive contribution and provide visual interest to the existing streetscape character. Front setbacks are well landscaped and comply with the minimum setbacks while the proposal does not have a driveway as it achieves vehicular access through the basement levels from the adjoining property to the west. The proposal includes appropriate communal open space on the podium level at the rear which has a pedestrian access gate to the open space on the adjoining property to the west at Nos. 96-102 Princes Highway.
3. *Floor Space Ratio* - The proposal exceeds the maximum FSR control under the Bayside LEP 2021 but complies with the bonus FSR controls in the Housing SEPP 2021 for the property at Nos. 41-51 Duncan Street. In this regard, a variation under clause 4.6 of the Bayside LEP 2021 is not required. The bulk and scale of the proposal is consistent with the desired future character of the locality, and this is discussed in more detail later in this report.
4. *Traffic and Car Parking* – The proposal shares the vehicular access from Kyle Street through the basement levels of the building on the adjoining property to the west. The proposal includes sufficient on site car parking with 111 spaces, but benefits from an easement over the building on the adjoining property to the west (2 Kyle Street) with vehicular access over the driveway fronting Kyle Street and access through a hole in the basement parking level walls to access the subject site. The proposal has a car parking provision of 111 spaces for the entire use.
5. *Affordable Housing* - The proposed residential flat building includes 16 units or 17% of affordable housing which is permissible in the R4 High Density Residential zone. The proposal generally complies with the requirements of the SEPP (Housing) 2021 in respect to affordable housing and the Design Quality of Residential Flat Development. In this regard, the proposal is acceptable in respect to affordable housing.

Following consideration of the matters for consideration under Section 4.15(1) of the EP&A Act, the provisions of the relevant State Environmental Planning Policies, and the Bayside Local Environmental Plan 2021, the proposal is supported subject to the imposition of conditions of development consent.

Issues relating to the design of the proposed development have been satisfactorily resolved through amendments and the submission of additional information. The proposal includes an 11 storey L shaped building which straddles the corner site, includes affordable housing all over basement parking levels. The site now includes the lot at No. 41 Duncan Street removing the site isolation issue in the previous DA for the site. Technical and other design matters have been satisfactorily addressed as considered in this report. Based on the above, the proposal as currently presented has acceptable outcomes and accordingly can be approved subject to conditions of development consent. Accordingly, based on the above the proposal will include affordable housing, is satisfactory and is in the public interest.

Following a detailed assessment of the proposal, pursuant to Section 4.16(1)(a) of the *EP&A Act*, the development application (DA-2024/152) is recommended for approval subject to the imposition of conditions contained at **Attachment A** of this report.

1. THE SITE AND LOCALITY

1.1 The Site

The subject site is generally rectangular, comprises a frontage of 67m approximately to Duncan Street, length of 49m to Kyle Street and overall site area of 3,070.3m². The site is zoned R4 High Density Residential as identified in red below, adjoining a MU1 Mixed use zone to the rear (purple) and is located in the Arncliffe Banksia Precinct.

The subject site comprises of six regular shaped allotments known as Nos. 41-51 Duncan Street, Arncliffe and has a legal description of Lot 33 in Section 2 in DP 1633 (No. 41), Lot 32 (No. 43), Lot 31 (No. 45), and Lot 30 in Section 2 in DP 1633 (No. 47) and Lot C in DP 186303 (No. 49) and Lot D in DP 186303 (No. 51). The site is located on the north western corner of the intersection of Kyle and Duncan Streets and is behind a tall multi storey mixed use development on the corner of Kyle Street and the Princes Highway.

The site falls from rear (northwest) to Duncan Street (southeast), with an overall fall of between 4m and up to 4.4m. The Kyle Street boundary is currently retained with retaining walls of partly sandstone, and brick. The site is currently occupied by 4 x single storey detached dwelling houses and a pair of semi-detached dwellings at the corner of Kyle and Duncan Streets.

The subject site falls within Class 5 Acid Sulphate Soils area, 15-20 ANEF Contour and within the building height control regulation of 15.24m applies to the subject site. As such the application will need to be referred to Sydney Airport Corporation Limited (SACL) for review. The site is located within a Design Excellence area (Arncliffe Banksia Precinct) but does not contain any items of environmental heritage.

The site is flood affected (1%AEP) and this affects the finished floor level of the building. The site has a history of residential use and contains old dwelling houses which contain asbestos. A Detailed Site Investigation Report has been submitted with the application and is currently being assessed.

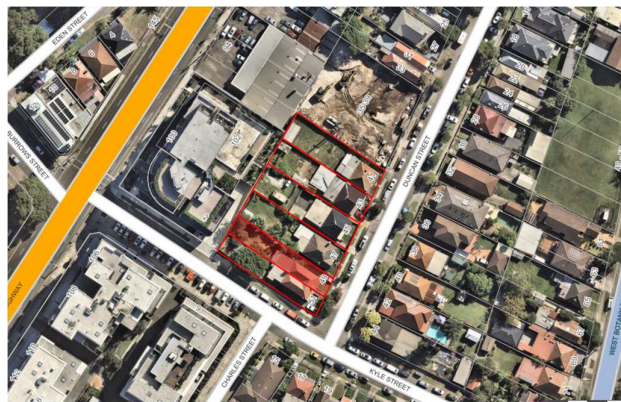


Figure 1 – Aerial photograph of the subject site and surrounds.

There are four trees (T1 to T4) within the rear yard of 49 & 51 Duncan Street, which are proposed to be removed. There are four (4) existing street trees (T7 to T10) within the nature strip at the front of the site in Duncan Street. While these trees could be retained, the applicant discusses their removal and replacement for various reasons. The proposal will include the removal of the four (4) trees from the subject site given they will directly impact

upon the proposal (T1-T3) and most likely not survive (T4). These trees will be replaced and compensatory trees provided on the site.

1.2 The Locality

To the rear of the site is 96 - 102 Princes Highway, Arncliffe (known as Lot 10 in DP 1003743), which comprises a site area of 2,690sq/m. It is located at the junction of Kyle Street and the Princes Highway Arncliffe. Construction has completed on this property in line with the current approval, for the demolition of existing structures and construction of a 9 storey mixed use development comprising 83 dwellings, rooftop communal open space, ground floor commercial space and 2 levels of basement parking, with vehicular access from Kyle Street.



Figure 2 – Extract of the zoning plan from the Bayside LEP 2021

The site is located approximately 250 metres walking distance from the entrance to the Arncliffe Railway Station on the Sydney Trains Eastern Suburbs and the Illawarra Railway Line. Surrounding development is comprised of a mix of residential and commercial uses, as detailed below:

- East - Duncan Street – single / two storey detached dwelling houses.
- North West (Princes Highway) - Industrial/commercial buildings with hard stand areas for car parking.
- South - Kyle Street located immediately south of the site has a mixture of houses and multi storey buildings.
- Further to the south, on the opposite side of Kyle Street is a recently constructed mixed use development of ten storeys with limited setbacks to the street. The development to the south is the result of a Planning Proposal which approved the mixed use development including residential and commercial premises.



Figure 3 – Photograph of 96-102 Princes Highway Arnccliffe viewed from the Princes Highway

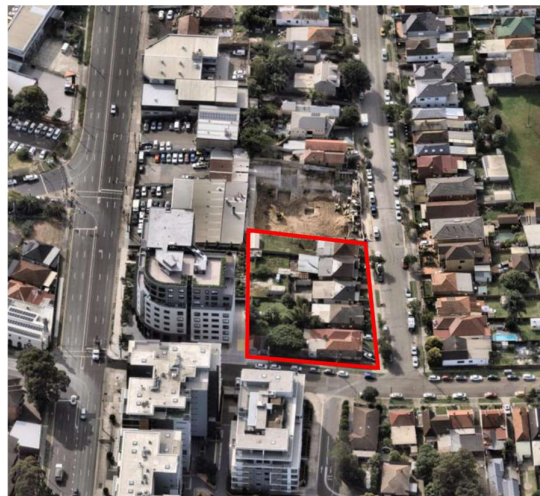


Figure 4 – Northern aerial view of site and surrounds

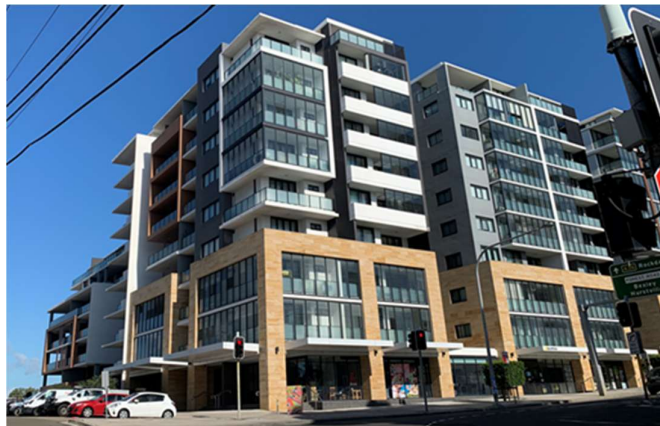


Figure 5 – 108 Princes Highway Arnccliffe to the south on the opposite side of Kyle Street (DA-2016/26).

2. THE PROPOSAL AND BACKGROUND

2.1 The Proposal

The proposal involves the demolition of the existing structures and construction of a 11 storey residential flat building with 94 units and 3 levels of basement parking. A total of 16 of 94 units within the development are proposed to be 'affordable'. The building is proposed in an L shaped configuration to address both street frontages.

The building will contain three basement levels with car parking, storage, lifts, ramps, mechanical plant and services. Each basement level has direct vehicular access from the basement levels of the northern adjoining property at Nos. 96-102 Princes Highway. The upper basement level (labelled as Basement 1 Floor Plan) contains five (5) apartments (4 x 2 bed and 1 x studio) along the frontage to Duncan Street with parking behind given the fall of the land to Duncan Street. This level also contains bin rooms, loading zone, bicycle parking and bulk waste room at the northern end.

The basement 1 floor plan will contain a central lobby accessible for pedestrians from Duncan Street with landscaped and pedestrianised front setback giving legibility and formal entry to the building. The proposal does not seek to provide an independent driveway for the development, this is proposed to be shared with the existing adjoining building at 96-102 Princes Highway. Vehicles enter the basement levels on the adjoining property to the north from Kyle Street.

The lifts on the northern side of the lobby provide access to the residential levels on the upper floors of the L shaped building. The units on the level above (ground level) comprise 8 standard units and 5 x 2 storey units with the latter fronting Kyle Street. The units above, on level 1, comprise 7 standard units with the upper level of the two storey units fronting Kyle Street. The design repeats again on level 2 but with 9 standard units and the lower level of the 2 storey units with 7 standard units and the upper levels of the 2 storey units on level 3. This repeats again on levels 4 & 5. Level 6 has 9 standard units and the lower level of 5 x 2 storey units while level 7 has 3 standard units, the upper level of 5 units and the lower level of 4 more units. Then level 8 has 2 standard units with 5 upper levels of units and 3 lower levels of units fronting Kyle Street. Level 9 contains the upper levels of the 3 units fronting Kyle Street with solar panels, skylights and the lifts in the corner and communal open space with landscaping on the remainder of the level along Duncan Street.

The proposal incorporates 19 adaptable dwellings and 16 affordable units. Affordable units are G01, G02, G08 to G14, 101, 102, 201, 202, 208, 214 and 302. The affordable units include 5 x 1 bedroom, 10 x 2 bedroom and 1 x 3 bedroom.

The proposal incorporates a communal open space area on the roof top terrace over the building wing fronting Duncan Street and ground level behind the building. The communal open space has a total area of 1,418.3m². The proposal has a deep soil area of 596m² or 25% at the rear of the site. The units on the upper floor have a flat roof however, the development has separate built forms that break up the facades with different roof levels across the site.

The proposal includes the removal of the existing trees on part of the site (four trees from Nos. 47 to 51 Duncan Street T1 to T4) and two trees on the rear adjoining property (T5 and T6) while the three trees on Council's nature strip at the front of the site within Duncan Street (T7 to T9) will be retained. The proposal will include appropriate fencing and landscape planting along the deep soil frontage to Kyle Street. The current proposal does not include subdivision of the site. This is anticipated to be addressed through a subsequent application. The figures below are extracts of the proposal:



Figure 6 - Photomontage of the building from Duncan Street.

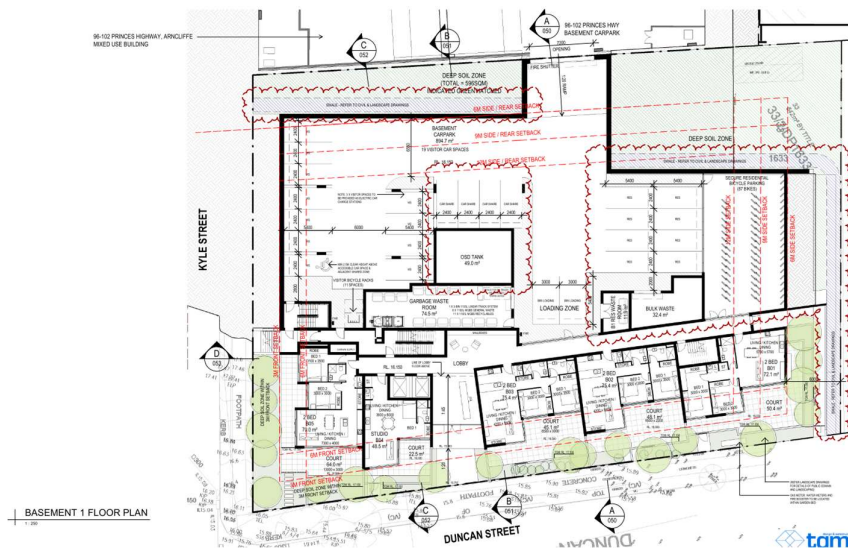


Figure 7 – Basement 1 floor plan of the proposed residential flat development.

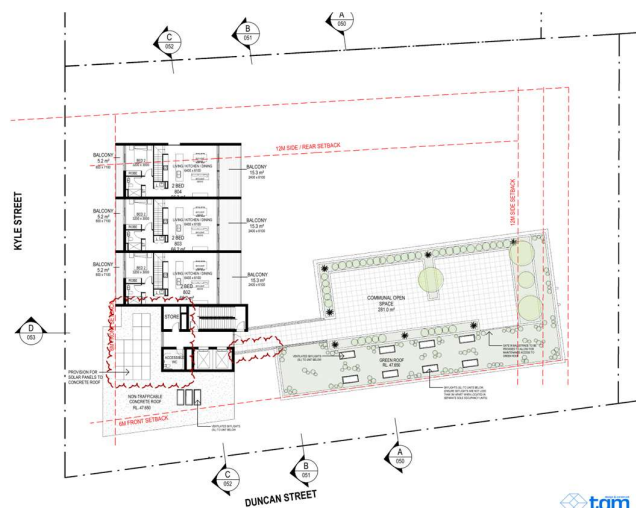


Figure 8 – Level 9 / roof top terrace plan of the proposed residential flat development.

Table 1: Development Data

Control	Proposal
Site area	3,070.3m ²
GFA	8,780.2m ²
FSR (residential)	2.86:1 – complies with SEPP Housing bonus
Max Height	34m – complies with SEPP Housing bonus
Clause 4.6 Requests	No <i>Floor Space Ratio / Height of Building</i> <i>Proposal exceeds the maximum FSR & Height of Building Standards of Bayside LEP 2021 but complies with the bonus FSR controls in the Housing SEPP 2021 thus a 4.6 is not required.</i>
No of apartments	94 residential units (10 x 1 bed, 1 x 1 bed-studio, 68 x 2 bed and 15 x 3 bedroom)
Affordable Dwellings	16 units (17%)
Adaptable Dwellings	19 units (20.2%)
Communal Open Space	1,418.3m ² (46.16%) – complies 279.5m ² – on roof top and 1,138.8m in rear yard
Deep Soil zone	596m ² (25%) – complies
Landscaped area	1,260m ² (41%)
Car Parking spaces	111 car parking spaces – complies 92 residential spaces and 19 visitor spaces 1 dedicated car wash bay 124 Bicycle parking spaces 10 Motorcycle parking spaces
Building Setbacks	4.5m to northern rear boundary 5m-6m to eastern side boundary 3m to western front boundary to Kyle Street 3m to southern front boundary to Duncan Street Increased setbacks on levels 8 and 9

2.2 Background

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

DA-2021/437 – Deferred Commencement granted 11/10/2022. Satisfied 05/04/2023

Construction of an eight-storey residential flat building comprising 60 residential units, podium communal open space, three basement levels and shared vehicular access / egress from Kyle Street with adjoining approved development (DA-2018/326) at 96-102 Princes Highway.

Note - This application did not include the property at No. 41 Duncan Street (which has now been included in the current application).

The subject development application was lodged on 22 July 2024. A chronology of the development application since lodgement is outlined below including the Panel's involvement (briefings, deferrals etc) with the application:

Table 2: Chronology of the DA

Date	Event
22 July 2024	DA lodged
2 August 2024 to 2 September 2024	Exhibition of the application
12 August 2024	DA referred to external agencies
31 October 2024	Design Review Panel meeting #1
8 November 2024	Site Inspection
11 November 2024	Request for Information from Council to applicant
19 December 2024	Additional information and amended plans submitted
28 January 2025	Regional Panel briefing
4 February 2025	Internal referrals received
17 February 2025	Additional information requested from the app for Council's Development Engineer
19 February 2025	Stormwater plans received from the applicant
20 March 2025	Additional information and final plans received from applicant
20 March 2025	Extension of time request from applicant to submit hydrogeological report to Water NSW
25 March 2025	Referral response received from SACL approving building height at RL 58.0m AHD
25 March 2025	Letter from applicant with development statistics
3 April 2025	Design Review Panel meeting #2
8 April 2025	Email to applicant requesting hydrogeological report information.
1 May 2025	Email to applicant with DRP minutes
5 May 2025	Hydrogeological report received by Council from the applicant. Council referred it to Water NSW on the same day and requested assessment.
19 May 2025	Referral response received from Sydney Water
6 June 2025	Referral response internal Landscape Architect
26 June 2025	Extension of time request from application to Water NSW for submission of the hydrogeological report
3 July 2025	Submission of hydrogeological report from applicant to Water NSW
4 August 2025	GTAs issued by Water NSW for the site
8 October 2025	Referral response internal Development Engineer
31 October 2025	Applicant confirmed he is working on the plans

Date	Event
6 November 2025	Amended plans lodged on the Planning Portal along with information to address the DRP minutes.

2.3 Site History

There are no concurrent applications currently being considered by Council.

The site is linked to the adjoining property to the north via basement access and shared driveway access along Kyle Street. The development will be built by the same developer who will provide the shared vehicular access.

The current proposal includes the lot at No. 41 Duncan Street which was not part of the previous DA on the site (DA-2021/437).

3. STATUTORY CONSIDERATIONS

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

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

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

- Integrated Development (s4.46)
- Requiring concurrence/referral (s4.13)

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

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

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

The following Environmental Planning Instruments are relevant to this application:

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

A summary of the key matters for consideration arising from these State Environmental Planning Policies are outlined in **Table 3** and considered in more detail below.

Table 3: Summary of Applicable Environmental Planning Instruments

EPI	Matters for Consideration	Comply (Y/N)
State Environmental Planning Policy (Biodiversity & Conservation) 2021	<u>Chapter 2 - Vegetation in non-rural areas</u> The proposal involves tree removal from the site and adjacent nature strip along Duncan Street	Yes
State Environmental Planning Policy (Sustainable Buildings) 2022	No compliance issues identified subject to imposition of conditions on any consent granted.	Yes
State Environmental Planning Policy (Housing) 2021	<u>Chapter 2: Affordable Housing</u> Infill affordable housing <u>Chapter 4: Design of Residential Apartment Development</u> • 145(2) – Referral to the DRP for review • 147(1) - Design Quality Principles - Proposal is consistent with design quality principles and ADG requirements.	Yes
State Environmental Planning Policy (Planning Systems) 2021	<u>Chapter 2: State and Regional Development</u> • General development in excess of \$30 million.	Yes
SEPP (Resilience & Hazards)	<u>Chapter 4: Remediation of Land</u> • 4.6 – Site Suitability Proposal is satisfactory subject to conditions.	Yes
State Environmental Planning Policy (Transport and Infrastructure) 2021	<u>Chapter 2: Infrastructure</u> • 2.122 - Traffic-generating development • 2.48 - Works within the vicinity of electricity infrastructure	N/A Yes
Proposed Instruments	No compliance issues identified.	Yes
Bayside LEP 2021	• 2.3 – Permissibility and zone objectives • 4.3 – Height of Buildings • 4.4 – Floor Space Ratio • 5.21 – Flood Planning • 6.1 – Acid Sulphate Soils • 6.2 – Earthworks • 6.3 – Stormwater and WSUD • 6.7 – Airspace Operations • 6.10 – Design Excellence	Yes

EPI	Matters for Consideration	Comply (Y/N)
	• 7.1 – Public Utility Infrastructure	
Bayside DCP 2022	• 3.15 – Views • 3.5 - Transport, Parking and Access • 3.7 - Landscaping, Private Open Space and Biodiversity • 3.12 - Waste Minimisation and Site Facilities • 3.14 – Noise, Wind, Vibration and Air Quality • 5.2.4 – High Density Residential • 7.4 – Arncliffe and Banksia Precinct	Yes

Consideration of the relevant SEPPs are outlined below.

State Environmental Planning Policy (Planning Systems) 2021 ('Planning Systems SEPP')

Chapter 2: State and Regional Development

The proposal is *regionally significant development* as the proposal is development for a residential flat building which has a capital investment value of greater than \$30 million. Accordingly, the *Sydney Eastern City Planning Panel* (SECPP) is the consent authority for the application. The proposal is consistent with this Policy and is referred to the SECPP for determination.

State Environmental Planning Policy (Biodiversity and Conservation) 2021

The SEPP (Biodiversity and Conservation) 2021 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. As per section 2.6 - Clearing that requires a permit or approval of the SEPP, approval is required for the removal of vegetation upon the subject site.

The proposal seeks to remove two exempt tree species (A & B), four (4) trees from the site (T1 to T4) and four (4) from the road reserve along Duncan Street (T7 to T10).

The application was referred to Councils Tree Management Officer who considered the proposal and raised no objections to the proposed removal, noting that;

- Trees within the road reserve were of poor quality and had limited life span and were therefore not worth retaining.
- The four trees to be removed from the site were located within the building footprint (T1 and T2), provided low significance (T4) and located very close to the footprint such that it would be affected by the development and not retain its ability to survive in the long term (T3).
- While trees on the site included a Weeping Fig (T1), Golden Locust (T2), Jacaranda (T3) and Silky Oak (T4), the proposal includes compensatory tree plantings for the loss of eight (8) trees from the site and public domain.

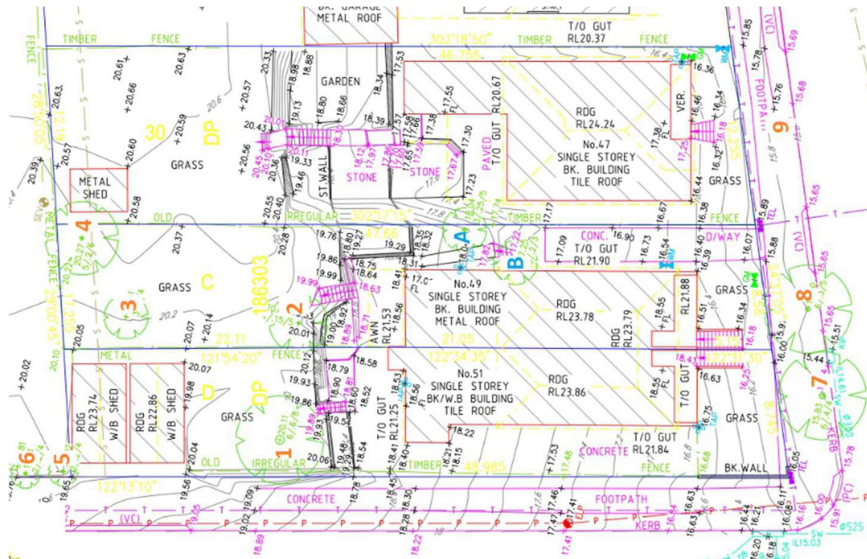


Figure 9 – Extract of the survey plan showing the location of trees in the vicinity of the site.

Given the above, Council's Tree Management Officer has advised the trees nominated for removal in the application can be supported for removal subject to a 3:1 compensatory replacement for all trees resulting in a total of twenty-four (24) new trees for the site. Should the site have insufficient room for this number of trees, the applicant may choose to offset the remaining trees to Council by way of a monetary contribution as outlined in Council's Fees and Charges so it can facilitate replacement planting in Public Land. The proposal has been conditioned accordingly and is satisfactory in this regard.

State Environmental Planning Policy (Sustainable Buildings) 2022

State Environmental Planning Policy – Sustainable Buildings 2022 ('SEPP Sustainable Buildings') applies to the proposal. The objectives of this Policy are to ensure that the performance of the development satisfies the requirements to achieve water and thermal comfort standards that will promote a more sustainable development.

The application is accompanied by BASIX Certificate No.1144045M_09 prepared by Integreco Consulting Pty Ltd dated 24 April 2024 committing to environmentally sustainable measures. The Certificate demonstrates the proposed development satisfies the relevant water, thermal and energy commitments as required by the SEPP. The proposal is consistent with the SEPP subject to the recommended conditions of consent.

State Environmental Planning Policy (Housing) 2021 **Chapter 2: Affordable Housing**

13 - Affordable housing—the Act, s 1.4(1)

The proposal has been assessed against the following;

- (1) *In this Policy, a household is taken to be a very low income household, low income household or moderate income household if*
 - (a) *the household—*
 - (i) *has a gross income within the following ranges of percentages of the median household income for Greater Sydney or the Rest of NSW*
 - (A) *very low income household—less than 50%,*
 - (B) *low income household—50–less than 80%,*
 - (C) *moderate income household—80–120%, and*

- (ii) *pays no more than 30% of the gross income in rent, or*
- (b) *the household—*
 - (i) *is eligible to occupy rental accommodation under the National Rental Affordability Scheme, and*
 - (ii) *pays no more rent than the rent that would be charged if the household were to occupy rental accommodation under the Scheme.*

Comment

The applicant has sought to construct 16 affordable housing units (17% of the total 94 units) as part of the overall development. As such, the applicant will comply with the above requirements in the provision of affordable housing. Conditions have been imposed in this regard.

15 - Requirement for imposition of conditions—the Act, s 7.32(3)(a)

Before imposing a condition under the Act, section 7.32, the consent authority must consider the following.

- a) *affordable housing must aim to create mixed and balanced communities,*
- b) *affordable housing must be created and managed so that a socially diverse residential population, representative of all income groups, is developed and maintained in a locality,*
- c) *affordable housing must be made available to very low, low and moderate income households, or a combination of the households,*
- d) *affordable housing must be rented to appropriately qualified tenants and at an appropriate rate of gross household income,*
- e) *land provided for affordable housing must be used for the purposes of the provision of affordable housing,*
- f) *buildings provided for affordable housing must be managed to maintain their continued use for affordable housing,*
- g) *affordable housing must consist of dwellings constructed to a standard that, in the opinion of the consent authority, is consistent with other dwellings in the area.*

Comment

The proposal will provide 16 affordable units within the development scheme that provides a mix of unit sizes, will be available to very low, low and moderate income households and will be managed by a registered community housing provider, in this instance St George Community Housing.

The units will be constructed to an acceptable standard and is consistent with other dwellings in the area. Subject to the imposition of the recommended conditions of development consent, the proposal complies with the above requirements.

15C - Development to which division applies

This division applies to development that includes residential development if;

- a) *the development is permitted with consent under Chapter 3, Part 4, Chapter 5, Chapter 6 or another environmental planning instrument, and*
- b) *the affordable housing component is at least 10%, and*
- c) *all or part of the development is carried out—*
 - i. *for development on land in the Six Cities Region, other than in the City of Shoalhaven or Port Stephens local government area—in an accessible area, or*
 - ii. *for development on other land—within 800m walking distance of land in a relevant zone or an equivalent land use zone.*

Comment

Residential Flat Development is permissible within the R4 High Density Residential zone under the Bayside LEP 2021. The site is located in the Six Cities Region i.e. within the greater Sydney area and within an “accessible area” as defined within the SEPP i.e. within 800m

walking distance to a railway station and 400m of multiple serviced bus stops. Affordable housing is proposed under the provisions of this chapter and includes in excess of 10% of the development. Further, the site is not located within an “*Accelerated TOD Precinct*”.

16 – Affordable housing requirements for additional floor space ratio

The provisions of this clause permit a maximum FSR bonus of up to 30% beyond the LEP standard subject to the provision of a minimum of 10% of the development being set aside for ‘Affordable Housing’. The proposal provides 16 affordable housing units or 17% of the development for the purposes of ‘Affordable Housing’ and thus is subject to these provisions.

$$\text{affordable housing component} = \frac{\text{additional floor space ratio}}{(\text{as a percentage})} \div 2$$

Bayside LEP 2021 limits the floor space ratio (FSR) of development on the site to 2.2:1. However, the Housing SEPP permits a bonus floor space of up to 30% when more than 10% of the units are affordable housing.

In this instance:

Total Proposed GFA for the development = 8,780.2m²

Proposed Affordable GFA for the development = 1,399.1m² (16% based on overall GFA)

Based on the formula above from the Housing SEPP, the FSR control applying is 2.2:1 under the BLEP with a FSR bonus of 30% (0.66:1) resulting in a total of 2.86:1 for the site.

Accordingly, the scheme has an affordable housing component (AHC) that allows an increase in FSR of up to 30%.

Pursuant to clause 16(2) of the SEPP, the proposal is afforded a maximum 30% bonus in FSR which raises the FSR control from 2.2:1 to 2.86:1. The proposal will have a GFA of 8,780.2m² which when compared with a site area of 3,070.3m² results in an FSR of 2.86:1 which complies with clause 16 of the SEPP.

18 – Affordable housing requirements for additional building height

The provisions of this clause permit a maximum height bonus of up to 30% beyond the LEP standard subject to the provision of a minimum of 10% of the development being set aside for ‘Affordable Housing’. The proposal provides 16 of 94 units (17%) of the development for the purposes of ‘Affordable Housing’ and thus is subject to these provisions.

$$\text{affordable housing component} = \frac{\text{additional building height}}{(\text{as a percentage})} \div 2$$

In this instance:

The proposed building height of the development = 33.6m

The proposal benefits from the building height bonus of the Housing SEPP as outlined above. Based on the formula above from the Housing SEPP, the building height control applying is 26.5m under the BLEP with a building height bonus of 30% (7.95m) resulting in a total maximum building height of 34.45m for the site.

Pursuant to clause 18(2) of the SEPP, the proposal benefits from a maximum height bonus of 30% or 7.95m which raises the height control from 26.5m to 34.45. The proposal will have a height of 33.6m and complies with the maximum height control of 34.45m under the Housing SEPP.

Clause 19 - Non-discretionary development standards

The proposal complies with the following requirements under this clause:

- Minimum site area of 450m² – provides 3,070.3m².
- Minimum landscaped area of 30% - provides 1,260m² (41%)
- Deep soil zone (15% site area) – provides 596m² (or 25%)
- Car parking – 108 spaces required under the SEPP and provides 111 spaces.
- Minimum internal areas of units set out by the ADG for the residential development.
- 3 hours of direct solar access to at least 70% of the dwellings

Clause 19 2(d) of the SEPP Housing at the time of writing required that living rooms and private open spaces for at least 70% of the proposed units receive a minimum of 3 hours of solar access between 9am 3pm in midwinter. Whilst the provisions of this clause require a minimum of 3 hours of solar access, the Apartment Design Guide stipulates 2 hours and as such the ADG requirements supersede the 3 hours specified in this clause.

Given the orientation of the site, the design of the buildings, nature in which shadows fall to the south and surrounding context, submitted shadow diagrams confirm that the proposal will achieve natural lighting to more than 70% of the proposed units for more than 2 hours during winter (72.34%).

Based on the above, the proposal is satisfactory with respect of the objectives and requirements of this clause in respect to solar access.

Clause 20 - Design Requirements

As per clause 20 the development cannot be approved unless Council considers whether the design of the residential development is compatible with;

- a) the desirable elements of the character of the local area or*
- b) the desired future character of the precinct, if undergoing transition.*

The design of the proposed development is compatible with the desirable elements of the character of the area in that it will be commensurate in respect to building height and contain sufficient architectural fenestration and high-quality materials and finishes. The design of the development includes a built form that is appropriate for the site, not unlike other multi storey developments in the precinct and consistent with the desired future character of the area.

The site is located within a Design Excellence precinct and has been amended to satisfy the design excellence requirements of section 6.10 of the Bayside LEP 2021. The DRP has supported the application in this regard.

Clause 21 - Must be used for affordable housing for at least 15 years

Under clause 21 the affordable housing development must not be granted unless that the development will operate for a period of at least 15 years. In this regard, a condition has been imposed in the consent and the proposal is acceptable in this regard.

Clause 22 – Subdivision permitted with consent

The proposal does not involve the subdivision of the development, and the proposal is acceptable pursuant to clause 22 of the SEPP.

Chapter 4: Design Quality of Residential Apartment Development

In accordance with this policy, the consent authority must take into consideration the following:

145 Referral to Design Review Panel (DRP)

The application was referred to and considered by the Design Review Panel (DRP) on two occasions, being on 31 October 2024 and 3 April 2025.

The Panel was satisfied that the proposal was an appropriate contextual response and consistent with the intended future desired character of the locality. In this regard, subject to minor changes, the application satisfied the design quality principles contained in SEPP Housing and achieved Design Excellence in accordance with Section 6.10 of the Bayside LEP 2021.

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

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

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

An assessment has been undertaken below.

Principle 1 – Context and Neighborhood Character Panel

The proposal now achieves a positive relationship with context. The basement entry from the adjoining property is commended. While the proposed landscape interface with Kyle Street is generally acceptable, further refinement may reduce the amount of retaining wall infrastructure, which would enhance deep soil and planting potential.

Council

The Kyle Street interface has been revised with the deletion of the first retaining wall such that the finished ground level steps down the site and provides an appropriate interface with the public domain along the frontage. The ground floor plan has been amended along with the southwest elevation plan along Kyle Street. This refinement results in a more suitable front elevation that is contiguous with the topography of the site.

The common open space area within the rear setback has been refined and is more usable now with increased room for planting and landscaping. The proposal has been improved with an increase in landscape planting and better use of the deep soil area.

The precinct is undergoing change, and the proposal is consistent with the desired future character. The proposal responds to the immediate context and the revisions are appropriate for the site. The relationship with the adjoining property to the west has been improved with pedestrian access at ground level and vehicular access within the basement levels.

Principle 2 – Built Form and Scale

Panel

Most, if not all of the previous Panel's recommendations have been adopted - which is commendable. While the built form is significantly improved, the following minor amendments are recommended:

- *neatly integrate an accessible bathroom and kitchenette / storage space to southern side of the core at roof terrace level*
- *slightly increase the width of the glazed bridge connection on all levels above ground; using a parallel geometry and moving the east wall further east could easily result in greater generosity and amenity*
- *slightly amend layouts of Units B01, G02, G03, G13 and G14 (and above) so as to provide formal entries to all units.*

Council

The roof terrace has been improved with more landscaping and improved layout, an accessible bathroom and storage space adjacent to the lift core. While the provision of these rooms at the roof top level improves its usage, it also increases the gross floor area. Notwithstanding, the development complies with the maximum applicable FSR.

The scheme has been amended to include an increased width of the glazed bridge connection which significantly improves its use and better relates the bridge to the geometry of buildings on the site. The improvements to the gap between the two building limbs have increased the usability of the lobby and refined its design.

The revised design includes an altered layout for the units specified above to not only provide a formal entry for certain units but also to allow the end of the corridor to have a window for natural lighting to penetrate the corridor. The revised design includes offset doors (unlike the previous scheme) and improved amenity for the formal front door to each of the specified units. The proposal has been refined in this regard.

Based on the above, the proposal represents a quality solution for the site in terms of its design, arrangement of dwellings and built form and satisfies the matters raised by the DRP.

Principle 3 – Density

Panel

Acceptable.

Council

The DRP raises no objection to the FSR of the proposal. The proposed density complies with the provisions of SEPP Housing and the proposal is acceptable in this regard.

Principle 4 - Sustainability

Panel

Acceptable.

Council

The applicant has specified the sustainable measures within the scheme and increased the provision of photovoltaic panels on the roof. The proposed development includes a range of both passive and active sustainability measures including EV charging spaces, rainwater tanks, natural ventilation and suitable cross flow layout and design. The building has a suitable design with glazing proportions, appropriate window locations and passive shading devices to manage heating and thermal massing. Appropriate balcony locations and balcony overhangs reduce glare with an appropriate southwestern façade design.

A BASIX Certificate submitted with the application (No. 1144045M_11) including commitments to energy and water consumption on the site post construction. This includes the use of photovoltaics on the roof. A condition has been imposed on the consent to ensure that the stipulated requirements are adhered to.

Accordingly, the proposal contains sufficient sustainability measures and is acceptable in respect to energy and sustainability. In this regard, the applicant has complied with the recommendations of the DRP and the proposal benefits from increased energy efficiency. The proposal includes measures that will reduce energy consumption and improve the cost effectiveness of the dwellings both initially and during the life of the project.

Principle 5 – Landscape

Panel

Acceptable generally. See notes above regarding:

- provision of WC and kitchenette store to roof terrace level*
- refinement of interface with Kyle Street*

Council

Council has found the provision of landscaping to be an improvement for the site. The provision of WC and kitchenette / store on the roof terrace has not been provided and was addressed previously in this report. For more information, please refer to bulk form and scale above.

While the recommendations of the panel have been implemented in the latest amended landscape plans for the site, Council's Landscape Architect has found that the increased courtyards to the ground floor dwellings fronting Duncan Street have reduced the width of the landscape front setback along Duncan Street. This has been addressed through the imposition of a condition of development consent requiring a reduction in the size of the front courtyard to increase the provision of landscaping in the deep soil setback. The courtyards still comply with the minimum area required for the dwellings and are acceptable in this regard.

The general arrangement of planting and seating areas within the central common area at the rear of the site has been improved, which will result in increased usage as it includes better levels of landscaping (i.e., groundcover, shrubs, small trees and taller palms all within an improved planter bed arrangement). In this regard, the changes make a considerable improvement to the ground/podium level which will contribute to the use and enjoyment of the common open space area.

The panel asked the designer to further refine the Kyle Street interface to reduce the amount of retaining walls and enhance the deep soil and planting potential. The applicant has amended the plans with a refined frontage to Kyle Street and included larger canopy trees along this frontage within the 3m setback able to mature in deep soil. The variation in the trees species and height will provide differences with the front half of the Kyle Street frontage and add to the landscape element along this frontage. The planter beds now vary in height with the fall to the east along Kyle Street and better relate to the topography of the land stepping down the street. This involves the first 1m being differentiated from the remaining 2m width with planting at different heights and densities. This is detailed in the latest landscape plan (refer to sheet LA04 for the sections). The improvements to the landscape plan are acceptable in this regard.

Notwithstanding the above, conditions have been imposed in relation to soil depths and landscape planting for the scheme. The plans were referred to Council's Landscape Architect who has raised no objections to the proposal subject to the imposition of conditions of consent.

Accordingly, the proposal complies with the requests of the Design Review Panel and Council's requirements in respect to landscaping and is acceptable in this regard.

Principle 6 – Amenity

Panel

Acceptable generally. See notes above regarding:

- *provision of formal entries to all units*
- *provision of WC and kitchenette store to roof terrace level*
- *refinement of interface with Kyle Street*

Council

The revised scheme is considered to have above average amenity with the improvements made to the corridor widths, lobby and communal open space. The proposal meets Council's requirements and those of the panel in respect to amenity and acceptable in this regard.

The three changes noted in point form above have been discussed previously in this report. For more information, please refer to principles 2 and 5 above. Based on the aforementioned, the proposal is a significant improvement over the plans originally lodged with the application, generally complies with the recommendations of the panel and is acceptable in respect to amenity.

Principle 7 - Safety

Panel

Acceptable.

Council

The proposal has been improved in respect to safety and security within the development. In this regard, the proposal includes a design which provides quality public and private spaces with clearly defined areas that are fit for their intended purpose. The proposal has been improved and is acceptable in respect to safety.

Principle 8 - Housing Diversity and Social Interaction

Panel

Acceptable generally. See notes above regarding:

- *provision of formal entries to all units*
- *provision of WC and kitchenette store to roof terrace level*

Council

The proposal has been designed to integrate both the affordable housing component along with the residential apartments. The proposal is consistent with the requirements of the SEPP and will include housing diversity and has been designed to encourage social interaction through the use of the ground floor lobby and common open space areas. The two points above have been addressed previously in this report.

Based on the above, the proposal is consistent with this principle and is acceptable in this regard.

Principle 9 – Aesthetics

Panel

Acceptable.

Council

The application has been improved with respect to aesthetics and external appearance. The panel has not raised objections to the modern design of each façade and its differences to the recently constructed mixed use development to the west fronting the Princes Highway. In this regard, the panel raises no objection to the materials and finishes submitted which add to the diversity of styles in Duncan Street and which is supported by Council.

Based on the above, the revised proposal complies with the requirements of the DRP. Accordingly, the proposal satisfies the requirements of the DRP in respect to aesthetics and is acceptable in this regard.

Design Excellence

The panel indicated support for the revised scheme and confirmed that the amended application achieves Design Excellence in accordance with the requirements of clause 6.10 of the Bayside LEP 2021. In this regard, the proposal is acceptable and subject to the imposition of the relevant condition, no objections are raised with respect to Design Excellence.

Apartment Design Guide

The proposal has been assessed against the relevant criteria of the ADG as follows:

Table 4: The Apartment Design Guide:

CLAUSE	DESIGN CRITERIA	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.	Direct access to the ground floor of the building from Duncan Street steps up 0.3m.	Yes
	Courtyard units to have direct street entry, where appropriate.	Nearly all ground floor units on both frontages have street entry.	Yes
	Front fences / walls along street frontage to be visually permeable and limited to 1m	Appropriate low level fencing is provided along street frontages where appropriate.	Yes
	Mailboxes located in lobbies or integrated into front fence	Mailboxes are integrated inside the lobby with direct entry from Duncan Street.	Yes
	On sloping sites protrusion of car parking above ground level to be minimised by using split levels to step underground car parking	The basement is below ground level, not visible from the public domain and the driveway is from the adjoining property within the basement levels.	Yes
3D - Communal Open Space	25% (767.58m ²)	1,418.3m ² (46.16%) of the site	Yes
	50% (1,535.15sq/m) of principle useable area to receive 2 hours solar access in midwinter 9am - 3pm	>50% of communal open space receives >2 hours solar access in midwinter	Yes
3E - Deep Soil Zone	7% (214.92sq/m) Minimum Dimension 3m	596m ² (25%) - complies	Yes
3F - Visual Privacy	<u>Up to 12m (4 storeys)</u> Hab. Rooms / Balconies – 6m Non Hab. Rooms – 3m	<u>Building Setbacks</u> <u>Front setback to Duncan Street (East)</u> • 3m - Ground up to L6 • 3m at corner and 6m further along Duncan St L7 up to L8 • 6m on L9	No but acceptable (front setback to St) Yes

CLAUSE	DESIGN CRITERIA	COMMENTS	COMPLIES
	Residential – Max 89 spaces Visitor – 19 spaces		
4A – Solar and Daylight Access	Living rooms + POS min 70% (66 of 94) receive min 2hrs direct sunlight b/w 9am and 3 pm mid-winter	72.34% (68 of 94)	Yes
	Max 15% (14 of 94) units receive no direct sunlight b/w 9am and 3pm mid-winter	4.26% (4 of 94)	Yes
4B – Natural Ventilation	Min 60% (56.4 of 94) units naturally cross ventilated in the first nine storeys of the building.	60.6% (57 of 94 units) The applicant (and the plans) indicate a total of 62 of all 94 units (or 65%) have suitable cross ventilation. However, the first nine storeys contain only 57 units in accordance with the control.	Yes
	Depth of cross-over / cross-through 18m max., measured glass line to glass line.	18.0m maximum building depth	Yes
4C – Ceiling Heights	Residential Floor to Floor 3.1m	3.15m – all levels comply DRP requested 3.15m	Yes
	Floor to Ceiling Habitable – 2.7m Non Habitable - 2.4m	2.7m habitable 2.4m non habitable	Yes
4D – Apartment Size and Layout	1 bed – 50sq/m	50.2sq/m	Yes
	2 bed / 2 bath – 75sq/m	77sq/m – 83sq/m	Yes
	3 bed / 2 bath – 95sq/m	96sq/m – 113.6sq/m	Yes
4E – Private Open Space and Balconies	1 bed – 8sq/m 2m min depth	8.1sq/m – 10.4sq/m	Yes
	2 bed – 10sq/m / 2m min depth	10.4sq/m – 14.6sq/m	Yes
	3 bed – 12sq/m / 2.4m min depth	12.1sq/m – 18.4sq/m	Yes
	Ground level - min 15m ² / min depth 3m.	22.5sq/m – 64sq/m	Yes (See Note 2 below)
4F – Common Circulation and Spaces	Max apartments off a circulation core on a single level is eight.	Western end of the L = 8 units. The Northern end of the L = 7 units. Upper levels contain less.	Yes
4G – Storage <i>50% is located within apartment</i>	1 bed - 6 cubic metres	Sufficient storage provided internally with supplementary at basement level.	Yes
	2 bed - 8 cubic metre		
	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

Note 1: Garbage Collection

It is noted that the bin stores and loading area within the basement levels of the proposed building is accessed via the adjoining property on each basement level. The opening to the adjoining property in the basement levels has a maximum height of 3m and therefore does not permit large garbage trucks accessing the site. The proposal will involve private small rigid garbage trucks to collect the waste on the site within the loading dock as this was previously approved on the adjoining property at Nos. 96-102 Princes Highway. In this regard, the proposal is acceptable subject to the imposition of conditions of development consent that will ensure such waste collection continues operating on the site.

Council's Development Engineer raises no objection to the waste collection, and the conditions have been imposed in this regard.

Note 2: Ground Floor Private Open Space

The ground floor units fronting Duncan Street contain large courtyards within the front setback to the street. These courtyards protrude into the minimum required 3m landscaped front setback to the street.

In this regard, a condition has been imposed that will reduce the courtyard to maintain a clear 3m landscaped setback (deep soil) whilst still maintaining compliance with minimum size requirements of the ADG. For example, unit B01 - 50.4m² courtyard which will be reduced to 34m² which remains sufficient and compliant for a two-bedroom unit. As conditioned the proposal is satisfactory.

A condition has been imposed requiring the provision of the 3m landscaped front setback on both street frontages. In respect to Kyle Street, the proposal intrudes 2m into the front setback. However, the scheme will still maintain adequate private open space despite the condition imposed given the ground floor units fronting Kyle Street are two storey and have balconies at the front and rear on the first floor.

State Environmental Planning Policy (Resilience and Hazards) 2021**Chapter 4: Remediation of Land**

The provisions of Chapter 4 of *State Environmental Planning Policy (Resilience and Hazards) 2021* ('the Resilience and Hazards SEPP') have been considered in the assessment of the development application. Section 4.6 of Resilience and Hazards SEPP requires consent authorities to be satisfied that the land is suitable or can be made suitable for the proposed development.

The application was accompanied by a Detailed Site Investigation ('DSI') and Geotechnical Report for the site.

The DSI and Geo-technical Reports were amended (updated) since they were also used in the previous development application (DA-2021/437). The DSI consisted of a search of historical records and a site walkover. This research found that the site did not contain any residual contamination. The subject site contains dwellings houses with no history of commercial or industrial use or potential contaminating activities. Further, the auditor found that no contamination was identified to be present on the adjoining property and was satisfied that there is no potential for migration of contaminants from the site itself.

Given the auditor's reliance on the completion of remediation measures on the adjoining property at 96-102 Princes Highway (Section A2 site audit statement), the continuation of implementation measures and ongoing monitoring of it on this adjoining property (by way of the Long Term Environmental Management Plan or LTEMP), Council's Environmental Scientist recommended planning a control on the consent of Duncan Street prior to the issue of any Construction Certificate. This involved compliance with the previous documents (site

audit statement and LTEMP) which can be achieved through the imposition of similar conditions of consent (as previously imposed on DA-2021/437).

The reports concluded that the site can be made suitable for the proposed development subject to conditions of consent which include compliance with the site audit statement and LTEMP.

Council found that the conditions imposed on any consent granted will effectively mitigate the potential health and ecological risks associated with the future use of the site. The proposal is considered to be consistent with the SEPP, subject to imposition of relevant conditions of consent in relation to a Section A2 Site Audit Statement and LTEMP during construction and throughout the life of the development. Accordingly, the proposal, as conditioned, can comply with the requirements of the SEPP in relation to contamination.

State Environmental Planning Policy (Transport and Infrastructure) 2021

2.122 – Traffic Generating Development

Schedule 3 of the SEPP states that development for residential accommodation that includes 75 or more dwellings and is on land with access to a classified road or to a road that connects with a classified road (within 90m of the connection) is Traffic Generating Development that should be referred to Transport for NSW (TfNSW).

The subject site does not have frontage to a classified road and benefits from existing vehicular access from the basement parking levels of the building on the adjoining property to the west at Nos. 96-102 Princes Highway via an easement and through a hole in the wall on each basement level. In this regard, the site has frontage to Duncan and Kyle Streets which are not classified roads, and the proposal includes 108 car parking spaces to service 94 dwellings. The application was not referred to the TfNSW as the scheme did not fall within the requirements outlined in the first paragraph above.

Notwithstanding, the adjoining property to the west has a driveway along Kyle Street which is approximately 55m away from the Princes Highway (i.e., is less than 90m to a classified road).

The previous development application approved on the subject site (DA-2021/437) for a similar development was referred to TfNSW who raised no objections to the scheme subject to the imposition of one condition of consent (condition 26). The condition required compliance with the relevant Australia Standards for basement access and design, responsibility for all public utility works that may be required, demolition and construction vehicles are to be contained wholly within the subject site and a Road Occupancy Licence (ROL) shall be obtained from Transport Management Centre for any works that may impact on traffic flows around the site.

In considering clause 2.122(4) of the SEPP, TfNSW is normally to be notified of a proposal when the site has frontage to a classified road and any submissions provided by TfNSW are to be considered. In this regard, the comments provided by TfNSW for the previous application have been considered and are still relevant to the current application. In this regard, the same condition of development consent previously imposed (DA-2021/437) shall be imposed on the current development in the draft Notice of Determination.

With respect of traffic generation, the submitted Traffic Report prepared by ATB Consulting Engineers dated 12/03/25 Revision C, concludes that the proposed development would likely generate one (1) additional vehicle trip every 5 minutes during the morning peak periods and every 7 minutes during the evening peak hour periods. This development will result in minor traffic impacts that can be readily accommodated within the surrounding road network. As

such the development is considered supportable from a traffic planning perspective with no external improvements to the road network required.

The above is concurred by Councils Development Engineer, and the proposed development is therefore not anticipated to have a detrimental impact upon the existing operation of the road network and is consistent with the provisions of the SEPP.

2.48 - Works within the vicinity of electricity infrastructure

The application is subject to 2.48 of the SEPP as the development proposes works within the vicinity of electricity infrastructure, along the side of Kyle Street and the opposite side of Duncan Street within proximity to the site.

In accordance with this section the consent authority must give written notice to the electricity supply authority for the area in which the development is to be carried out, inviting comments about potential safety risks, and take into consideration any response to the notice that is received within 21 days after the notice is given.

Accordingly, the proposal was sent to Ausgrid. The authority has responded granting approval for the development subject to conditions of consent, which have been imposed on the draft Notice of Determination. The conditions relate to underground cables in the vicinity of the development, overhead powerlines and new driveways with proximity to power poles. The application is consistent with the provisions of the SEPP and is acceptable in this regard.

Bayside Local Environmental Plan 2021

The relevant local environmental plan applying to the site is the *Bayside Local Environmental Plan 2021* ('the BLEP 2021'). The relevant aims of the BLEP include the following:

- (d) *to encourage sustainable economic growth and development in Bayside,*
- (e) *to create a liveable urban place through the application of design excellence in all elements of the built environment and public domain,*
- (f) *to encourage diversity in housing to meet the needs of, and enhance amenity for, Bayside residents,*
- (g) *to encourage walking, cycling and use of public transport through appropriate intensification of development densities surrounding transport nodes,*
- (h) *to encourage development that demonstrates efficient and sustainable use of energy and resources in accordance with ecologically sustainable development principles,*

The proposal is consistent with these aims as the proposal will increase the residential density of the precinct with design excellence and encourage a range of housing with access to public transport in an efficient and sustainable design.

Zoning and Permissibility (Part 2)

The site is located within the R4 High Density Residential zone (R4) pursuant to Section 2.3 of the LEP (see Figure 9 below). The proposal is a *residential flat development* and is permissible in the R4 High Density Residential zone with Council consent. The proposal is consistent with the zone objectives.

According to the definitions in Clause 4 (contained in the Dictionary), the proposal satisfies the definition of a residential flat building which is a permissible use with consent in the R4 High Density Residential Land Use Table in Clause 2.3.

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

- *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 proposal is consistent with these zone objectives for the following reasons:

- It provides a range of housing types in high density form for the precinct
- It contains a suitable design and external appearance that are not likely to result in any significant adverse amenity impacts on the residential precinct.
- It will enable access to housing and maximum public transport patronage whilst encouraging walking and cycling for residents.



Figure 10 - Zoning extract of the R4 High Density Residential zone of the site (in blue) from BLEP 2021

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

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

Table 5: Consideration of the LEP Controls

Control	Requirement	Proposal	Comply
Height of buildings (CI 4.3(2))	26.5 metres (LEP) SEPP (Housing) permits 30% bonus thus 34.45m maximum	33.6m (RL 50.8 - RL 17.2m) (RL 50.8 roof and lift over-run Kyle St) Duncan Street: RL 48.65 – NGL 17.0 = 31.65m (rooftop balustrade)	Yes Complies with SEPP bonus Yes Complies with SEPP bonus
FSR (CI 4.4(2))	2.2:1 (6,754.66m ²) (LEP) SEPP (Housing) permits 30% bonus or 2.86:1	2.86:1 (8,780.2m ²)	Yes Complies with SEPP bonus
Exception to Development Standards	To provide an appropriate degree of flexibility in applying certain	The proposal benefits from bonuses under SEPP (Housing).	N/A

Control	Requirement	Proposal	Comply
(CI 4.6)	development standards to particular development, To achieve better outcomes for and from development by allowing flexibility in particular circumstances.		
Heritage Conservation (CI 5.10)	The development is to address the impact on any items of environmental heritage on or around the site	The proposal is not likely to result in any impacts on the setting or context of any items of environmental heritage.	Yes – Refer to discussion below
Earthworks (CI 6.2)	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.	The proposal involves extensive excavation within the site to accommodate basement levels.	Yes - Impacts of proposed earthworks have been considered
Acid sulphate soils (CI 6.1)	Works within 500 metres of adjacent Class 1, 2, 3 or 4 ASS and that is below 5m AHD and by which the water table is likely to be lowered below 1 metre Australian Height Datum on adjacent Class 1, 2, 3 or 4 land.	Site is not within 500m of Class 1 to 4 Acid Sulphate Soils (ASS). There are no indicators of any Acid Sulphate Soils and therefore not likely to impact on any adjoining ASS classes. Therefore, an ASS Management Plan is not required as the proposal is unlikely to lower the water table within Class 5 land.	Yes
Stormwater and WSUD (CI 6.3)	Avoid / minimise adverse impact of urban stormwater	Appropriately designed and located On Site Detention proposed to mitigate and manage stormwater. While the system can work, it has a minor issue with the invert level. A condition has been imposed to amend the system and resubmit the stormwater plans at the Construction Certificate stage.	Yes – subject to conditions

Control	Requirement	Proposal	Comply
		WSUD incorporated into development i.e. rainwater to be used for car washing, toilet flushing, irrigation etc	
Airspace Operations (CI 6.7)	To protect airspace around airports. 15.24m AHD	SACL raise no objection to development to a maximum height of 50.8m AHD	Yes
Design Excellence (6.10)	Deliver the highest standard of architectural, urban and landscape design.	The proposal has been redesigned to achieve Design Excellence. Refer to discussion in SEPP Housing section of this report.	Yes
Essential Services (6.11)	Essential services are or will be available	Existing sewer, water, electricity and gas connections are available.	Yes

Heritage Conservation

The proposal is located a reasonable distance from the following five heritage items as detailed below:

21 / 23 / 25 Duncan Street

These properties are positioned 72m direct walking distance to the north of the site. They are identified as a 'stone cottage' and 'paired houses' respectively.

31 Kyle Street

This property comprises a Victorian dwelling house which is located 95m direct walking distance from the northern boundary of the site.

73 West Botany Street

This property is positioned to the east of the site, with a direct distance of 68m from the front boundary of the site in Duncan Street to the rear property boundary of this item. This property comprises a single storey detached dwelling which is proposed to be incorporated into a development at 67-73 West Botany Street, of which Council has at present received a Pre DA.

Given the separation distance of the site to the nearby locally listed heritage items as stated above, it is unlikely that the proposal will adversely impact upon the heritage items themselves or their curtilage. The proposal is satisfactory with respect of the provisions of this clause.

Conclusion

Based on the above, the proposal is considered to be generally consistent with the controls in the Bayside LEP 2021. While the proposal exceeds the height and FSR controls in the Bayside LEP 2021, it complies with the height and FSR bonuses in the SEPP (Housing) 2021. As such, there were no Clause 4.6 Requests submitted with the application.

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

There are no proposed instruments which have been the subject of public consultation under the EP&A Act 1979 (as amended), which are relevant to the proposed development. The proposal is acceptable in this regard.

(c) 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 DCP')

3.15 – Views

The subject site falls to the east and further east are continued falls beyond Marsh Street of 10 to 15m lower than the site. As such, the subject site contains some views to the Kogarah Gold Club, the Cooks River and the western end of the Kingsford Smith Airport. These views are not significant or iconic views as they are quite distant and will eventually be reduced with further redevelopment of the land to the east on the opposite side of Duncan Street and along West Botany Street. In this regard, there are minor views to the north and east of similar high rise residential developments along the Princes Highway and in other directions over the immediately adjoining properties. In this regard, there are some view corridors to the east that will be impacted by the proposal however these do not include any iconic or landmark views.

The proposal will include a residential flat building of eleven (11) storeys along each street frontage which may prevent some overlooking from the existing apartments to the west at Nos. 96-102 Princes Highway. However, all the adjoining properties are zoned for this form of development, and some view intrusion is anticipated.



Figure 11: View of elevations along Kyle Street looking north



Figure 12: Aerial photograph of the site (shown in red) looking west

The proposal is not dissimilar to the building envelope anticipated by the planning controls applying to the site. In this regard, the proposed development is likely to affect some existing views to the east however this is to be expected given the zoning of the land and adjoining lots and given the site is not developed to its full potential. In this regard, the proposal will provide extensive views from the proposed residential units on the upper levels to the north, east and south which will be interrupted by future development in these directions.

The proposal will allow increased views from the site from the proposed dwellings without preventing the retention of some existing views to the north and south from the adjoining property to the west (Nos. 96-102 Princes Highway). As such, the siting of the proposed building is not unreasonable and is consistent with the anticipated development for land within the high-density zoning under the Bayside LEP 2021.

3.5 – Transport, Parking and Access

The proposal is for 94 residential apartments with 16 being affordable housing units which represent 17% of the total 94 units proposed. The proposal has three basement levels which contain 92 residential car parking spaces. The proposal requires ninety (90) car parking spaces and has a surplus of 2 car parking spaces which will be included in the GFA.

The proposal has 19 visitor car parking spaces, 120 bicycle parking and 11 visitor bicycle parking spaces, 10 motorcycle spaces and 2 car wash bays which comply with Council's requirements.

The proposal has 2 van spaces in lieu of 1 MRV medium rigid vehicle space which is an acceptable non-compliance. In this regard, the proposal includes more than adequate on site car parking capable of satisfying the needs of future occupants of the site. The proposal complies with the design and access requirements of Council's DCP and AS2890.1 and is not likely to result in any significant adverse impacts on road safety or the free flow of traffic within both street frontages.

The application was referred to Council's Development Engineer who advised that the site does not benefit from an easement for one lot being that part of the site at 41 Duncan Street. The remainder of the site was provided for in respect to the benefit of an access easement, while No. 41 was acquired by the applicant subsequent to the formation of the easement over

the adjoining property at No. 96-102 Princes Highway. As such, No. 41 does not have the benefit of an access easement, and this has been addressed through the imposition of Deferred Commencement conditions to ensure legal right of access.

The Operational Waste Management Plan submitted with the application relies on a private waste collection vehicle that collects from the SRV loading bay on the adjoining property at Nos. 96-102 Princes Highway. This was previously approved in DA-2021/437 on the adjoining property. In this regard, the current proposal benefits from this arrangement given the access through the basement levels sharing the common driveway on the adjoining property within Kyle Street. The existing easements on 96-102 Princes Highway benefit the site in respect to access and the current proposal relies on the easements for vehicular access. This arrangement was discussed and considered acceptable to continue operating given the subject site does not have any direct vehicular access to either street frontage. Accordingly, conditions are imposed to ensure suitable waste collection can be operated on the subject site.

The proposal will provide sufficient on site car parking capable of satisfying the needs of the future occupiers of the development. Notwithstanding the need for one additional easement for access to benefit No. 41 Duncan Street by way of the Deferred Commencement, the proposal is acceptable in respect to traffic, parking and access and subject to conditions, can comply with Council's requirements in this regard.

3.7 Landscaping, Private Open Space and Biodiversity

The proposal will provide a landscaped area of 1,260m² or 41% and complies with the minimum requirement of 15% for residential flat developments under this clause of the DCP.

The proposal will provide a communal open space area of 1,418.3m² (46.16%) (comprising 279.5m² on the roof and 1,138.8m² in rear yard) and deep soil area of 596m² or 25% of the site which complies with the requirements of the Apartment Design Guide. The proposal contains common open space areas on the podium (level 1) within the rear setback that will provide sufficient landscaped areas for the future occupants of the development. In this regard, the proposal contains deep soil areas capable of accommodating trees and significant landscape elements on the site to soften the proposed development.

The landscaping on the podium level includes a turf lawn and playground areas with planter beds adjacent to the common open area with barbeque facilities. Level 9 of the building will include landscape planters along the front and side of the roof top terrace on the building fronting Duncan Street to provide setbacks from the side of the building and soften the development.

The application was referred to Council's Landscape Architect who raised no objections to the proposal subject to the imposition of conditions of development consent. The conditions related to the planting of trees and landscape beds within each street frontage, details of planter beds for trees to street gardens and the public domain, details to be provided at the construction certificate stage, general landscape conditions and maintenance requirements.

The proposed residential flat development contains private open space areas on the balcony to each of the residential apartments that comply with the requirements of and as discussed in the assessment of SEPP Housing previously in this report.

Based on the above, the proposal is acceptable in respect to landscaping and private open space and complies with the controls in this clause.

3.12 - Waste Minimisation and Site Facilities

Waste storage areas are provided on the basement level 1 for the development which is underground and screened from public domain. The loading zone is on site within basement level 1 for preparation and collection for the proposed development a private waste contractor.

This agreement already exists on the adjoining property (2 Kyle Street) and the proposed development will also benefit from this operation. The bins are not to be collected kerbside and the private waste collector can access the subject site. The application was referred to Council's Waste Management Officers who advised that the scheme would need to comply with Council's Technical Specification – Waste Management 2022, a condition shall be imposed in this regard. Conditions shall also be imposed in respect to Council indemnity and collection processes. Based on the above, the proposal is acceptable in respect to waste collection.

3.14 Noise, Wind, Vibration and Air Quality

The application was accompanied by a Wind Report prepared by SLR Consulting Australia Pty Ltd, dated April 2024 (version 1). The consultant stipulated that in order to ensure tolerable wind conditions are achieved for all trafficable outdoor areas within and around the site, some windbreak mitigation treatments are to be implemented on the site. In this regard, landscaping and tree foliage in communal open space areas (e.g. to the rear), impermeable wind breaks and balcony screens to be retained, seating areas include a pergola above and intertenancy walls can be used along with an increase in balustrade heights for example on the roof top (level 10).

With the inclusion of the recommendations within the final design of the development, the Wind Consultant advised that the overall effect of the proposal on the local wind microclimate with the wind mitigation treatments recommended, are predicted "*to achieve the target Lawson Comfort Criteria*" and safety criterion established for the project. As such, the areas around the development will be acceptable for their intended uses.

The proposal has been conditioned to ensure the above recommendations are implemented on site. Based on the above, the proposal complies with the requirements of this clause.

An acoustic report was submitted with the application which addresses interior noise levels. The report concluded that the proposal would meet the required noise reduction levels based on the aircraft and road noise for the proposed development. A condition has been imposed on the draft Notice of Determination in this regard.

5.2.4.1 Streetscape, Local Character and Quality of Design.

The proposal has been designed to address the local character as detailed in Section 7.4 of the DCP in relation to the Arncliffe and Banksia Precinct. As such, the proposal complies with this provision under part 5.2.4.1 of the DCP.

The proposal has been designed with the street wall parallel to the street boundary alignment. The two building elements fronting each street include a legible front entry lobby with pedestrian accessway above linking the two elements whilst being setback further from the formal frontage. The expanse of walls is broken up with appropriate fenestration, overhangs, blade walls, balconies and architectural features responding to the design excellence criteria applying to the precinct. The two building elements present separately to each street whilst sharing the pedestrian accessway above the entry level.

The development contains a suitable architectural expression that does not result in excessive bulk or scale even though the development comprises similar materials and finishes on each elevation. The facades include sun shading devices, privacy screens and landscape planting to soften the built form.

Based on the above, the proposal complies with the requirements of section 5.2.4.1 of Council's DCP 2022 in respect to streetscape.

5.2.4.5 Solar Access and Overshadowing

Bayside DCP 2022 refers to compliance with the Apartment Design Guide (ADG) with all other development that the ADG does not apply to having to receive a minimum of 2 hours of direct sunlight to habitable areas (family room, kitchen areas) and at least 50% of the primary private open space between 9am and 3pm in mid-winter. In this instance, the ADG applies to the scheme. Compliance with the ADG has been addressed previously in this report.

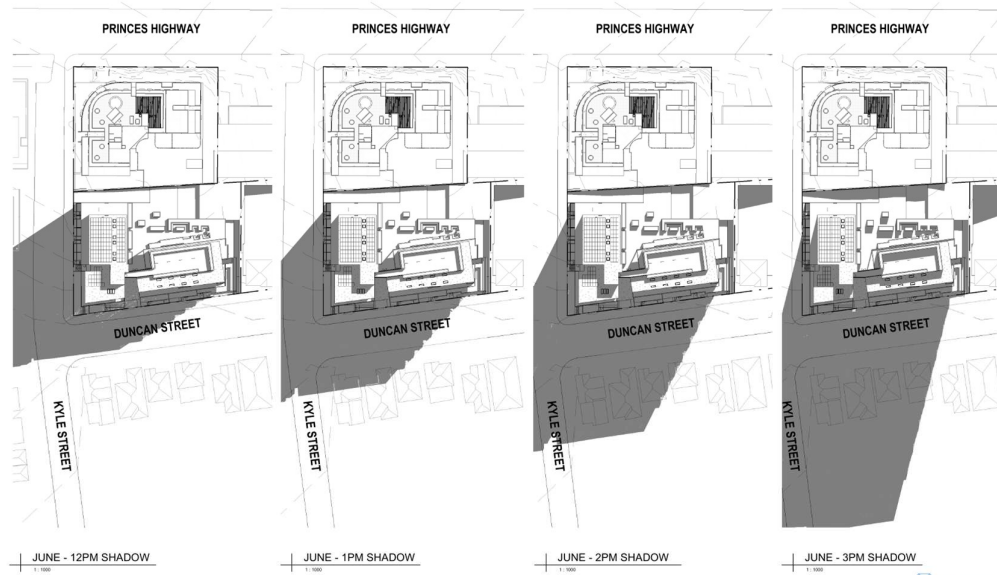


Figure 13: Shadow diagrams showing the afternoon shadow to the southeast affecting the properties on the opposite side of Duncan Street.

The shadow diagrams submitted with the application show that the shadows cast by the proposed development will fall to the south west in the morning and sweep through to the southeast in the afternoon during the winter months. In this regard, the shadows will fall over the adjoining property at No. 9 Kyle Street which contains a ten storey mixed use development located to the southwest in the morning between 9am and 11am. In the afternoon the proposal will cast a shadow to the south east over the opposite side of Duncan Street which contains dwellings between 1pm and 3pm.

The mixed use development will retain access to natural light at the front of the building for at least 2 hours in the afternoon in mid-winter while the dwelling houses on the opposite side of Duncan Street will retain access to natural light for at least 2 hours in the morning. In this regard, the adjoining properties will receive a minimum of 2 hours of direct sunlight to the habitable rooms and at least 50% of the primary private open space areas between 9am and 3pm in mid-winter.

The applicant has stated in the SEE (under the DCP section 4.8) that the minimum 2 hours of direct sunlight required for the adjoining properties is not applicable, as the ADG applies to the development. Further, the adjoining properties are either existing or under construction mixed use and residential developments. Notwithstanding this, the proposal will retain a minimum of 2 hours to the adjoining properties to the southeast as the shadow cast by the development will only affect them after 1.30pm in the afternoon in mid winter.

The proposal will result in an overshadowing impact which is compliant and is to be expected given the proposal is a compliant development. The degree of overshadowing is largely a result of the orientation of the site and complies with Council's controls in this instance. The

extent of overshadowing is not a result of poor design, and it has been confirmed by the DRP that the design exhibits design excellence.

Given the above, the proposal complies with the objectives and requirements of this clause and is acceptable in respect to solar access and overshadowing.

5.2.4.7 – Visual and Acoustic Privacy

The proposal generally complies with the minimum setback requirements of the ADG and Council's DCP apart from the front and one side setback.

The provisions of the Apartment Design Guide require a front setback to be consistent with the established pattern in the street and refers to the DCP. Council's DCP stipulates the same control unless the site is in a special precinct under Part 7 of the DCP. The site is located within the Arncliffe / Banksia Special Precinct, however there are no front setback controls applying to the site (Figure 72 built form and Character Map). Notwithstanding this, the existing pattern in the street includes increasing front setbacks of 3m to 5m for single storey dwelling houses from Nos. 41 to 51 Duncan Street respectively.

The proposal includes a front setback of 3m on each street. An assessment of this variation has been undertaken and given the existing setbacks, the proposal is not unreasonable in the circumstances of the case.

The front setback to Duncan Street aligns with the future developments in the street while the western side setback is not unreasonable as it aligns with a previously constructed building on the adjoining property (2 Kyle Street). Given the compliant building setbacks on all other elevations, appropriate building separation and appropriate size and location of openings and privacy louvres, the proposal will have minimal visual and acoustic privacy impacts and is consistent with high density residential development in the precinct. For the above reasons, the proposed front and side setbacks are acceptable and consistent with the objectives of the setback controls in Part 7 of Council's DCP.

The degree of building separation with other multi storey developments is acceptable and complies with the Apartment Design Guide. The communal open space area on the roof top terrace and ground floor level has compliant separation and setbacks with planter boxes along the edge of the building which will limit the degree of overlooking and encourage looking inward rather than over or down at the development on the adjoining properties and opposite the site.

While some overlooking may occur from the balconies of the proposed units in each building, particularly on the upper levels, the proposed setbacks and landscaping elements are considered sufficient to reduce and discourage overlooking and privacy impacts to the sides and rear to any significant degree. The amount of overlooking is that ordinarily expected within high density areas within the locality.

Given the above, the proposal is satisfactory with respect to visual and acoustic privacy.

The proposal comprises a total of 94 dwellings within a high-density residential built form in an L shape which retains a common open space area to the rear not unlike the adjoining property to the west. In this regard, the proposal is not likely to generate any significant additional noise impacts on the adjoining properties over and above what would normally be associated with a high-density residential development on the site. The proposal is not unlike neighbouring developments in respect to the high-density residential environment within the precinct.

Further to the above, an acoustic report prepared by Harwood Acoustics dated 23 April 2024 considered aircraft noise, traffic noise and mechanical plant along with floors and wall insulation within the development in order to ensure the acoustic amenity of future occupants

within the development is maintained. The proposal has been conditioned to ensure compliance with the requirements of the acoustic report and the Building Code of Australia.

Given the above, the proposed development is satisfactory with regards to visual and acoustic privacy.

(d) S7.11 Contributions

The following contributions plans are relevant pursuant to Section 7.18 of the EP&A Act and have been considered in the recommended conditions (notwithstanding Contributions plans are not DCPs they are required to be considered):

- *Arncliffe and Banksia Local Infrastructure Contributions Plan 2020*

This Contributions Plan has been considered and included the recommended draft consent conditions as the above plan is applicable to the development under Section 7.11 of the Act. A Section 7.11 contribution of \$1,758,027.48 shall be paid to Council and a condition shall be imposed in this regard.

(e) Housing and Productivity Contributions

From 1 October 2023, the Housing and Productivity Contribution (HPC) replaces the Special Infrastructure Contribution (SIC) in the NSW planning legislation. It applies to the DAs lodged after 1 October 2023 in the whole of the LGAs located within Greater Sydney (including Bayside Council). A further Order replaced the 2024 Order, on 30 June 2024.

The current application was lodged on 22 July 2024 and therefore the *Environmental Planning and Assessment (Housing and Productivity Contribution) Order 2023* applies to the application. The proposal will include 94 new residential dwellings, but these will include 16 affordable housing units. As such, the HPC is not applicable to affordable housing units managed by a registered housing provider. Accordingly, the HPC will apply to 78 units which will impose a levy of \$843,349.57. A condition has been imposed in this regard.

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

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

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

The Development Application is accompanied by the name of the registered community housing provider, St George Community Housing, who will manage the affordable housing component of the proposed development as required by the provisions of section 26(1) of the Regulations.

The Development Application is accompanied by a BASIX certificate, as required by section 27 of the Regulations.

The Development Application is accompanied by a statement by a qualified designer which addresses the relevant provisions of s29(2) – Residential Apartment Development of the Regulations.

Section 61 of the 2021 EP&A Regulation contains matters that must be taken into consideration by a consent authority in determining a development application, with the following matters being relevant to the proposal:

- If demolition of a building proposed - provisions of AS 2601;

The proposal will involve the demolition of the existing improvements on the site. In this regard, the proposal will be required to comply with the provisions of AS 2601. A condition of consent shall be imposed requiring all building works to comply with the requirements of the Building Code of Australia (BCA) or the National Construction Code (NCC).

All relevant provisions of the Regulations have been considered in the assessment of this application and are addressed in the recommended draft conditions (where necessary). Based on the above, the current proposal is consistent with the requirements of the Regulations 2021 and is acceptable in this regard.

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

Likely impacts of the proposal not considered previously in this assessment are discussed below.

Context and Setting

The proposal is considered to be generally consistent with the emerging and future desired context of the site, in that the proposed residential flat building is commensurate with what would normally be expected given the controls applying to the site. The proposal is appropriate as a result of the characteristics of the site, zone of the land, future desired character of the precinct and its local context. The proposal will add to the character and amenity of the locality and existing streetscape along Duncan Street, given its height, scale and form which is no unlike other high density developments in the precinct. The proposal will not dominate the locality but add to the character and form that is aligned with the desired future character of the precinct.

Access and Traffic

The proposal was referred to Council's Development Engineers for consideration. In this regard, the likely traffic to be generated was not considered excessive and can be accommodated within the surrounding street network. The site has close proximity to Arncliffe Railway Station and the surrounding road network is capable of accommodating the anticipated increase in traffic generation from the site.

The proposal complies with the on site car parking requirements in the ADG as well as the provision of motorcycle and bicycle parking facilities, visitor parking, loading bay and car wash facilities in accordance with Council's DCP 2022. The proposal was accompanied by a Traffic Assessment Report by ATB Consulting Engineers and has been assessed by Council's Development Engineers.

The proposal was considered and is not likely to result in any significant adverse amenity impacts in respect to road safety or the free flow of traffic within the surrounding road network. The entry / exit point within Kyle Street from an adjoining property has adequate sight distances with room for vehicles to pass and is acceptable. In this regard, a Deferred Commencement Condition has been imposed in respect to an easement which is required for part of the subject site to ensure vehicular access is retained. Apart from this, the proposal is considered acceptable in respect to traffic and parking subject to the imposition of conditions of development consent. Conditions to be imposed relate to parking, access and the provision of spaces with electric vehicle (EV) charging points. Accordingly, the proposal is not likely to result in any adverse amenity impacts in respect to traffic and parking.

Public Domain

As conditioned, the proposal is not likely to result in any adverse impacts on the public domain. In this regard, the proposal will contribute to the precinct by introducing a form and function that is consistent with the zone of the land and the objectives of the Arncliffe precinct. The proposal steps down the site and allows light penetration to the proposed dwellings and rear

yard. The proposal will contribute to the public domain through the provision of well landscaped front setbacks along Duncan and Kyle Streets. The proposal presents well to the street and will be legible with good pedestrian access to Duncan Street.

Utilities / Services

The site currently has public utilities available. However, an increase in public utilities may be required for the increase in residential density on the site. The fire booster facilities are located in a separate housing along the Duncan Street frontage in front of unit B01 in the northeastern corner of the site. This location is not unreasonable as it will provide the utility and emergency service personnel sufficient access and be located within the landscape bed between landscape elements along Duncan Street. The applicant has advised that a substation is not required for the development.

Safety, Security and Crime Prevention

The proposal has employed CPTED Principles to increase security and pedestrian safety. Conditions have been imposed as requested by the NSW Police to increase these measures used in the proposed development.

Social

The proposed development seeks to provide 16 affordable housing units within the development for a minimum period of 15 years. Such units are to be managed by a registered community housing provider and will aid in the provision of housing within the LGA for low to medium socio economic households.

Economic

The proposal will involve employment generation during the construction of the buildings along with economic benefits to the community with the provision of both residential and affordable housing in the long term for the precinct.

Construction

The potential impacts from the construction process have been adequately mitigated with the imposition of the draft conditions of development consent. The proposed demolition and construction works are restricted to specific hours on the site to minimise any significant disturbance to the residents on the adjoining and adjacent properties. Conditions have been imposed to ensure modern construction techniques are used to minimise the disturbance of land on the adjoining properties.

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

The relevant matters pertaining to the suitability of the site for the proposed development have been considered in the assessment of the proposal, throughout this report. There are no known major physical constraints, environmental impacts, natural hazards or exceptional circumstances that would hinder the suitability of the site for the proposed development. Appropriate conditions of consent are proposed to further manage and mitigate impacts on neighbouring properties and the environment.

The proposal fits within the locality and is of a suitable design and external appearance such that it is consistent with the future desired character of the locality. The site contains adequate services, has access to transport infrastructure and open space within the precinct.

Based on the above, subject to the recommended conditions, the proposal is suitable for the site.

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

Submissions are considered in Section 5 of this report.

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

The proposed development is in the public interest as it increases the supply of high density housing, including dedicated affordable housing, within the precinct. It aligns with the design excellence provisions of the Bayside LEP 2021 and is permissible within the R4 High Density Residential zone.

The scheme provides a generally compliant built form with minimal amenity impacts on the surrounding residential area. Any impacts have been appropriately managed through recommended conditions of consent.

The development delivers economic and social benefits during construction and throughout the life of the project. It also supports ecologically sustainable development principles.

Overall, the proposal contributes positively to the precinct, meets community housing needs, and is considered to be in the public interest.

4. REFERRALS AND SUBMISSIONS

4.1 Agency Referrals and Concurrence

The development application has been referred to various agencies for comment / referral as required by the EP&A Act and outlined below. There are no outstanding issues arising from these concurrence and referral requirements subject to the imposition of the recommended conditions of consent being imposed.

Table 6: Referrals to agencies

Agency	Concurrence/referral trigger	Comments (Issue, resolution, conditions)	Resolved
Referral/Consultation Agencies			
Electricity supply authority	Section 2.48 – <i>State Environmental Planning Policy (Transport and Infrastructure) 2021</i> Development near electrical infrastructure	Addressed previously in this report. Refer to “SEPP Transport and Infrastructure 2021”.	Yes
Design Review Panel	CI 145(2) – Housing SEPP Advice of the Design Review Panel ('DRP')	Addressed previously in this report. Refer to SEPP (Housing) 2021.	Yes
Integrated Development (S 4.46 of the EP&A Act)			
Natural Resources Access Regulator	S89-91 – <i>Water Management Act 2000</i> water use approval, water management work approval or activity approval under Part 3 of Chapter 3	Addressed previously in this report. Water NSW issued GTA on 24 July 2025.	Yes

4.2 Council Officer Referrals

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

Table 7: Consideration of Council Referrals

Officer	Comments	Resolved
Engineering	Council's Development Engineer reviewed the submitted application and noted that the site is not flood affected but has issues in relation to the stormwater plan. In this regard, minor amendments are required in the resubmission of the stormwater management plan at the construction certificate stage. Council's Development Engineers found the remaining matters to be acceptable and raised no objections to the proposal subject to conditions. The conditions imposed relate to parking, access, services, construction site management, dilapidation and geotechnical matters, and so on.	Yes (conditions)
Traffic	Council's Traffic Engineering Officer reviewed the proposal and did not raise any concerns in relation to the anticipated traffic generation, access to and within the site and car parking provision subject to the imposition of conditions of development consent. This is apart from the property at No. 41 Duncan Street not being included in the easement for vehicular access from the adjoining property to the north at No. 2 Kyle Street (formerly Nos. 96-102 Princes Highway). This issue is addressed in the Deferred Commencement Condition while the traffic matters relating to waste collection and loading are considered in more detail and addressed through the imposition of conditions of consent.	Yes (by way of conditions including a Deferred Commencement Condition relating to vehicular access)
Building Surveying	The application will involve demolition and the construction of new buildings in accordance with the requirements in the Building Code of Australia (BCA). A condition of development consent has been imposed in this regard.	Yes (conditions)
Address	The application was referred to Council's Development Control Planner who raised no objections to the proposal subject to the imposition of conditions of development consent. This is on the basis the address for the multi-level building will be allocated in accordance with Part 6.5.5 of the NSW Address Policy and an application for a street address will be required.	Yes (condition)
Waste	The application was referred to Council's Waste Management Officer who raised no objections to the proposal subject to the imposition of conditions of development consent. This is on the basis that a demolition phase waste plan and a construction phase waste plan be submitted.	Yes (conditions)
Landscape Architect	The scheme has been improved in respect to landscaping and complies with the requirements of Council's DCP 2022. The application was referred to	Yes (conditions)

Officer	Comments	Resolved
	Council's Landscape Architect who raised no objections to the proposal subject to the imposition of conditions of development consent.	
Trees	The application was referred to Council's Tree Management Officer who assessed the Arboricultural Impact Assessment Report submitted prepared by Allied Tree Consultancy which was amended in April 2024. Council's Tree Management Officer raised no objections to the proposal subject to the imposition of conditions imposed on the draft Notice of Determination.	Yes (conditions)
Environmental Scientist	The application was referred to Council's Environmental Scientist who raised no objections to the proposal subject to the imposition of conditions of development consent. This is on the basis that the site will have a long-term environmental management plan and all waste and materials be monitored throughout the construction process.	Yes (conditions)
Contributions	Council assessed the proposal under the Arncliffe and Banksia Local Infrastructure Contributions Plan 2020. Based on the plan a fee was levied based on the intensity of the development. For more information, please refer to the relevant section previously in this report.	Yes (condition)

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

4.3 Community Consultation

The proposal was notified in accordance with the Council's Community Participation Plan from 2 August 2025 until 2 September 2024. The notification included the following:

- An advertisement in the local newspaper [The Leader];
- A sign placed on the site;
- Notification letters sent to adjoining and adjacent properties (over 640 letters sent out);
- Notification on the Council's website.

Council received a total of twelve (12) unique submissions, all comprising objections with no submissions in favour of the proposal. The issues raised in these submissions are considered in **Table 8**.

Table 8: Community Submissions

Issue	No of submissions	Council Response
Overbearing and overdevelopment, exceeds the building height limit of 26.5m, impact on neighbouring properties. The proposed building is incongruent with the	7	The proposal complies with the height and FSR standards applicable to the site as per SEPP (Housing) 2021. The proposal is not dissimilar to recently constructed multi storey residential developments

Issue	No of submissions	Council Response
low rise residential landscape of the area.		in the area and is consistent with the future desired character of the precinct. In this regard, the proposed residential flat building represents a bulk and scale of development that would ordinarily be expected on the site. The precinct is undergoing transition to higher density residential developments. In this regard, the proposal is consistent with the future desired character of the area.
Excessive traffic congestion, the traffic report does not address cumulative traffic impact on the local road network. The proposal will result in a reduction in road safety.	7	The proposal will result in the removal of the existing six dwelling houses and provision of 94 units in the residential flat building on the site. The matter of traffic has been previously discussed in this report. It is reiterated that the likely increase in traffic can be safely accommodated within the surrounding street network without resulting in any unreasonable traffic impacts or the reduction of road safety.
Manoeuvring issues with larger vehicles and service trucks accessing the loading areas in the site. This will lead to traffic conflicts in the street.	2	During the construction large trucks will be visiting the site and parked within the surrounding street network. This inconvenience will be temporary and is not unreasonable in this instance. The ongoing loading and servicing vehicles associated with the proposal can enter the site through the adjoining property in Kyle Street and park within the loading areas in the basement parking level. In this regard, they are not likely to result in ongoing traffic congestion within the surrounding street network.
Confirm the OWMP complies with the DCP. E.g., minimum bulky waste storage area of 30m2 is provided. The bin collection and transport for collection may not comply with the guidelines for operational efficiency. Bins must be securely covered and bin rooms sealed or else they violate environmental protection standards.	2	The operational waste management plan submitted with the application has been considered by Council's Waste Management Officer. The officer has not raised any objections to the proposal subject to the imposition of conditions of development consent. This has been addressed previously in this report. For more information, please refer to the section headed "3.12 - Waste Minimisation and Site Facilities".
Insufficient on-site parking provided for the number of units proposed, lack of on street parking in the area will be exacerbated, and lack of parking infrastructure.	10	The proposal complies with the relevant car parking requirements for the site as previously discussed in this report. The application was referred to Council's Development Engineer who confirmed that the surrounding street network is capable of accommodating the increase in traffic likely to be generated by the development with minimal

Issue	No of submissions	Council Response
		adverse impacts on traffic congestion during the peak periods. As sites are redeveloped to their full potential and the precinct evolves, so too does the demand for public and on street car parking. The provision of public car parking in the area will be increased over time and better service the rising demand for car parking. The proposal is one of many that will enable Council to afford the cost of increasing public car parking in the area.
Insufficient measures to retain pedestrian safety via the shared vehicular access point on Kyle Street. Visibility and sightlines in the basement must comply with AS 2890.1:2004.	2	Council's Development Engineer has recommended the imposition of conditions of development consent requiring compliance with AS2890. In this regard, adequate sight distance has been provided from the existing driveway on the adjoining property fronting Kyle Street. Furthermore, appropriate conditions have been imposed to address this issue in respect to the operation of the site.
Noise and Amenity impacts	5	An increase in noise emissions from the site may temporarily occur during the construction process which is unavoidable. Construction of the proposed development includes excavation and the construction of the basement. The construction process is temporary and will be managed on site by a qualified builder and foreman. Impacts will be minimized through the use of standard conditions of consent relating to hours of construction, noise, dust suppression, construction techniques, traffic management and the like to minimise noise and amenity impacts throughout the construction process. The proposal will result in an increase in noise generation when compared to the existing number of dwelling houses on the site. However, the increase in noise from the use of the proposed apartments is not considered to be unreasonable and is in keeping with the high-density residential zone just like other recently constructed multi storey residential developments in the precinct. Subject to compliance with conditions of consent likely impacts from the development within the high-density residential precinct are not unreasonable.
Lack of infrastructure in place to support such a large increase in density (e.g. roads, schools healthcare and utilities).	2	The site and surrounding area contain access to services and infrastructure, including roads, schools, utilities and healthcare services. The additional number of residents will both add to the number of people benefitting from the services

Issue	No of submissions	Council Response
		and will also allow an increase in the ability of the government and public utilities to increase the provision of those services within additional paying customers. Based on the above, the site can accommodate an increase in residential density without placing undue pressure on the existing provision of services and utilities.
The proposal exceeds the FSR applying to the site which is 2.2:1 under the BLEP 2021. This is an overdevelopment leading to overcrowding, increased noise and destabilise the community's quality of life. Reduction in air quality and residential amenity	5	The proposal has been designed to comply with the FSR and building height controls applying to the site (Housing SEPP) which are in addition to those in the Bayside LEP 2021. In this regard, the proposal benefits from the FSR and building height bonus provisions under the Housing SEPP that relate to affordable housing. The proposed residential flat building represents a bulk and scale of development for which the site has been zoned, is permitted under the Housing SEPP and that would ordinarily be expected on the site. Accordingly, the proposal is acceptable in respect to density, bulk and scale.
Loss of privacy from overlooking and lack of measures including offsetting windows and the use of opaque glazing.	4	This has been addressed previously in this report. Please refer to the section headed "Provisions of any Development Control Plan", specifically section 5.2.4.7 – Visual and Acoustic Privacy.
Loss of views	5	This has been addressed previously in this report. Please refer to the section headed "Provisions of any Development Control Plan", specifically, section 3.15 - Views.
The proposal relies on vehicular access from the adjoining building which will also contain units and a childcare centre, impacts of this restricted access near a corner have not been investigated, waste collection is similarly not clear or understood from the SEE submitted.	3	Vehicular access through the adjoining property has been investigated and considered by Council's Development Engineer. A Traffic and Parking Report prepared by ATB Consulting Engineers dated 12/03/25 Revision C was submitted with the application and referred to Council's Development Engineer for consideration. Council's Engineer considered that the proposal will work effectively, given the provision of easements and rights of accessway from Kyle Street. The proposal has the capacity to operate in a safe and acceptable manner given the likely number of vehicles accessing both sites from the single double driveway along Kyle Street. Waste collection has also been considered by both Council's Waste Management officer and Development Engineer and subject to conditions of consent, is acceptable in this instance.

Issue	No of submissions	Council Response
		Conditions have been imposed in relation to access and waste collection, and the proposal is acceptable in this regard.
We have not been contacted in relation to excavation and construction. We would appreciate an opportunity to be contacted given the depth proposed and sandstone bedrock which could overlap our complex.	1	The applicant is not legally required to contact the adjoining property owners during the development application stage. The adjoining owners have been given an opportunity to comment on the development during the notification period. However, the applicant will be contacting the adjoining owners should they commence with the redevelopment in order to comply with particular conditions of development consent. Such conditions include the submission of a dilapidation report and the like.
Overshadowing to adjoining properties and opposite in Kyle Street. Non compliances with setbacks which will reduce access to light, air and privacy and detract from the area's liveability. Lack of solar access will result in increased energy costs for neighbours	5	This has been addressed previously in this report. Please refer to the section headed "Provisions of any Development Control Plan", specifically section 5.2.4.5 – Solar Access and Overshadowing.
Noise, reduced air quality, increased pollution including dust and rubbish, all affecting tenants of Kyle Street and Duncan Street.	6	An increase in noise emissions from the site may temporarily occur during the construction process which is unavoidable. Construction of the proposed development includes excavation and the construction of the basement. Impacts will be minimized through the use of standard conditions of consent relating to hours of construction, noise, dust suppression, construction techniques, rubbish collection, traffic management, site management, and the like. Subject to compliance with conditions of consent the likely impacts from the redevelopment are not unreasonable. This issue has been satisfactorily addressed subject to the imposition of relevant recommended conditions of consent.
Loss of property values and negative impact on our adjacent property.	4	No information has been submitted with the application or received by Council that would substantiate this claim. Notwithstanding this, the cost of the proposed building works is substantial and will add value to the site.
Wind tunnel effects from high rise development. Excessive	2	This has been addressed by the applicant through the submission of a Wind Report with the application. The wind report makes

Issue	No of submissions	Council Response
development with dehumanising canyons of high rises.		recommendations which will be employed on the site to minimise wind tunnel effects. This can be achieved through the imposition of conditions of consent relating to the wind report. As such, subject to the conditions being imposed, the proposal is acceptable in respect to wind tunnel effects.
Approval of the development will encourage the developer to act in bad faith. For example, when they sold units at 2 Kyle Street they promised the adjoining land (the now subject site) would be limited to a height of 6 storeys.	1	The applicant has responded positively to the requests of the Design Review Panel and Council in respect to improving the design and bringing the scheme into compliance. The applicant has acted in good faith and a positive manner with Council at all times. Under the BLEP 2021 which was gazetted on 27/08/21, the subject site has always been limited to a maximum building height of 26.5m which is equivalent to just over 8 storeys. This height control is public information and is freely available from various sources.
Construction noise, dust and safety within the street which will lead to stress.	4	An increase in noise emissions from the site may temporarily occur during the construction process which is unavoidable. Construction of the proposed development includes excavation and the construction of the basement. Impacts will be minimized through the use of standard conditions of consent relating to hours of construction, noise, dust suppression, construction techniques, traffic management and the like. Subject to compliance with conditions of consent the likely impacts to occur are temporary and not unreasonable. This issue has been satisfactorily addressed subject to the imposition of relevant recommended conditions of consent (Attachment A).
The area is undergoing constant developments including tunnelling, Earth shaking, noise, and dust. A further development would be unacceptable affecting our health and amenity. Existing residents are being displaced and workers on adjacent building sites frequently pump large amounts of wastewater and drop rubbish in the street.	2	The precinct is in transition and is undergoing an increase in density from R2 low density residential to R4 high density residential development. The evolution of the precinct is likely to continue as land within the precinct is not developed to its full potential. The Earth shaking and tunnelling for the M6 corridor, which is immediately to the south of the site, is temporary and the site is prone to experiencing the aftereffects given its location immediately to the west of the underground corridor. This is temporary and will cease after completion of the M6. Developments within the vicinity of the site do require some water to be pumped out causing a temporary inconvenience. Such actions are a

Issue	No of submissions	Council Response
		controlled activity and are temporary during the construction phase of the high density residential developments in the area.

5. KEY ISSUES

The following key issues are relevant to the assessment of this application having considered the relevant planning controls and the proposal in detail:

5.1 Urban Design

The proposed building form presents an appropriate response to the existing mixed streetscape despite its significant increase in the size of development on the land. The external appearance is the end result of an ongoing process of refinement and improvement. The proposal comprises a bulk and scale that contributes to the built form of the precinct within the high density residential zone whilst providing various elements that break up an otherwise large parcel. The upper levels are setback while the building forms are separated into segments. The residential flat building is one of many redevelopments in the street block that make a positive contribution to the precinct and will be an example for the future redevelopment in the area. The area is undergoing the piecemeal transition to a higher density residential precinct.

The proposal comprises an array of design features with suitable articulation that contribute to its Design Excellence which has been confirmed and approved by the Design Review Panel. In this regard, please refer to Attachment B for more information in respect to the DRP minutes.

Apart from the site and one side boundary setback, the proposal complies with the setback controls which provide sufficient building separation and curtilage to accommodate landscape elements that will soften the proposed development.

Resolution: The proposal represents a positive contribution to the existing and future desired character of the area and complies with the requirements of the ADG and Council's DCP 2022 in respect to urban design and streetscape. For more information, please refer to the section previously in this report headed SEPP Housing 2021.

5.2 Height, Bulk and Scale

The proposal has a building height of 33.6m which complies with the maximum permissible building height bonus under the Housing SEPP. This building height control is 26.5m under the Bayside LEP 2021 with an addition 30% (7.95m) with a total of 34.45m. In this regard, the proposal complies with the building height control under the Housing SEPP and contains increased setbacks on the upper two floors with the lift overrun located further back.

The bulk and scale of the proposal is compatible with the future desired character of the surrounding residential precinct, despite the non-compliance with the height control. The arrangement of buildings, setbacks and landscape elements are all consistent with the controls applying to the land and will result in a development that has a bulk and scale that would normally be anticipated on the site. In this regard, the minor variation of 1.2m for the lift overrun and roof top pergola has been considered in earlier this report. For more information, please refer to the section titled Clause 4.6 Request for a variation under the Bayside LEP 2021.

The proposal is consistent with the desired future character of the area and acceptable in respect to its height, bulk and scale.

5. CONCLUSION

This development application has been considered in accordance with the requirements of the EP&A Act and the Regulations as outlined in this report. Following a thorough assessment of the relevant planning controls, issues raised in submissions and the key issues identified in this report, it is considered that the application can be supported.

While the site benefits from vehicular access via an adjoining property, the proposal is acceptable in respect to its design and subject to the imposition of conditions of consent, can operated to its anticipated capacity without any significant adverse impacts on the amenity of the site and adjoining properties or the surrounding street network. The site is zoned for the proposed development and is suitable in this regard. The proposal is compatible with the surrounding precinct which has the same high density residential zoning and is consistent with the future desired character of the area.

It is considered that the key issues as outlined in Sections 3.2, 4 and 5 have been resolved satisfactorily through amendments to the proposal and/or in the recommended draft conditions at **Attachment A**.

6. RECOMMENDATION

That Development Application No 2024/152 for an Integrated Development - Demolition of existing structures and construction of an 11 storey residential flat building with 94 units and 3 levels of basement parking at 41-51 Duncan Street Arncliffe be APPROVED pursuant to Section 4.16(1)(a) of the *Environmental Planning and Assessment Act 1979* subject to the draft conditions of consent attached to this report at Attachment A.

The proposal is supported for the following reasons:

1. The proposal is permissible within the zone with development consent and satisfies the zone objectives.
2. The proposed development complies with the relevant environmental planning instruments, including the SEPP Housing 2021 and is acceptable in this report.
3. The proposal is of an appropriate height, bulk, scale and form for the site and is consistent with the emerging future desired character of the area as envisaged by the Bayside LEP 2021 and Bayside DCP 2022.
4. The proposal achieves and demonstrates Design Excellence as required by requirements of Clause 6.10 of the Bayside LEP 2021 and was supported by the Design Excellence Panel.
5. The proposed development is a suitable use for the subject site, and its approval is in the public interest

The following attachments are provided:

- Attachment A: Draft Conditions of consent
- Attachment B: Architectural Plans