

SYDNEY EASTERN CITY PLANNING PANEL PANEL DETERMINATION MEETING

SECPP No	PPSSEC-43
DA Number	DA-2019/393
Local Government Area	Bayside Council
Proposed Development	Stratum Subdivision of Lot 22 DP 1242288 from one (1) lot into four (4) lots
Street Address	5 Oscar Place Eastgardens
Applicant	Karimbla Construction Services (NSW) Pty Ltd
Owner	Karimbla Properties (No. 39) Pty Ltd
Number of Submissions	Nil
Regional Development Criteria (Schedule 7 of the SEPP)	Development the subject of a concept DA that meets criteria under the State and Regional Development SEPP (Clause 21).
List of All Relevant s4.15(1)(a) Matters	<ul style="list-style-type: none"> ○ Environmental Planning & Assessment Act 1979, Part 4 – Development Assessment & Schedule 7 of the SEPP- State and Regional Development 2011 which regional panels may be authorised to exercise consent authority functions of councils ○ Environmental Planning & Assessment Regulation 2000, Part 6 – Procedures relating to Development Applications ○ Botany Bay Local Environmental Plan 2013 ○ Botany Development Control Plan 2013
List all documents submitted with this report for the panel's consideration	<ul style="list-style-type: none"> ● Subdivision Plans- JBW Surveyors Pty Ltd ● Statement of Environmental Effects – Meriton Group
Report by	Angela Lazaridis – Senior Development Assessment Planner

RECOMMENDATION

In view of the below comments, it is **RECOMMENDED** that the Sydney Eastern City Planning Panel (SECPP), as the Consent Authority, resolve to:

- a) Grant approval of Development Application No. 2019/393 for the stratum subdivision of Lot 22 DP 1242288 from one (1) lot into four (4) lots at 5 Oscar Place, Eastgardens, subject to the conditions in the attached Schedule.

EXECUTIVE SUMMARY

Council received Development Application No. 2019/393 on 1 November 2019 for the stratum subdivision of Lot 22 in DP 1242288 from one (1) lot into four (4) lots at 5 Oscar Place Eastgardens.

The Development Application is required to be referred to the Sydney Eastern City Planning Panel (SECPP) pursuant to Clause 21 of the State Environmental Planning Policy (State and Regional Development) 2011 as the application is subject to a site that was included within a Concept approval, being the BATA site (130-150 Bunnerong Road Eastgardens).

The development application was advertised for a period of fourteen (14) days between 3 December to 17 December 2019. No submissions were received during the notification period.

The development application has been assessed in accordance with the relevant requirements of the Environmental Planning and Assessment Act 1979 (EP&A Act). In summary, Council is supportive of the proposal and is recommended for approval, subject to conditions of consent within the attached Schedule.

SITE DESCRIPTION

The overall Stage 1 Master plan site is contained within the block bound by Bunnerong Road to the east, Banks Avenue to the west, Heffron Road to the north, and Westfield Drive to the south. The north eastern portion of this block is the consolidated British American Tobacco Australia (BATA) operations which does not form part of the subject site and is subject to a separate application that is currently in Council (DA-2019/386).

The site is irregular in shape with frontages to Bunnerong Road, Heffron Road, Banks Avenue and Westfield Drive of 194.21m, 107.22m, 419.85m and 342.34m respectively. The site also has two internal boundaries of 237.75m and 238.20m with the remaining BATA site.

The portion of the overall site relevant to this application is known as 5 Oscar Place (formerly known as UB5C) in the Stage 1 consent. UB5C is located on the central southern part of the site between Westfield Drive to the south, Oscar Place to the north, Finch Drive to the west and Studio Drive to the east. The subdivision of the site in accordance with the Stage 1 consent has been approved under DA-15/104 and further modified under DA-15/104/05 and DA-14/96/03. UB5C is Lot 5 on the approved subdivision plan and has an area of 13,095sqm. The lot is generally rectangular in shape with a frontage to Westfield Drive.

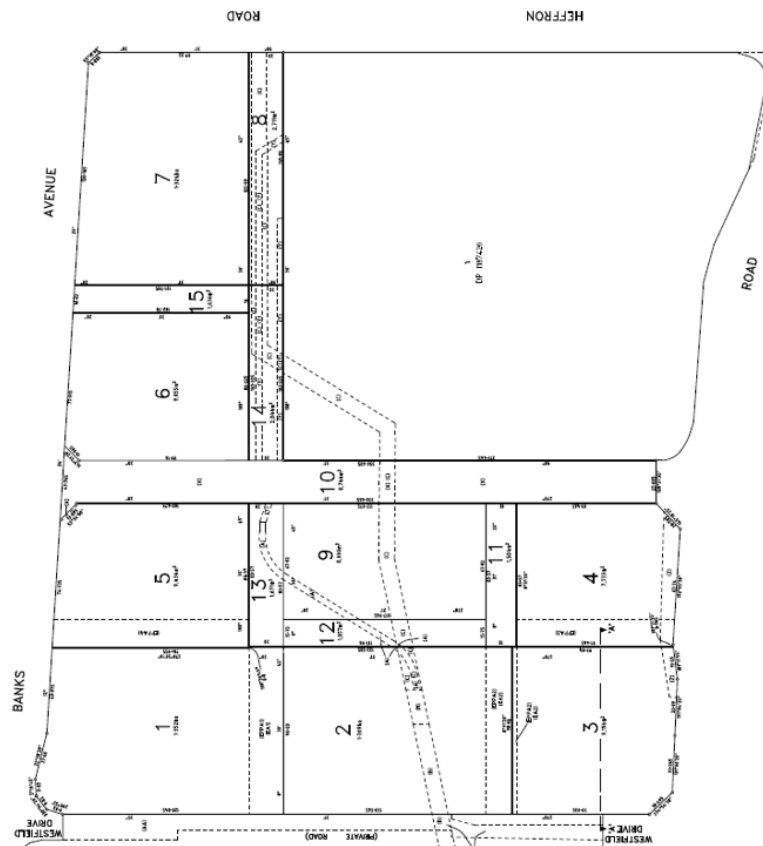


Figure 1. Approved Subdivision of the subject site

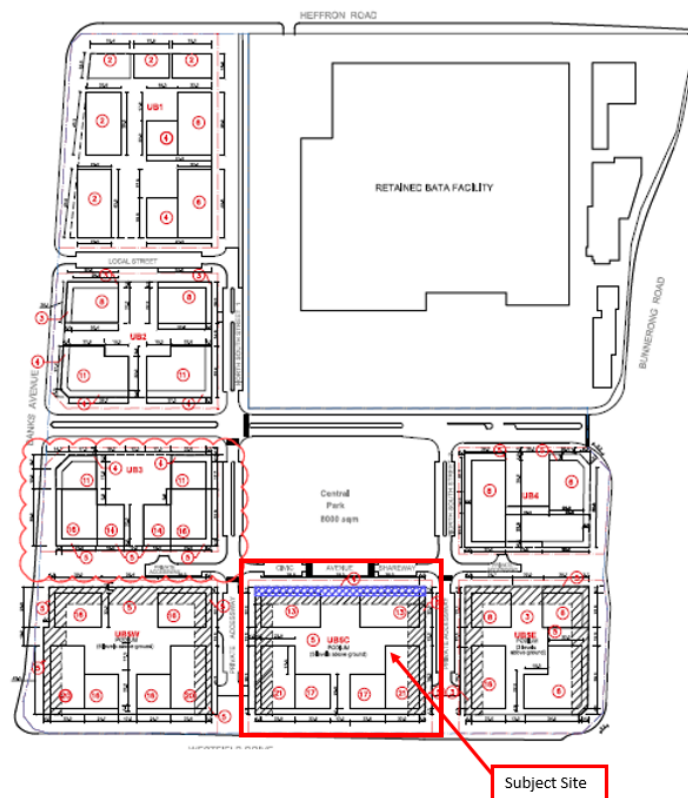


Figure 2. Approved Building Envelope of the Stage 1 consent (DA-14/96/02 and DA-14/96/07)

SURROUNDING LOCALITY

In terms of what is currently located in the greater site in which the subject urban block is located in, the subject site is located centrally to the southern portion of the site. The development to the west is identified as 1 Finch Drive and contains a mixed use building with 487 apartments and a childcare centre within a building consisting of a 5 storey podium including 847 car spaces sleeved with apartments and 2 x 16 storey and 2 x 20 storey towers above. The development to the east is identified as 2 Studio Drive and contains a residential flat building comprising one level of basement car parking, a 3 storey podium including car parking sleeved with apartments, and 2 x 6 storey, 1 x 8 storey and 1 x 16 storey towers above. Both these buildings are accessed from private roads internal to the site. These private roads are connected to Tingwell Boulevard which is the main road in and out of the site and is a thoroughfare between Bunnerong Road and Banks Avenue. The site to the north is the recently completed central park which provides 8,000sqm of open space and includes public amenities block and kiosk, play and gym equipment, basketball court, seating, BBQ area and public art.



Figure 3. Aerial photograph of the subject site (Source: nearmap.com.au)

A variety of development is in the vicinity of the site. To the north is Pagewood consisting primarily of low density residential development. To the east is Maroubra which is also primarily low density residential development. To the immediate south of the site is Westfield Eastgardens which is a large regional shopping centre. To the immediate west is the Bonnie Doon Golf Course.

In terms of vegetation, landscaping beds including medium and large sized mature trees form the perimeter of the site along the Bunnerong Road, Westfield Drive, Banks Avenue, and Heffron Road frontages. Internally, the most significant vegetation is an avenue of large Lemon Scented Gum trees running north-south in the southern half of the site.

BACKGROUND/SITE HISTORY

- Development Application No. 14/96 was approved on 7 August 2015 by the Land and Environment Court through a Section 34 Agreement for the redevelopment of the site for a staged mixed use development involving subdivision and concept approval for the location of public road network, private access ways through the site, on site stormwater detention including water sensitive urban design (WSUD), building envelopes and building heights facilitating approximately 2,733 dwellings on site, parking spaces in above ground and basement facilities, and provision of 8,000sqm of public open space at 130-150 Bunnerong Road Eastgardens. There have been subsequent modification application approved under this development application which included a minor boundary readjustment of the lots on the site (DA-14/96/03).
- Development Application No. 2015/104 was approved by Council on 8 January 2016, allows for the subdivision of the site into 15 lots (comprising 7 developments lots, 7 road lots and a residual lot (public park)) and construction of the internal road network (excluding East-West Boulevard and the private access ways) and associated civil works envisaged under the Stage 1 masterplan consent for the site (approved in NSWLEC proceedings number 10730 of 2014).
- Development Application No. 2018/1003 was approved by the Sydney Eastern City Planning Panel on 29 November 2018 for the construction of a mixed use development comprising of four (4) residential towers ranging between 13 and 21 storeys, ground floor retail tenancies, associated landscaping and site works. The development was approved with 515 units.
- Development Application No. 2019/235 was approved by the Bayside Local Planning Panel on 11 February 2020 for modifications to the building envelope as approved under DA-2018/1003, internal reconfiguration and conversion of approved Building D from residential apartments to serviced apartments.

DESCRIPTION OF PROPOSED DEVELOPMENT

The proposal seeks to stratum subdivide the development on Registered Lot 22 in DP 1242288 approved under DA-2018/1003 and DA-2019/235 from one lot into four stratum lots

- Proposed Lots 1 and 3 are the residential component of the building;
- Proposed Lot 2 is the serviced apartment component; and
- Proposed Lot 4 is the commercial retail tenancies.

An indicative layout of the stratum subdivision proposed is demonstrated in Figure 4 and 5 below.

The purpose of the application is to allow for the division of titles across the development in particular between the residential apartments, serviced apartments and the commercial retail tenancies located at the ground floor level along the northern side of the site. The application is for subdivision only and does not involve any building works.

The proposal has not included the basement car park levels as part of the stratum subdivision being sought. The applicant has commented that the basement levels are included within the package however are followed with a disclaimer to their intentions. The disclaimer states “ the proposed boundaries in the basement carpark are to be finalised prior to the preparation of the plan to be lodged for the subdivision certificate parking allocations for the respective stratum lots are to be in accordance with the requirements of the main DA (as amended)”. The parking will be within its own stratum lots.

The application was referred to Council’s Development Engineer who provided the following comment on the application:

“The provided SEE does not detail the number of dwellings and accessible dwellings in each proposed stratum lot and the required parking spaces for each stratum lot. Additionally, the plans also do not show the primary easements for access that are required across the stratum. This is similar to DA-2019/56 which was accepted therefore the above information will need to be addressed when the subdivision certificate is lodged. The site will be subject to DA-2018/1003 and DA-2019/235 apply to the site and parking will need to be distributed among the stratum lots as per these approvals.”

Considering the above response by the applicant and development engineer, Council has imposed a condition of consent that the linen plan must include the allocation of car parking spaces to the residential, serviced apartment and commercial tenancies within the development in addition to the visitor car parking in accordance with the car parking rates as detailed within the conditions of consent of Development Consent Nos. DA-2018/1003 and DA-2019/235.

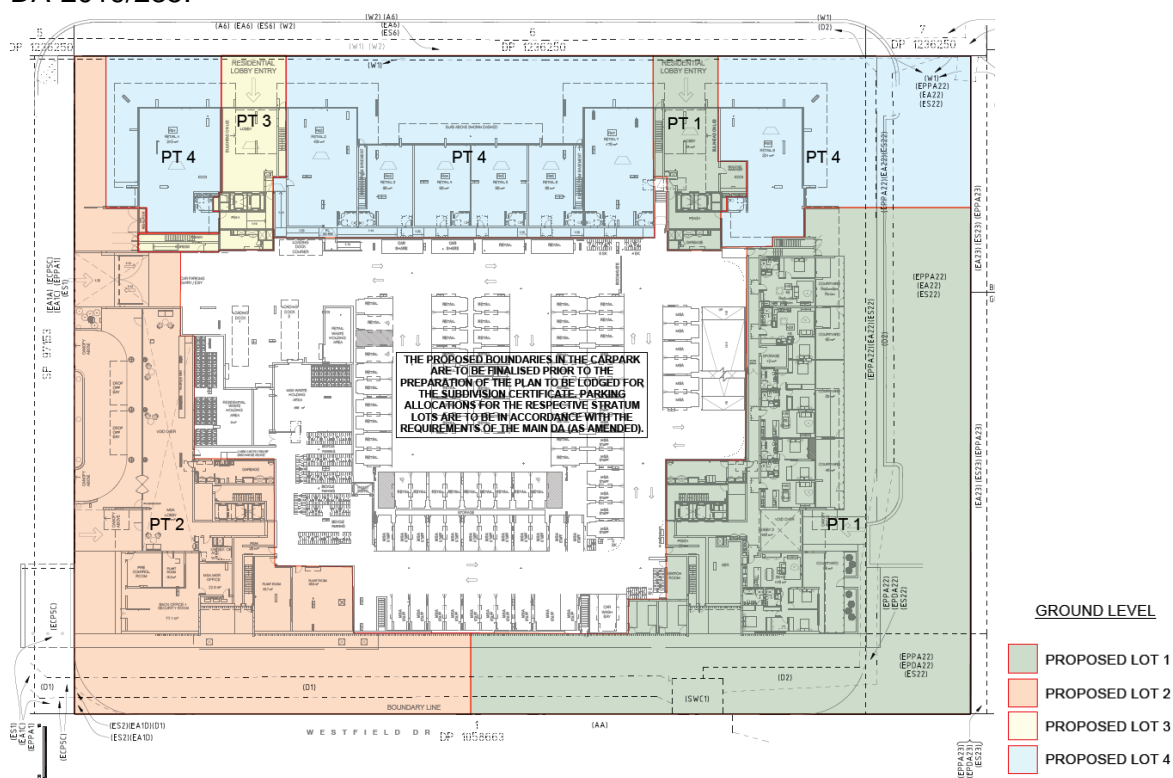


Figure 4. Indicative layout (ground level) of proposed stratum subdivision



Figure 5. Indicative layout (Level 6 and above) of proposed stratum subdivision

STATUTORY CONSIDERATIONS

SECTION 4.42- STATUS OF CONCEPT APPLICATIONS AND CONSENT CONSIDERATIONS

The Stage 1 concept plan consent DA-14/96 was for the first of a Staged Development Application as per Section 4.42 of the Environmental Planning and Assessment Act. The proposal is for a development application that results in a stratum subdivision of the approved development which the approved development under DA-2018/1003 and DA-2019/235 and was consistent with the Stage 1 concept consent. There is no conditions of consent within the Stage 1 concept plan approval which relates to the subject proposal.

SECTION 4.15 CONSIDERATIONS

In considering the Development Application, the matters listed in Section 4.15 of the *Environmental Planning and Assessment Act 1979* have been taken into consideration in the preparation of this report and are as follows:

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

The following Environmental Planning Instruments are relevant to this application:

State Environmental Planning Policy (Infrastructure) 2007

The proposed development does not involve any building works.

State Environmental Planning Policy (SEPP) No. 65 – Design Quality of Residential Apartment Building

The building will continue to be consistent with SEPP No. 65 and the Apartment Design Guide as was approved via DA-2018/1003 and subsequent modifications. The subject stratum subdivision application does not contravene any controls within SEPP 65 or the Apartment Design Guide.

Botany Bay Local Environmental Plan 2013 (BBLEP)

The provisions of the Botany Bay Local Environmental Plan (BBLEP) 2013 have been considered in the assessment of the Development Application and the following information is provided:

Relevant Clauses Principal Provisions of Botany Bay Local Environmental Plan 2013	Compliance Yes/No	Comment
Land use Zone	Yes	The site is zoned B4 Mixed Use zone under the Botany Bay Local Environmental Plan 2013.
Is the proposed use/works permitted with development consent?	Yes	The resultant land use is permissible with Council's consent.
Does the proposed use/works meet the objectives of the zone?	Yes	The proposed development is consistent with the objectives of the B4 Mixed Use Zone. The proposed subdivision seeks to create new allotments to facilitate titling for the buildings. The proposed subdivision does not seek to amend the previously approved use under DA-2018/1003 and DA-2019/235.
What is the proposed height? Does the height of the building comply the maximum height?	N/A	The proposal does not result in any changes to the approved height for the buildings.
What is the proposed FSR? Does the FSR of the building comply the maximum FSR?	N/A	The proposal does not result in any changes to the approved GFA for the buildings.

Relevant Clauses Principal Provisions of Botany Bay Local Environmental Plan 2013	Compliance Yes/No	Comment
Is the land affected by road widening?	N/A	The subject site is not affected by road widening.
Is the site listed in Schedule 5 as a heritage item or within a Heritage Conservation Area?	N/A	The site is not listed as a heritage item, nor is it located within a Heritage Conservation Area.
<p>The following provisions in Part 6 of Botany Bay Local Environmental Plan apply–</p> <ul style="list-style-type: none"> • 6.1 – Acid Sulfate Soils • 6.2 – Earthworks • 6.3 – Stormwater Management • 6.9 – Development in areas subject to aircraft noise • 6.15 – Active Street frontage • 6.16 – Design Excellence 	N/A	<p>The conclusions approved under DA-2018/1003 and DA-2019/235 has not been modified as part of this DA.</p> <p>The site is identified with the BATA Precinct on the Key Sites Map.</p> <p>The proposed development does not seek to alter the bulk or scale of the approved buildings on the subject site. Given this it is considered that the proposed development satisfies the objectives of the BBLEP.</p>

The development application has been considered against the BBLEP 2013 by which the proposal is considered satisfactory.

S.4.15(1)(a)(ii) - Provisions of any Draft EPI's

There are no current Draft EPIs applicable to this development

S4.15(1)(a)(iii) - Provisions of any Development Control Plan

Botany Bay Development Control Plan (BBDGP) 2013

The development proposal has been assessed against the controls contained in the Botany Bay Development Control Plan 2013 as follows:

Part 3E – Subdivision and Amalgamation

Control	Complies	Comment
3E.2.1 General Torrens Title Subdivision and Amalgamation		
C1 Development Applications shall demonstrate that the proposed subdivision or amalgamation is consistent with the Desired Future Character of the area (refer to relevant sections in Part 8 - Character Precincts, Part 9 - Key Sites, Part 5 -	Yes	The proposed subdivision is consistent with the desired future character of the area being the BATA Key Precinct Area.

Control	Complies	Comment
Business Centres and Part 6 - Employment Zones).		
C2 Subdivision or amalgamation must not compromise any significant features of the existing or adjoining sites including streetscape character, landscape features or trees	Yes	The proposed subdivision does not contravene any conditions of consent applying the approved buildings on the subject site, this being DA-2018/1003 and DA-2019/235.
C3 Proposed subdivision or amalgamation must have characteristics similar to the prevailing subdivision pattern of lots fronting the same street, in terms of area; dimensions, shape and orientation (refer to Figure 1)	Yes	The proposed development is for a stratum subdivision – as such no change is proposed to the existing pattern.
C4 Development Applications shall demonstrate that future development for the site can comply with all Parts of the DCP (ie. setbacks, parking and private open space)	Yes	The proposed subdivision does not contravene any conditions of consent applying the approved buildings on the subject site, this being DA-2018/1003 and DA-2019/235. The proposal facilitates titling of the approved mixed use development and as such does not restrict future development potential for the subject site.
C5 Applications must demonstrate that the following has been considered: (i) Site topography and other natural and physical features; (ii) Existing services; (iii) Existing vegetation; (iv) Existing easements or the need for new easements; (v) Vehicle access; (vi) Any land dedications required (e.g. road widening); (vii) Existing vegetation; (viii) Potential flood affectation and stormwater management requirements; (ix) Contamination of the land; (x) Existing buildings or structures; and Heritage Items, Conservation Areas and adjoining Heritage Items	Yes	It is noted that the car parking areas are highlighted white on the stratum plans and as such are not allocated to a lot. The applicant has advised that the car parking areas will be finalised at the subdivision certificate stage in accordance with the conditions of consent as amended DA-2018/1003 and DA-2019/235. A condition has been recommended to this effect.
C6 Subdivision must not result in the creation of a new lot that contains significant site features that would render the land unable to be developed (e.g. creation of allotments	Yes	The proposal is for a stratum subdivision within an existing approved building envelope. No changes are proposed that restricts the development potential of the subject site. The proposed development will allow portions of

Control	Complies	Comment
that are solely burdened by easements, flooding, highly contaminated land, land that contains significant trees or land of a size which could not facilitate development as per the zoning and controls applicable to the land		the residential development to be titled independently.

Part 9D – 130-150 Bunnerong Road, Eastgardens

It is noted that Part 9D of the BBDCP 2013 specifically relates to the redevelopment of the subject site, 130-150 Bunnerong Road, Eastgardens, and guided the Stage 1 consent. The Stage 1 consent included conceptual details of the proposed buildings which have been altered from the provisions of Part 9D. Accordingly, the Stage 1 consent contained the relevant provisions for the approved DA-2018/1003 and DA-2019/235 for the approved development on the site. There is no controls relating to subdivision within this section of the DCP.

S.4.15(1)(a)(iia) – 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

The site is subject to a Voluntary Planning Agreement (VPA) negotiated by the Applicant and the former Botany Bay Council during the assessment of the Stage 1 Masterplan application. The VPA provides a mechanism for the delivery of public benefits to the locality. The current application does not affect the commitments required by this agreement.

S.4.15(1)(a)(iv) - Provisions of regulations

The proposed development is inconsistent with the relevant provisions of the *Environmental Planning and Assessment Regulation 2000*.

S.4.15(1)(b) - Likely Impacts of Development

The proposal is for a stratum subdivision within an existing approved building envelope. No changes are proposed that restricts the development potential of the subject site. The proposed development will allow the residential be titled independently within four stratum lots, as such the proposal does not have any adverse environmental, social or economic impacts on the locality.

S.4.15(1)(c) - Suitability of the site

The subject site is not known to be affected by any natural hazards or other site constraints that are likely to have a significant adverse impact on the proposed development. The site is zoned B4 – Mixed use which permits subdivision with development consent. The built form, being a residential apartment, serviced apartment and commercial tenancy development, is approved and is under construction, and the proposed subdivision will facilitate titling of the development. Therefore the site is suitable to stratum subdivide the development approved under DA-2018/1003 and DA-2019/235 and any subsequent modification applications.

S.4.15(1)(d) - Public Submissions

In accordance with Part 2 of the Botany Bay DCP 2013 – Notification and Advertising, the application was placed on public exhibition for a thirty (14) day period from 3 December to 17 December 2019. No submissions were received.

S.4.15(1)(e) - Public interest

Granting approval to the proposed development will have no adverse impact on the public interest. The proposal will facilitate the orderly development of the land.

Conclusion

In accordance with Clause 21 of the State Environmental Planning Policy (State and Regional Development) 2011, the Application is referred to the Sydney Eastern City Planning Panel (SECPP) for determination.

As discussed above, the proposal has not raised any significant issues that need to be addressed within this report.

The proposal has been assessed in accordance with Section 4.15 of the Environmental Planning and Assessment Act 1979. The proposal does not seek to amend the built form approved under either DA-2018/1003 or DA-2019/235, is permissible within the B4 Mixed Use zone and is considered to be suitable within this context. The proposal is recommended for approval subject to the conditions of consent, in the attached Schedule.

Attachment

Schedule 1 – Conditions of Consent

Premises: 5 Oscar Place Eastgardens

DA No.: DA-2019/393

GENERAL CONDITIONS

1. The development is to be carried in accordance with the following plans and documentation listed below and endorsed with Council's stamp, except where amended by other conditions of this consent:

Drawing No.	Author	Dated
Sheet 01 of 08- Plan Showing the concept of the proposed stratum subdivision of Lot 22 DP 1242288		Dated 30 January 2020; Received 5 February 2020
Sheet 02 of 08- Plan Showing the concept of the proposed stratum subdivision of Lot 22 DP 1242288		Dated 30 January 2020; Received 5 February 2020
Sheet 03 of 08- Plan Showing the concept of the proposed stratum subdivision of Lot 22 DP 1242288		Dated 30 January 2020; Received 5 February 2020

Sheet 04 of 08- Plan Showing the concept of the proposed stratum subdivision of Lot 22 DP 1242288	JBW Surveyors Pty Ltd	Dated 30 January 2020; Received 5 February 2020
Sheet 05 of 08- Plan Showing the concept of the proposed stratum subdivision of Lot 22 DP 1242288		Dated 30 January 2020; Received 5 February 2020
Sheet 06 of 08- Plan Showing the concept of the proposed stratum subdivision of Lot 22 DP 1242288		Dated 30 January 2020; Received 5 February 2020
Sheet 07 of 08- Plan Showing the concept of the proposed stratum subdivision of Lot 22 DP 1242288		Dated 30 January 2020; Received 5 February 2020
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CONDITIONS WHICH MUST BE SATISFIED PRIOR TO THE ISSUE OF A SUBDIVISION CERTIFICATE

2. Prior to the issue of a Subdivision Certificate the applicant must pay the following fees:-
 - a) All Subdivision Certificate and Linen Plan Handling Fees applicable at the time of lodgement in accordance with Council Fees & Charges.
 - b) The lodgement of a Subdivision Certificate Application is to be accompanied by linen plans and six (6) copies of such and the required fees.
3. A copy of the Building Management Statement and By-Laws shall be submitted to Council prior to the issue of a Subdivision Certificate. The Building Management Statement and By-Laws shall be in the approved form and shall address all conditions associated with the ongoing use of Development Consent No. DA-14(96) (as modified), DA-15(104) (as modified), DA-2018/1003 (as modified) and DA-2019/235 (as modified).
4. Prior to the issue of a Subdivision Certificate, a Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained and submitted to the Principal Certifying Authority. Application must be made through an authorised Water Servicing Coordinator. Please refer to "Your Business" section of Sydney Water's web site at www.sydneywater.com.au then the "e-developer" icon or telephone 13 20 92.

Following application a "Notice of Requirements" will detail water and sewer extensions to be built and charges to be paid. Please make early contact with the Co-ordinator, since building of water/sewer extensions can be timed consuming and may impact on other services and building, driveway or landscape design
5. Prior to the issue of a Subdivision Certificate, a Certificate of Survey from a Registered Surveyor shall be submitted to the Certifying Authority showing all the structures are wholly located within the property boundaries.
6. The linen plan must include details of any easements, encroachments, rights of way, restriction as to user or positive covenants and include a Section 88B Instrument under the Conveyancing Act, 1919. Council is to be nominated as the only authority permitted

to release, vary or modify any easements, encroachments, rights of way, restriction as to user or positive covenants.

7. Written evidence is required to be provided to Council prior to the issue of a Subdivision Certificate from all service providers such as Sydney Water, Ausgrid and their telecommunication provider, confirming that adequate infrastructure can and/or has been provided to the development.
8. The linen plan must include the allocation of car parking spaces to the residential development, serviced apartment development and commercial tenancies and in addition to visitor parking in accordance with the car parking rates as detailed within the conditions of consent of Development Consent No. 2018/1003 and 2019/235 (as modified).
9. The subdivision plan shall be consistent with the terms and conditions of DA-14(96) (as modified), DA-15(104) (as modified), DA-2018/1003 (as modified) and DA-2019/235 (as modified).