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## Extraordinary Council Meeting

10/11/2021

Item No	8.4
Subject	<b>Draft Planning Proposal - 146-154 O'Riordan Street, Mascot</b>
Report by	Peter Barber, Director City Futures
File	SF21/5353

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### Summary

In August 2019, Council resolved to support a Planning Proposal for land at 146-154 O'Riordan Street, Mascot. The Planning Proposal sought to increase the Height of Buildings control over the part of the site fronting O'Riordan Street from 22 metres to 44 metres by amending *Botany Bay Local Environmental Plan 2013* (Botany Bay LEP 2013).

After a lengthy process (described in detail below) On the 9th December 2020, Council considered a post-exhibition report for the Planning Proposal and resolved to **not** proceed with making the Plan.

The proponent re-submitted the draft Planning Proposal (**Attachment 1**), which includes the draft building height plane clause (refer page 11), which is the subject of this report. All attachments to the re-submitted draft Planning Proposal are referenced as separate attachments in this report, for ease of access.

Since the time that the draft Planning Proposal was re-submitted, the Bayside LEP 2021 has been finalised (Friday 27 August 2021) and come into effect. The Bayside LEP 2021 did not change the zoning or any development standards that applied to the site under the former Botany Bay LEP 2013. Any references in the proponent's draft Planning Proposal package that refer to proposed amendments to the Botany Bay LEP 2013 can now instead be taken to equate to an amendment to the Bayside LEP 2021.

The draft Planning Proposal was re-considered by the Bayside Local Planning Panel (Panel) on the 21<sup>st</sup> September 2021. The recommendations of the Panel are included in this report. The Panel recommended that the draft Planning Proposal be forwarded to the Department of Planning, Industry and Environment (DPIE) for a Gateway determination. The draft Planning Proposal is now submitted for Council's consideration.

### Officer Recommendation

- 1 That Council considers the recommendation of the Bayside Local Planning Panel from 21<sup>st</sup> September 2021 to forward the draft Planning Proposal for land known as 146-154 O'Riordan Street, Mascot to the Department of Planning, Industry and Environment (DPIE) for a Gateway determination.
  - 2 That should a Gateway determination be issued, a further report be presented to Council following the public exhibition period to demonstrate compliance with the Gateway determination, and to provide details of any submissions received throughout that process.
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## Background

In August 2019, Council resolved to support a Planning Proposal for land at 146-154 O’Riordan Street, Mascot. The Planning Proposal sought to increase the Height of Buildings control over the part of the site fronting O’Riordan Street from 22 metres to 44 metres by amending *Botany Bay Local Environmental Plan 2013* (Botany Bay LEP 2013).

Council’s resolution required the preparation of a clause applying to the northern and eastern side boundaries to make provision for appropriate building setbacks and height controls before a Gateway Determination was sought from the Department of Planning, Industry and Environment (DPIE). Council staff submitted a draft clause with the Gateway request and received a positive Gateway determination on 11 December 2019.

As part of the conditions attached to the Gateway determination, the proponent was required to detail and justify the building height plane clause prior to community consultation commencing. Subsequent to this being completed, the Planning Proposal was exhibited from 22 July to 19 August 2020.

On 29<sup>th</sup> September 2020, the Planning Proposal was reported back to the Bayside Local Planning Panel (Panel) post-exhibition. The Panel supported the draft Planning Proposal, subject to the building height plane being extended for the full length of the northern boundary to its north-western extent. Further assessment by Council staff found that the height plane as proposed, together with provisions in Part 6 of the Botany Bay DCP 2013, were adequate to address the Panel’s concerns.

On the 9<sup>th</sup> December 2020, Council considered a post-exhibition report for the Planning Proposal and resolved to *not* proceed with making the Plan.

The proponent re-submitted the draft Planning Proposal, which is the subject of this report.

## Context and Proposal

### APPLICANT AND SITE DETAILS

#### Applicant

Mr David Krepp, on behalf of Toplace Pty Ltd  
Director: Mr Jean Nassif  
Secretary: Mr Jean Nassif

#### Owner

JKN Park Pty Ltd  
Director: Mr Jean Nassif  
Secretary: Mr Jean Nassif

#### Site Description

Lot	DP	Address	Current zoning	Current Height of Buildings	Owner
13	1232496	146 O’Riordan Street, Mascot	B5 Business Development	22 metres	JKN Park Pty Ltd
14	1232496	154 O’Riordan Street, Mascot			
15	1232496				
A	402876				

Sydney Water infrastructure, namely the Mascot Park Branch, traverses the mid-section of the site and the Southern and Western Suburbs Ocean Outfall Sewer traverses the south-western corner of the site.

The site:

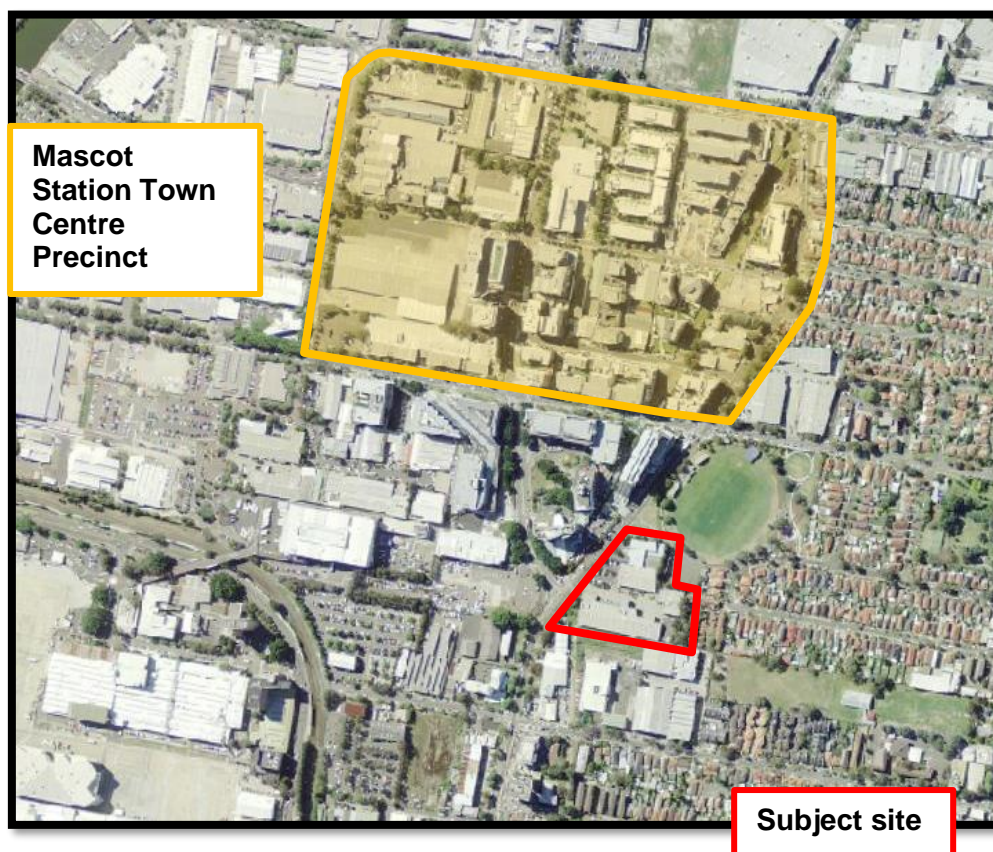
- is irregular in shape and has an area of approximately 17,020.5sqm;
- has a western frontage to O’Riordan Street approximately 152 metres in length;
- has a southern boundary adjoining a range of commercial land uses approximately 165 metres in length;
- has a staggered northern boundary adjoining Mascot Park and a Council owned car park of approximately 69 metres and 40 metres (respectively);
- has a staggered eastern boundary adjoining the Council-owned car park and medium density residential development of approximately 57 metres and 79 metres.

The site currently contains a range of commercial land uses including commercial food preparation, freight forwarding, and transport services.

## PHYSICAL SITE CONTEXT

### General

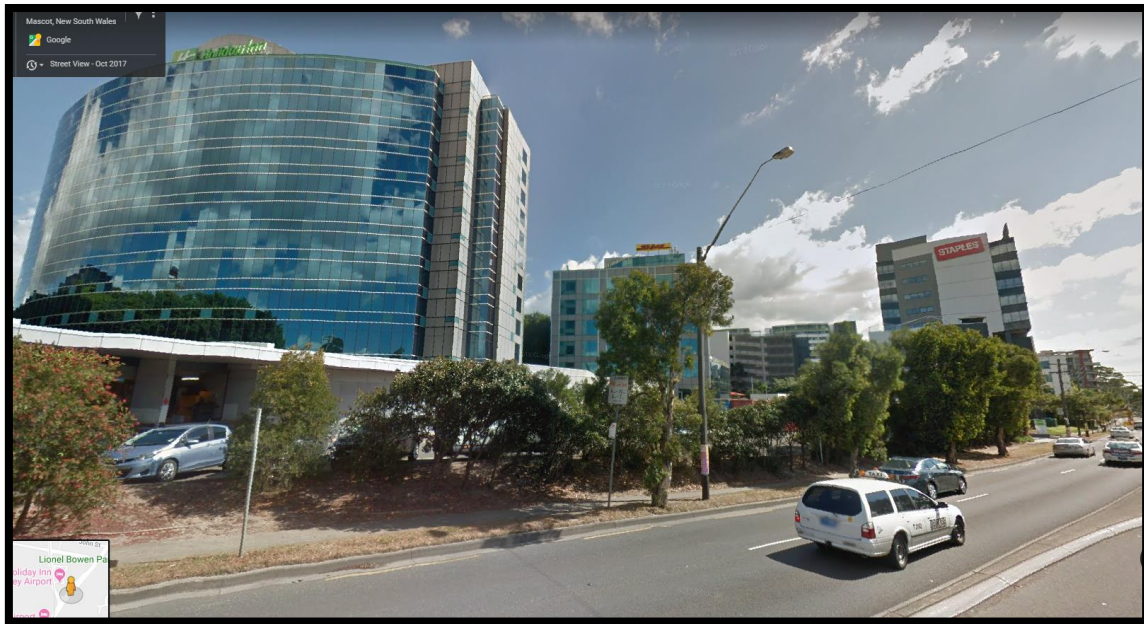
The site lies to the south east of the Mascot Station Town Centre Precinct, shown bold yellow in the context map at **Figure 1**, and approximately 450 metres walking distance from Mascot rail station.



**Figure 1:** Site context map  
(Source: Land and Property Information [www.maps.six.nsw.gov.au](http://www.maps.six.nsw.gov.au))

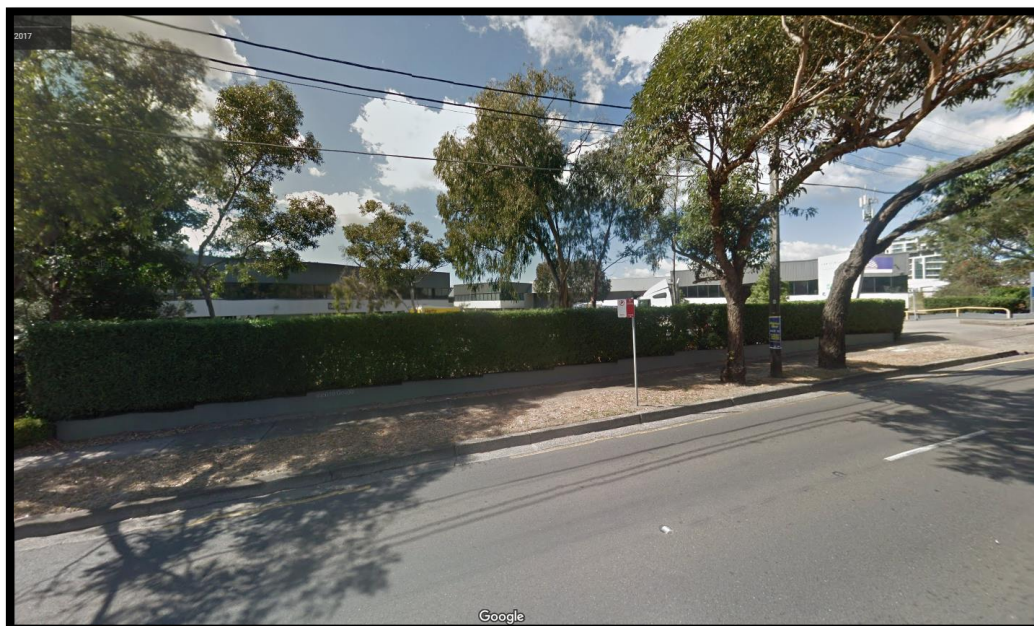


Development along the western side of O’Riordan Street, opposite the subject site, is characterised by commercial development (on land with a maximum building height of 44 metres) as shown in **Photograph 1**, below:



**Photograph 1:** Typical built form fronting the western side of O’Riordan Street.  
(Source: [www.google.com.au/maps/](http://www.google.com.au/maps/))

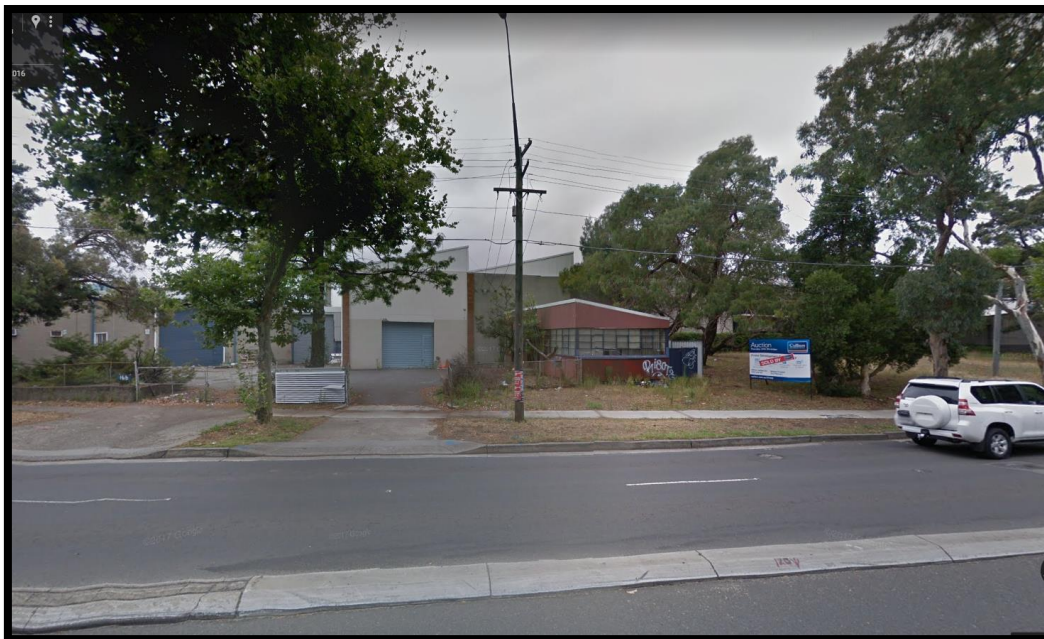
Development on the subject site comprises low rise commercial development as shown in **Photograph 2**, below:



**Photograph 2:** The subject site  
(Source: [www.google.com.au/maps/](http://www.google.com.au/maps/))

Development fronting the eastern side of O’Riordan Street and adjoining the subject site to the south is also characterised by low rise commercial development as shown in **Photograph 3**, below:





**Photograph 3:** Typical built form fronting the eastern side of O’Riordan Street, south of the subject site  
(Source: [www.google.com.au/maps/](http://www.google.com.au/maps/))

## STRATEGIC SITE CONTEXT

The site is located within the Green Square-Mascot strategic centre identified in the Eastern City District Plan (refer to **Figure 2**).



**Figure 2:** Green Square-Mascot strategic centre  
(Source: Eastern City District Plan)

The Eastern City District Plan notes that the Green Square-Mascot Strategic Centre:

*... is a significant centre for the District and a supporting centre for the nearby Harbour CBD, Port Botany and Sydney Airport. It is undergoing major urban renewal from a predominantly industrial area to one of increased residential use. This renewal has also resulted in the loss of half the commercial office space within the precinct since 2014, a reduction from 400,000 to 200,000 square metres.*

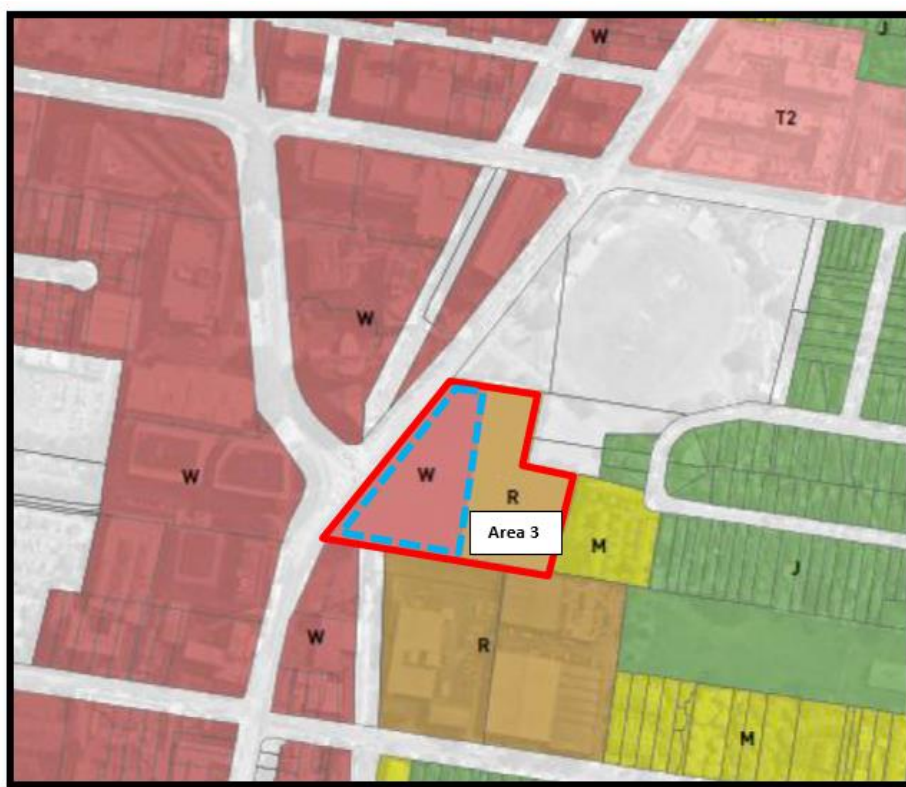
The actions contained in the plan aim to strengthen the strategic centre with a 'retain and manage approach' to industrial and urban services lands.

## PROPOSED AMENDMENT TO PLANNING CONTROLS

The draft Planning Proposal seeks the following amendment to the Bayside LEP 2021:

- Increase the Height of Buildings (HOB) over the part of the site fronting O'Riordan Street from 22 metres to 44 metres (refer to **Figure 7**, below).
- Amending the Bayside LEP 2021 Height of Buildings Map to identify part of the site as 'Area 3' (refer to **Figure 7**, below) and apply a Building Height Plane clause to the part of the site identified as 'Area 3':

*(2D) Despite subclause (2), the area of land identified as "Area 3" is subject to a 45 degree Building Height Plane that is measured on the northern boundary at a height of RL19 and a height of RL26 on the eastern boundary.*



**Figure 7:** Proposed Height of Building

The purpose of the Building Height Plane is to achieve a transition or stepping in building height towards Mascot Oval and the adjoining R3 Medium Density Residential zone to the rear. The front portion of the site that falls within the proposed 44m height zone does not have the same relationship with Mascot Oval and therefore does not have the same transition requirements.

At its meeting of 29 September 2020, the Bayside Local Planning Panel (Panel) considered a post-exhibition report on the previous draft Planning Proposal. The Panel raised concern that the building height plane should extend for the length of the northern boundary to its north-western extent.

In response to the Panel's consideration and recommendation, the proponent submitted additional justification and this is addressed under the heading 'Response to the Bayside Local Planning Panel recommendations', later in this report.

No other provisions are proposed to be amended as part of this draft Planning Proposal.

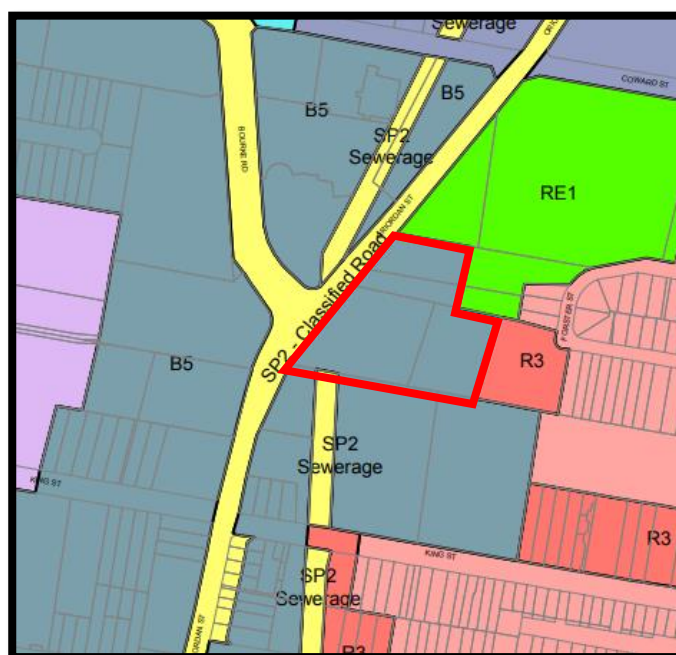
## Current Planning Controls

Extracts from the Bayside LEP 2021 for the site and immediately surrounding land are provided below (refer to **Figures 3-6**), and describe current planning controls. Note that the subject site is shown in thick red line outline.

### Land use zones

Land use zones immediately surrounding the site comprise:

- predominantly B5 Business Development to the west and south;
- RE1 Public Recreation (car park) and R3 Medium Density Residential to the east;
- RE1 Public Recreation (Mascot Park and car park to the north, as shown in Figure 3:



**Figure 3** –Zoning Map (B5 Business Development (Site); R3 Medium Density Residential; RE1 Public Recreation)  
(Source: Bayside Council)



### Height of Buildings

The current permissible height of buildings for the site, under the Bayside LEP 2021 is 22 metres. Permissible building heights fronting the western side of O’Riordan Street between Gardeners Road to the north and Joyce Drive/ Qantas Drive to the south are currently 44 metres. Heights are limited to between 9 metres and 12 metres in the adjoining medium density residential areas to the east of the site. An extract from the Bayside LEP 2021 Height of Buildings Map is provided at **Figure 4**:



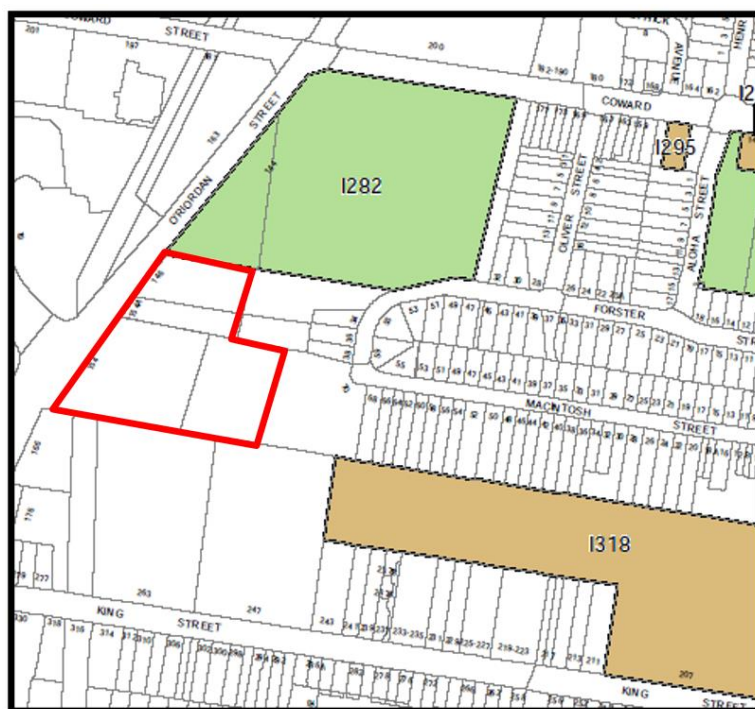
**Figure 4** –Height of Buildings Map

(R - 22 metres (subject site); W - 44 metres; T2 - 26 metres; M - 12 metres; J - 9 metres)  
(Source: Bayside Council)

### Heritage

The site adjoins an item of local heritage significance under the Bayside LEP 2021, namely, Mascot Park (Item I282), also known as Lionel Bowen Park. The site is also in close proximity to the Mascot Public School building group, an item of local heritage significance (I318) under the Bayside LEP 2021. An extract from the Bayside LEP 2021 Heritage Map is provided at **Figure 5**:





**Figure 5 – Bayside LEP 2021 Heritage Map**  
(Source: Bayside Council)

The draft Planning Proposal is supported by a Statement of Heritage Impact (**Attachment 2**), which noted that the oval and park *“demonstrate very good aesthetic values as a traditional local oval which has retained the characteristic elements of the local sports ground, including a white picket perimeter fence and grassed embankments for spectators that reference the 1911 date of the park’s nominal establishment.”*

The Heritage report also noted that the *“site is also significant for its ‘hidden’ aesthetic experience, reading from the street as a standard area of open space, but once inside the perimeter planting, demonstrate very good cultural landscape values.”*

The Heritage Impact Statement has been assessed by Councils Heritage consultant who advised:

- the park is located to the north east of the subject site and the proposed amendment to the height of future development will not block any sun from the oval or overshadow the park;
- the area is already quite densely developed;
- proposed change of the permissible height from 22 metre to 44 metres only applies to the western area of the subject site, which is consistent with heights on the other side of O’Riordan Street.
- Mascot Oval and Lionel Bowen Park have a strong inward-looking focus. The heritage data sheet describes how the Parks turns inward, away from surrounding development. The strong inward focus of the Park along with its size and location on a corner will ensure that the heritage significance of the Park is not adversely impacted by the change in planning controls.

#### Design Excellence Requirement

The site is identified on the Bayside LEP 2021 Key Sites Map. Any Development Applications are subject to the requirements of clause 6.12 Design Excellence under the

Bayside LEP 2021, noting that the submitted Urban Design Report (**Attachment 3**) has included a set of principles to demonstrate how the objectives of the Design Excellence Clause can be achieved.

## Assessment of Draft Planning Proposal

### Environmental Planning and Assessment Act 1979 (EPAA)

The Department of Planning, Industry and Environment's (DPIE) publication '*Planning Proposals - A Guide to Preparing Planning Proposals*' (The Guide) - issued under s3.33 (3) of the EP&A Act - provides guidance and information on the process for preparing Planning Proposals. The assessment of the submitted draft PP by Council staff has been undertaken in accordance with the latest version of this guide (dated December 2018).

Page 5 of The Guide states that:

*A planning proposal must demonstrate the strategic merit of the proposed LEP amendment.*

*A planning proposal which is submitted for a Gateway determination must provide enough information to determine whether there is merit in the proposed amendment proceeding to the next stage of the plan making process. The level of detail required in a planning proposal should be proportionate to the complexity of the proposed amendment.*

The draft Planning Proposal is considered to demonstrate adequate strategic merit, as outlined in the following section of this report.

The draft Planning Proposal provides sufficient information to determine whether strategic and site specific merit exists that would enable progression to a Gateway determination.

While certain matters would require further detailed investigation in conjunction with any future Development Application (if the proposed LEP amendment was to be made), adequate detailed information supports the draft Planning Proposal at this stage to enable the proposal to proceed to Gateway determination.

### Key Sections of the EP&A Act – Strategic Merit of Planning Proposals

#### 3.8 Implementation of Strategic Plans

- (1) In preparing a draft district strategic plan, the relevant strategic planning authority is to give effect to any regional strategic plan applying to the region in respect of which the district is part.
- (2) In preparing a planning proposal under section 3.33, the planning proposal authority is to give effect—
  - (a) to any district strategic plan applying to the local government area to which the planning proposal relates (including any adjoining local government area), or

.....

The Eastern City District Plan (ECDP) applies to the Bayside Local Government Area (LGA), and, therefore, any Planning Proposal must outline how it demonstrates strategic merit against the objectives of the ECDP and Greater Sydney Regional Plan.

It should be noted that neither the GSRP or ECDP proposed a different role, or any change to the built character, for this area. The future character that can be expected is described under the existing statutory framework and is in alignment with the current strategic planning framework. As detailed later in this report, **Table 4** provides an assessment against the GSRP and ECDP.

### 3.9 Local Strategic Planning Statements of Councils

- (1) *The council of an area must prepare and make a local strategic planning statement and review the statement at least every 7 years.*
  - (2) *The statement must include or identify the following—*
    - (a) *the basis for strategic planning in the area, having regard to economic, social and environmental matters,*
    - (b) *the planning priorities for the area that are consistent with any strategic plan applying to the area and (subject to any such strategic plan) any applicable community strategic plan under section 402 of the Local Government Act 1993,*
    - (c) *the actions required for achieving those planning priorities,*
    - (d) *the basis on which the council is to monitor and report on the implementation of those actions.*

.....
  - (3A) *The council for an area that is in the Greater Sydney Region must not make a local strategic planning statement unless the Greater Sydney Commission has advised the council in writing that the Commission supports the statement as being consistent with the applicable regional and district strategic plans.*
- .....

Council's LSPS was endorsed by the GSC in March 2020. This indicated that the LSPS had demonstrable consistency with the GSRP and ECDP. As per 3.9(1) above, the LSPS is to be reviewed at least every 7 years.

Council's LSPS sets the 20-year vision for the Bayside LGA, including identifying the special character and values to be preserved and how change will be managed. The LSPS explains how Council is implementing the planning priorities and actions in the ECDP, in conjunction with their Community Strategic Plan.

As detailed later in this report, **Table 5** provides an assessment against the LSPS.

## Section 9.1 Local Planning Directions Issued by the Minister

Section 9.1(2) Local Planning Directions issued by the Minister (s.9.1 directions) set out what a Relevant Planning Authority (RPA) must do if a s.9.1 direction applies to a Planning Proposal, and provides details on how inconsistencies with the terms of a direction *may* be justified.



An assessment of the draft Planning Proposal against the applicable s.9.1 directions is provided in **Table 2** below:

**Table 2:** Draft Planning Proposal consistency with s9.1(2) Local Planning Directions

Local Planning Direction	Draft Planning Proposal consistency with terms of direction	Consistent: Yes/ No If No, justified?
<b>1.1 Business and Industrial Zones</b>	<p><b>Objectives</b>  <i>(1) The objectives of this direction are to:</i>  <i>(a) encourage employment growth in suitable locations,</i>  <i>(b) protect employment land in business and industrial zones, and</i>  <i>(c) support the viability of identified centres.</i></p> <p><b>Where this direction applies</b>  <i>(2) This direction applies to all relevant planning authorities.</i></p> <p><b>When this direction applies</b>  <i>(3) This direction applies when a relevant planning authority prepares a planning proposal that will affect land within an existing or proposed business or industrial zone (including the alteration of any existing business or industrial zone boundary).</i></p> <p><b>What a relevant planning authority must do if this direction applies</b>  <i>(4) A planning proposal must:</i>  <i>(a) give effect to the objectives of this direction,</i>  <i>(b) retain the areas and locations of existing business and industrial zones,</i>  <i>(c) not reduce the total potential floor space area for employment uses and related public services in business zones,</i>  <i>(d) not reduce the total potential floor space area for industrial uses in industrial zones, and</i>  <i>(e) ensure that proposed new employment areas are in accordance with a strategy that is approved by the Secretary of the Department of Planning and Environment.</i></p> <p><b>Comment:</b>  The draft Planning Proposal is considered consistent with the objectives of this direction, given that the draft Planning Proposal does not amend the existing B5 Business Development zone and does not reduce potential floor space area within the zone and broader strategic centre.</p> <p><b>Consistency:</b>  No inconsistencies with the terms of the direction were identified.</p>	YES
<b>1.2 Rural zones</b>	Not applicable	N/A
<b>1.3 Mining, Petroleum and Extractive Industries</b>	Not applicable.	N/A
<b>1.4 Oyster Aquaculture</b>	Not applicable	N/A
<b>1.5 Rural Lands</b>	Not applicable	N/A
<b>2.1 Environment Protection Zones</b>	Not applicable. The site is not an environmental protection zone.	N/A
<b>2.2 Coastal Management</b>	Not applicable – the site is not with a Coastal Zone.	N/A
<b>2.3 Heritage Conservation</b>	<p><b>Objective</b>  <i>(1) The objective of this direction is to conserve items, areas, objects and places of environmental heritage significance and indigenous heritage</i></p>	YES

Local Planning Direction	Draft Planning Proposal consistency with terms of direction	Consistent: Yes/ No If No, justified?
	<p>significance.</p> <p><b>Where this direction applies</b> (2) This direction applies to all relevant planning authorities.</p> <p><b>When this direction applies</b> (3) This direction applies when a relevant planning authority prepares a planning proposal.</p> <p><b>What a relevant planning authority must do if this direction applies</b> (4) A planning proposal must contain provisions that facilitate the conservation of:</p> <p>(a) items, places, buildings, works, relics, moveable objects or precincts of environmental heritage significance to an area, in relation to the historical, scientific, cultural, social, archaeological, architectural, natural or aesthetic value of the item, area, object or place, identified in a study of the environmental heritage of the area,</p> <p>(b) Aboriginal objects or Aboriginal places that are protected under the National Parks and Wildlife Act 1974, and</p> <p>(c) Aboriginal areas, Aboriginal objects, Aboriginal places or landscapes identified by an Aboriginal heritage survey prepared by or on behalf of an Aboriginal Land Council, Aboriginal body or public authority and provided to the relevant planning authority, which identifies the area, object, place or landscape as being of heritage significance to Aboriginal culture and people.</p> <p><b>Comment:</b> The draft Planning Proposal is supported by a Statement of Heritage Impact (<b>Attachment 2</b>), which was assessed by Council staff. It was noted that the proposal would result in no additional overshadowing of the Heritage item, Mascot Park (I282), to the northern boundary.</p> <p>The Planning Proposal also includes a Building Height Plane Clause which is to apply to the northern and eastern boundaries of the site, and is considered to further reduce impacts on the adjoining oval from the potential built form.</p> <p><b>Consistency:</b> No inconsistencies with the terms of the direction were identified.</p>	
<b>2.4 Recreation Vehicle Areas</b>	Not applicable.	N/A
<b>2.5 Application of E2 and E3 Zones and Environmental Overlays in Far North Coast LEPs</b>	Not applicable.	N/A
<b>2.6 Remediation of Contaminated Land</b>	<p><b>Objective</b> (1) The objective of this direction is to reduce the risk of harm to human health and the environment by ensuring that contamination and remediation are considered by planning proposal authorities.</p> <p><b>Where this direction applies</b> (2) This direction applies to:</p> <p>(a) land that is within an investigation area within the meaning of the Contaminated Land Management Act 1997,</p> <p>(b) land on which development for a purpose referred to in Table 1 to the contaminated land planning guidelines is being, or is known to have been, carried out,</p> <p>(c) the extent to which it is proposed to carry out development on it for residential, educational, recreational or childcare purposes, or for the</p>	YES

Local Planning Direction	Draft Planning Proposal consistency with terms of direction	Consistent: Yes/ No If No, justified?
	<p><i>purposes of a hospital – land:</i>  <i>(i) in relation to which there is no knowledge (or incomplete knowledge) as to whether development for a purpose referred to in Table 1 to the contaminated land planning guidelines has been carried out, and</i>  <i>(ii) on which it would have been lawful to carry out such development during any period in respect of which there is no knowledge (or incomplete knowledge).</i></p> <p><b>When this direction applies</b>  <i>(3) This direction applies when a planning proposal authority prepares a planning proposal applying to land specified in paragraph (2).</i></p> <p><b>What a planning proposal authority must do if this direction applies</b>  <i>(4) A planning proposal authority must not include in a particular zone (within the meaning of the local environmental plan) any land specified in paragraph (2) if the inclusion of the land in that zone would permit a change of use of the land, unless:</i>  <i>(a) the planning proposal authority has considered whether the land is contaminated, and</i>  <i>(b) if the land is contaminated, the planning proposal authority is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for all the purposes for which land in the zone concerned is permitted to be used, and (c) if the land requires remediation to be made suitable for any purpose for which land in that zone is permitted to be used, the planning proposal authority is satisfied that the land will be so remediated before the land is used for that purpose. In order to satisfy itself as to paragraph (4)(c), the planning proposal authority may need to include certain provisions in the local environmental plan.</i>  <i>(5) Before including any land specified in paragraph (2) in a particular zone, the planning proposal authority is to obtain and have regard to a report specifying the findings of a preliminary investigation of the land carried out in accordance with the contaminated land planning guidelines.</i></p> <p><b>Comment:</b>  The Detailed Site Investigation (<b>Attachment 4</b>) submitted with the Planning Proposal has been assessed.  The planning proposal seeks to increase the height to part of the site from 22m to 44m. The existing B5 Business Development zone will remain unchanged.</p> <p>Report that was reviewed includes:</p> <ol style="list-style-type: none"> <li>1. 'Detailed Site Investigation, 146-154 O'Riordan Street, Mascot, NSW', (Report 1.16) by Trace Environmental, dated 1 November 2018.</li> </ol> <p>The Detailed Site Investigation identified a number of potential contamination and acid sulfate soil issues at the site. However, from a planning proposal's perspective, an increase in building height alone would not present an increase in land use sensitivity with respect to contamination or acid sulfate soil exposure. Therefore, no objections to this planning proposal have been identified in respect to this aspect of the proposal.</p> <p><b>Consistency:</b>  No inconsistencies with the terms of the direction were identified.</p>	
<b>3.1 Residential Zones</b>	Not applicable. The site is not zoned for residential purposes and the draft Planning Proposal does not propose to rezone the site for residential purposes.	<b>N/A</b>
<b>3.2 Caravan Parks and Manufactured</b>	Not applicable.	<b>N/A</b>



Local Planning Direction	Draft Planning Proposal consistency with terms of direction	Consistent: Yes/ No If No, justified?
<b>Home Estates</b>		
<b>3.3 Home Occupations</b>	Revoked	
<b>3.4 Integrating Land Use and Transport</b>	<p><b>Objectives</b>  <i>(1) The objective of this direction is to ensure that urban structures, building forms, land use locations, development designs, subdivision and street layouts achieve the following planning objectives:</i>  <i>(a) improving access to housing, jobs and services by walking, cycling and public transport, and</i>  <i>(b) increasing the choice of available transport and reducing dependence on cars, and</i>  <i>(c) reducing travel demand including the number of trips generated by development and the distances travelled, especially by car, and</i>  <i>(d) supporting the efficient and viable operation of public transport services, and</i>  <i>(e) providing for the efficient movement of freight.</i></p> <p><b>Where this direction applies</b>  <i>(2) This direction applies to all relevant planning authorities.</i></p> <p><b>When this direction applies</b>  <i>(3) This direction applies when a relevant planning authority prepares a planning proposal that will create, alter or remove a zone or a provision relating to urban land, including land zoned for residential, business, industrial, village or tourist purposes.</i></p> <p><b>What a relevant planning authority must do if this direction applies</b>  <i>(4) A planning proposal must locate zones for urban purposes and include provisions that give effect to and are consistent with the aims, objectives and principles of:</i>  <i>(a) Improving Transport Choice – Guidelines for planning and development (DUAP 2001), and</i>  <i>(b) The Right Place for Business and Services – Planning Policy (DUAP 2001)</i></p> <p><b>Comment:</b>  The draft Planning Proposal is considered consistent with the aforementioned Guidelines, as the draft Planning Proposal encourages business development in an identified strategic centre, namely, Green Square-Mascot strategic centre.</p> <p><b>Consistency:</b>  No inconsistencies with the terms of the direction were identified.</p>	<b>YES</b>
<b>3.5 Development Near Regulated Airports and Defence Airfields</b>	<p><b>Objectives</b>  <i>(1) The objectives of this direction are:</i>  <i>(a) to ensure the effective and safe operation of regulated airports and defence airfields;</i>  <i>(b) to ensure that their operation is not compromised by development that constitutes an obstruction, hazard or potential hazard to aircraft flying in the vicinity; and</i>  <i>(c) to ensure development, if situated on noise sensitive land, incorporates appropriate mitigation measures so that the development is not adversely affected by aircraft noise.</i></p> <p><b>Where this direction applies</b>  <i>(2) This direction applies to all relevant planning authorities.</i></p> <p><b>When this direction applies</b>  <i>(3) This direction applies when a relevant planning authority prepares a</i></p>	<b>YES</b>

Local Planning Direction	Draft Planning Proposal consistency with terms of direction	Consistent: Yes/ No If No, justified?
	<p><i>planning proposal that will create, alter or remove a zone or a provision relating to land near a regulated airport which includes a defence airfield.</i></p> <p><b>What a relevant planning authority must do if this direction applies</b>  <i>(4) In the preparation of a planning proposal that sets controls for development of land near a regulated airport, the relevant planning authority must:</i>  <i>(a) consult with the lessee/operator of that airport;</i>  <i>(b) take into consideration the operational airspace and any advice from the lessee/operator of that airport;</i>  <i>(c) for land affected by the operational airspace, prepare appropriate development standards, such as height controls.</i>  <i>(d) not allow development types that are incompatible with the current and future operation of that airport.</i>  <i>(5) In the preparation of a planning proposal that sets controls for development of land near a core regulated airport, the relevant planning authority must:</i>  <i>(a) consult with the Department of the Commonwealth responsible for airports and the lessee/operator of that airport; (b) for land affected by the prescribed airspace (as defined in Regulation 6(1) of the Airports (Protection of Airspace) Regulation 1996, prepare appropriate development standards, such as height controls.</i>  <i>(c) not allow development types that are incompatible with the current and future operation of that airport.</i>  <i>(d) obtain permission from that Department of the Commonwealth, or their delegate, where a planning proposal seeks to allow, as permissible with consent, development that would constitute a controlled activity as defined in section 182 of the Airports Act 1996. This permission must be obtained prior to undertaking community consultation in satisfaction of section 57 of the Environmental Planning and Assessment Act 1979.</i></p> <p><b>Comment:</b>  This direction applies because the draft Planning Proposal seeks to alter provisions relating to land in the vicinity of a regulated airport (Sydney Airport).</p> <p>The site is located within the 51m AHD OLS contour and proposes a Height of Buildings of 44 metres above ground level (existing) on land with a reduced level of approximately 8 metres above Australian Height Datum (AHD).</p> <p>A Preliminary Aeronautical Impact Assessment (<b>Attachment 5</b>) was submitted with the draft Planning Proposal, which concludes that the proposed building height would not result in penetration of the OLS.</p> <p><b>Consistency:</b>  No inconsistencies with the terms of the direction were identified noting that during exhibition of the previous Planning Proposal, SACL and DITRDC were consulted and the proponent has been issued with a controlled activity approval (<b>Attachment 6</b>).</p>	
<b>3.6 Shooting Ranges</b>	Not applicable.	<b>N/A</b>
<b>3.7 Reduction in non-hosted short term rental accommodation period</b>	The direction only applies to land within the Byron Shire Council LGA.	<b>N/A</b>
<b>4.1 Acid Sulfate Soils</b>	<p><b>Objective</b>  <i>(1) The objective of this direction is to avoid significant adverse environmental impacts from the use of land that has a probability of</i></p>	<b>NO - justified.</b>

Local Planning Direction	Draft Planning Proposal consistency with terms of direction	Consistent: Yes/ No If No, justified?
	<p><i>containing acid sulfate soils.</i></p> <p><b>Where this direction applies</b>  <i>(2) This direction applies to all relevant planning authorities that are responsible for land having a probability of containing acid sulfate soils, as shown on Acid Sulfate Soils Planning Maps held by the Department of Planning.</i></p> <p><b>When this direction applies</b>  <i>(3) This direction applies when a relevant planning authority prepares a planning proposal that will apply to land having a probability of containing acid sulfate soils as shown on the Acid Sulfate Soils Planning Maps.</i></p> <p><b>What a relevant planning authority must do if this direction applies</b>  <i>(4) The relevant planning authority must consider the Acid Sulfate Soils Planning Guidelines adopted by the Director-General of the Department of Planning when preparing a planning proposal that applies to any land identified on the Acid Sulfate Soils Planning Maps as having a probability of acid sulfate soils being present.</i>  <i>(5) When a relevant planning authority is preparing a planning proposal to introduce provisions to regulate works in acid sulfate soils, those provisions must be consistent with:</i>  <i>(a) the Acid Sulfate Soils Model LEP in the Acid Sulfate Soils Planning Guidelines adopted by the Director-General, or</i>  <i>(b) such other provisions provided by the Director-General of the Department of Planning that are consistent with the Acid Sulfate Soils Planning Guidelines.</i>  <i>(6) A relevant planning authority must not prepare a planning proposal that proposes an intensification of land uses on land identified as having a probability of containing acid sulfate soils on the Acid Sulfate Soils Planning Maps unless the relevant planning authority has considered an acid sulfate soils study assessing the appropriateness of the change of land use given the presence of acid sulfate soils. The relevant planning authority must provide a copy of any such study to the Director General prior to undertaking community consultation in satisfaction of section 57 of the Act.</i>  <i>(7) Where provisions referred to under paragraph (5) of this direction have not been introduced and the relevant planning authority is preparing a planning proposal that proposes an intensification of land uses on land identified as having a probability of acid sulfate soils on the Acid Sulfate Soils Planning Maps, the planning proposal must contain provisions consistent with paragraph (5).</i></p> <p><b>Comment:</b>  The Bayside LEP 2021 Acid Sulfate Soils Map identifies the site as having Class 4 acid sulfate soils. The draft Planning Proposal was not supported by an acid sulfate soils study.</p> <p><b>Consistency</b>  A Planning Proposal may be inconsistent with the terms of the direction if the inconsistency is justified by a study prepared in support of the Planning Proposal.</p> <p><b>Comment:</b>  Clause 6.1 of the Bayside LEP 2021 requires an acid sulfate soils management plan at Development Application stage, before carrying out any development on the land. The inconsistency with this direction is therefore considered minor and justifiable.</p>	
<b>4.2 Mine Subsidence and Unstable Land</b>	Not applicable.	<b>N/A</b>



Local Planning Direction	Draft Planning Proposal consistency with terms of direction	Consistent: Yes/ No If No, justified?
4.3 Flood Prone Land	<p><b>Objectives</b>            (1) The objectives of this direction are:            (a) to ensure that development of flood prone land is consistent with the NSW Government's Flood Prone Land Policy and the principles of the Floodplain Development Manual 2005.            (b) to ensure that the provisions of a local environmental plan that apply to flood prone land are commensurate with flood behaviour and include consideration of the potential flood impacts on and off the subject land.</p> <p><b>Where this direction applies</b>            (2) This direction applies to all relevant planning authorities that are responsible for flood prone land.</p> <p><b>When this direction applies</b>            (3) This direction applies when a planning proposal authority prepares a planning proposal that creates, removes or alters a zone or a provision that affects flood prone land.</p> <p><b>What a planning proposal authority must do if this direction applies</b>            (4) A planning proposal must include provisions that give effect to and are consistent with:            (a) the NSW Flood Prone Land Policy,            (b) the principles of the Floodplain Development Manual 2005,            (c) the Considering flooding in land use planning guideline 2021, and            (d) any adopted flood study and/or floodplain risk management plan prepared in accordance with the principles of the Floodplain Development Manual 2005 and adopted by the relevant council.            (5) A planning proposal must not rezone land within the flood planning area from Recreation, Rural, Special Purpose or Environmental Protection Zones to a Residential, Business, Industrial or Special Purpose Zones.            (6) A planning proposal must not contain provisions that apply to the flood planning area which:            (a) permit development in floodway areas,            (b) permit development that will result in significant flood impacts to other properties,            (c) permit development for the purposes of residential accommodation in high hazard areas,            (d) permit a significant increase in the development and/or dwelling density of that land,            (e) permit development for the purpose of centre-based childcare facilities, hostels, boarding houses, group homes, hospitals, residential care facilities, respite day care centres and seniors housing in areas where the occupants of the development cannot effectively evacuate,            (f) permit development to be carried out without development consent except for the purposes of exempt development or agriculture. Dams, drainage canals, levees, still require development consent,            (g) are likely to result in a significantly increased requirement for government spending on emergency management services, flood mitigation and emergency response measures, which can include but are not limited to the provision of road infrastructure, flood mitigation infrastructure and utilities, or            (h) permit hazardous industries or hazardous storage establishments where hazardous materials cannot be effectively contained during the occurrence of a flood event.            (7) A planning proposal must not contain provisions that apply to areas between the flood planning area and probable maximum flood to which Special Flood Considerations apply which:            (a) permit development in floodway areas,            (b) permit development that will result in significant flood impacts to other properties,            (c) permit a significant increase in the dwelling density of that land,</p>	YES

Local Planning Direction	Draft Planning Proposal consistency with terms of direction	Consistent: Yes/ No If No, justified?
	<p>(d) permit the development of centre-based childcare facilities, hostels, boarding houses, group homes, hospitals, residential care facilities, respite day care centres and seniors housing in areas where the occupants of the development cannot effectively evacuate,</p> <p>(e) are likely to affect the safe occupation of and efficient evacuation of the lot, or</p> <p>(f) are likely to result in a significantly increased requirement for government spending on emergency management services, and flood mitigation and emergency response measures, which can include but not limited to road infrastructure, flood mitigation infrastructure and utilities.</p> <p>(8) For the purposes of preparing a planning proposal, the flood planning area must be consistent with the principles of the Floodplain Development Manual 2005 or as otherwise determined by a Floodplain Risk Management Study or Plan adopted by the relevant council.</p> <p><b>Comment</b> The draft Planning Proposal is supported by a Flood Assessment (<b>Attachment 7</b>). Whilst it is noted that the draft Planning Proposal does not seek to alter provisions to significantly increase the development of the land, the Flood Assessment has been assessed and it is noted that documentation will need to be submitted at DA lodgement that reflects the following matters:</p> <ol style="list-style-type: none"> <li>1. Undertake a detailed site specific two-dimensional hydraulic modelling to estimate the flood behaviour of the pre- and post-development scenarios. Detailed site survey to be undertaken.</li> <li>2. The development is not to increase the water level or hazard on adjoining properties. Opportunities should be investigated to design a development that is clear of the overland floodway and acts to reduce the impacts of these flows, possibly by removing inappropriate travel paths and/or reducing the hazard.</li> <li>3. Inclusion of a flood risk management plan in accordance with the floodplain development manual including but not limited to flood risk analysis, emergency response and evacuation procedure up to PMF flooding.</li> <li>4. Any portion of the building or structure lower than the applicable flood planning level (FPL) shall be built from flood compatible materials to be specified by a Structural Engineer.</li> <li>5. All services associated with the development and driveway access to the basement shall be flood proofed to the habitable floor level.</li> <li>6. Council is aware of an existing 1050mm diameter stormwater drainage pipe running across the middle of the site (refer to figure 1-1 [of the submitted Flood Assessment] for the approximate location). Council records show that this pipe is owned by Sydney Water. This pipe should be physically located by a surveyor along with the depth. The depth of the pipe and the alignment of the pipe should be clearly shown on the plans submitted for the application for planning consent. Approval from Sydney Water shall be sought for the stormwater network diversion/building over the existing pipe. The proposed acute angle will not be permitted as it will result in loss of network efficiency and head and will cause problems with ongoing maintenance of the drainage asset.</li> </ol> <p><b>Consistency:</b> No inconsistencies with the terms of the direction were identified.</p>	
<b>4.4 Planning for Bushfire Protection</b>	Not applicable.	<b>N/A</b>
<b>5.1 Implementation</b>	Revoked	<b>N/A</b>

Local Planning Direction	Draft Planning Proposal consistency with terms of direction	Consistent: Yes/ No If No, justified?
of Regional Strategies		
5.2 Sydney Drinking Water Catchment	Not applicable.	N/A
5.3 Farmland of State and Regional Significance on the NSW Far North Coast	Not applicable.	N/A
5.4 Commercial and Retail Development along the Pacific Highway, North Coast	Not applicable.	N/A
5.5 to 5.8	Revoked	
5.9 North West Rail Link Corridor Strategy	Not applicable.	N/A
5.10 Implementation of Regional Plans	<p><b>Objective</b> (1) The objective of this direction is to give legal effect to the vision, land use strategy, goals, directions and actions contained in Regional Plans.</p> <p><b>Where this direction applies</b> (2) This direction applies to land to which a Regional Plan has been released by the Minister for Planning.</p> <p><b>When this direction applies</b> (3) This direction applies when a relevant planning authority prepares a planning proposal.</p> <p><b>What a relevant planning authority must do if this direction applies</b> (4) Planning proposals must be consistent with a Regional Plan released by the Minister for Planning.</p> <p><b>Comment</b> The draft Planning Proposal is considered generally consistent with the Eastern City District Plan by retaining and managing industrial and urban services land within an identified strategic centre, namely, the Green Square—Mascot Strategic Centre.</p> <p><b>Consistency</b> No inconsistencies with the terms of the direction were identified.</p>	YES
5.11 Development of Aboriginal Land Council land	Not applicable.	N/A
6.1 Approval and Referral Requirements	<p><b>Not applicable</b> The Draft Planning Proposal does not propose to include provisions that require the concurrence, consultation or referral of Development Applications to a Minister or public authority.</p>	N/A
6.2 Reserving Land for Public Purposes	Not applicable.	N/A
6.3 Site Specific Provisions	<p><b>Objective</b> (1) The objective of this direction is to discourage unnecessarily restrictive site specific planning controls.</p> <p><b>Where this direction applies</b> (2) This direction applies to all relevant planning authorities.</p> <p><b>When this direction applies</b></p>	YES



Local Planning Direction	Draft Planning Proposal consistency with terms of direction	Consistent: Yes/ No If No, justified?
	<p><i>(3) This direction applies when a relevant planning authority prepares a planning proposal that will allow a particular development to be carried out.</i></p> <p><b>What a relevant planning authority must do if this direction applies</b></p> <p><i>(4) A planning proposal that will amend another environmental planning instrument in order to allow a particular development proposal to be carried out must either:</i></p> <p><i>(a) allow that land use to be carried out in the zone the land is situated on, or</i></p> <p><i>(b) rezone the site to an existing zone already applying in the environmental planning instrument that allows that land use without imposing any development standards or requirements in addition to those already contained in that zone, or</i></p> <p><i>(c) allow that land use on the relevant land without imposing any development standards or requirements in addition to those already contained in the principal environmental planning instrument being amended.</i></p> <p><i>(5) A planning proposal must not contain or refer to drawings that show details of the development proposal.</i></p> <p><b>Comment:</b> The draft Planning Proposal includes a building height plane clause, as a result of the Bayside Local Planning Panel's recommendation from the previous submitted Planning Proposal.</p> <p><b>Consistency:</b> The inconsistency with the terms of the direction is considered minor, given that the DPIE raised no objection to a building height plane clause being introduced into the LEP when issuing a Gateway determination. The clause is now included as part of this re-submitted Planning Proposal.</p>	
7.1 Implementation of A Plan for Growing Sydney	Revoked	N/A
7.2 Implementation of Greater Macarthur Land Release Investigation	Revoked	N/A
7.3 Parramatta Road Corridor Urban Transformation Strategy	Not applicable.	N/A
7.4 Implementation of North West Priority Growth Area Land Use and Infrastructure Implementation Plan	Not applicable.	N/A
7.5 Implementation of Greater Parramatta Priority Growth Area Interim Land Use and Infrastructure Implementation Plan	Not applicable.	N/A
7.6 Implementation of Wilton Priority Growth Area Interim Land Use and	Not applicable.	N/A

Local Planning Direction	Draft Planning Proposal consistency with terms of direction	Consistent: Yes/ No If No, justified?
Infrastructure Implementation Plan		
7.7 Implementation of Glenfield to Macarthur Urban Renewal Corridor	Not applicable.	N/A
7.8 Implementation of the Western Sydney Aerotropolis Plan	Not applicable.	N/A
7.9 Implementation of Bayside West Precincts 2036 Plan	Not applicable. The site is not located within the Bayside West Precincts area.	N/A
7.10 Implementation of Planning Principles for the Cooks Cove Precinct	Not applicable. The direction does not apply to this Draft Planning Proposal, as the site is not within the Cooks Cove Precinct.	N/A
7.11 Implementation of St Leonards and Crows Nest 2036 Plan	Not applicable.	N/A
7.12 Implementation of Greater Macarthur 2040	Not applicable.	N/A
7.13 Implementation of the Pyrmont Peninsula Place Strategy	Not applicable.	N/A

### State Environmental Planning Policies (SEPPs)

An assessment of the draft Planning Proposal against the relevant SEPPs is provided in **Table 3**, below.

**Table 3:** Relevant State Environmental Planning Policies

Name of SEPP	Compliance of draft Planning Proposal with SEPP	Complies Y/ N
SEPP (Infrastructure) 2007	<p><b>Clause 87 - Impact of rail noise or vibration on non-rail development</b></p> <p>The site is located in close proximity to the Sydney Airport rail tunnel.</p> <p>Should a future Development Application be made, the publication <i>'Development near rail corridors and busy roads – interim guideline'</i> issued by the former Department of Planning would need to be considered.</p> <p><b>Clause 101 - Development with frontage to classified road</b></p> <p>O'Riordan Street is identified by Roads and Maritime Services (RMS) as a Classified Road.</p> <p>The submitted Traffic and Parking Impact Statement (<b>Attachment 8</b>) report was referred to a Traffic Consultant for peer review. The peer review found that there are no traffic or transport issues that would preclude the draft Planning Proposal from proceeding.</p> <p>It is noted that the previous Planning Proposal was referred to Transport for NSW (TfNSW) as a requirement of the Gateway determination. TfNSW</p>	YES

Name of SEPP	Compliance of draft Planning Proposal with SEPP	Complies Y/ N
	did not raise objection to the draft Planning Proposal.	

There are no other SEPPs applicable to the draft Planning Proposal.

### Sydney Regional Environmental Plans (SREPs)

There are no SREPs applicable to the draft Planning Proposal.

### Strategic Planning Framework – Regional and District

Regional, sub-regional and district plans and strategies include outcomes and specific actions for a range of different matters including housing and employment targets, and identify regionally important natural resources, transport networks and social infrastructure.

An assessment of the draft Planning Proposals consistency with the strategic planning framework is provided in **Table 4**, below.

**Table 4:** Strategic Planning Framework

Name of Strategic Plan	Directions, priorities, objectives and actions	Draft Planning Proposal consistency with Strategic Plan	Consistency Y/N
<b>Regional Plans</b>			
A Metropolis of Three Cities – The Greater Sydney Region Plan	<p><i>Direction 5: Productivity</i></p> <p><i>Objective 14: Integrated land use and transport creates walkable and 30-minute cities.</i></p> <p><i>Objective 22: Investment and business activity in centres.</i></p> <p><i>Objective 23: Industrial and urban services land is planned, retained and managed.</i></p>	<p>The draft Planning Proposal supports permissible land uses located approximately 400m walking distance from Mascot rail station.</p> <p>The draft Planning Proposal is consistent with the objective as it supports business activity within an identified strategic centre.</p> <p>The draft Planning Proposal is consistent with the objective to retain industrial and urban services land.</p>	<b>YES</b>
<b>District Plans</b>			
Eastern City District Plan (Plan)	<p>The draft Planning Proposal is consistent with the overall intent of the Plan, in particular:</p> <p><i>Planning Priority E10 – Delivering integrated land use and transport planning and a 30-minute city</i></p>	<p>The draft Planning Proposal improves access to local jobs and services as the proposal encourages the growth of the strategic centre, reducing the</p>	<b>YES</b>

Name of Strategic Plan	Directions, priorities, objectives and actions	Draft Planning Proposal consistency with Strategic Plan	Consistency Y/N
	<p><i>Planning Priority E11 – Growing investment, business opportunities and job in strategic centres</i></p> <p><i>Planning Priority E12 – Retaining and managing industrial and urban services land</i></p>	<p>need for people to travel long distances to access jobs and local services.</p> <p>The site is located within the Green Square-Mascot strategic centre. The proposal supports development opportunity within the centre, consistent with the Planning Priority.</p> <p>The draft Planning Proposal retains the existing B5 Business Development zoning for the site and is therefore consistent with the Planning Priority.</p>	

## Strategic Planning Framework – Local

### Bayside Local Strategic Planning Statement (LSPS)

Council's LSPS sets the 20-year vision for the Bayside LGA, including identifying the special character and values to be preserved and how change will be managed. The LSPS explains how council is implementing the planning priorities and actions in the relevant district plan in conjunction with their Community Strategic Plan.

The draft PP compares with the following relevant Planning Priorities identified in the Bayside LSPS, as noted in **Table 5**, below:

**Table 5:** Bayside LSPS

Bayside Planning Priority	Action	Draft Planning Proposal consistency
11. Develop clear and appropriate controls for development of heritage items, adjoining sites and within conservation areas.	<i>Council will protect, celebrate and promote Bayside's rich cultural heritage</i>	The draft PP responds to the adjoining heritage item, Mascot Park, by introducing a building height plane clause into the LEP to mitigate visual impacts from any future development proposal.
15. Growing investment, business opportunities and jobs in Bayside's strategic centres and centres.	<i>Retain and manage surrounding employment, industrial and urban services lands and their role in supporting the Harbour CBD and Bayside.</i>	The draft Planning Proposal is consistent with Action 15.4 by retaining and managing employment, industrial and urban services land.



### Bayside Community Strategic Plan 2030

An assessment of the draft PP's consistency with the following relevant themes and strategic directions contained in the Bayside Community Strategic Plan 2030 is provided in **Table 6**:

**Table 6:** Bayside Community Strategic Plan 2030

Theme Four – In 2030 we will be a prosperous community	How We Will Get There	Consistency
<ul style="list-style-type: none"> <li><b>Strategic Direction –</b> <i>Opportunities for economic development are recognised</i></li> </ul>	<i>Industrial lands and employment lands are preserved – partnering with major employers to support local jobs</i>	The draft PP proposes to retain and manage industrial and employment land, and will result in more efficient use of the site for employment purposes, by enabling for additional urban design outcomes / building envelopes to achieve a broader range of employment types.

### **Local Plans**

An assessment of the draft Planning Proposal's consistency with the Bayside LEP 2021 is provided below.

### Bayside Local Environmental Plan 2021 (Bayside LEP 2021)

#### Clause 4.3 Height of Buildings

The draft Planning Proposal is generally consistent with the objectives set out in Clause 4.3 of the Bayside LEP 2021, as it does not result in unreasonable overshadowing, visual impact or loss of views, and is appropriate in terms of the surrounding context.

It should be noted that a building height plane clause does *not* currently exist for the site under the Bayside LEP 2021. The draft Planning Proposal has the intention of introducing one for the site.

#### Clause 4.4 Floor Space Ratio

It should be noted that the draft Planning Proposal does not propose any changes to the existing Floor Space Ratio of 3:1.

On 13 March 2020, Development Application (DA2019/6) was approved by the Sydney Eastern City Planning Panel. The DA includes a mixed use development including 2 x seven (7) storey buildings and 2 x six (6) storey buildings containing 94 hotel rooms, 457 serviced apartments, a restaurant, commercial tenancies and basement parking. The DA had an FSR of approximately 2.16:1.

If the draft Planning Proposal was to be supported by Council and finalised by DPIE, all or part of the residual FSR of 0.84:1 could be accommodated within the additional 22m building height sought under the draft Planning Proposal.

### Clause 6.12 Design Excellence

Any Development Applications are subject to the requirements of clause 6.12 Design Excellence under the Bayside LEP 2021, noting that the submitted Urban Design Report has included a set of principles to demonstrate how the objectives of the Design Excellence Clause can be achieved.

### Botany Bay DCP 2013

#### Part 6 – Employment Zones

This Part of the DCP provides a framework to guide future development in the IN1 General Industrial and IN2 Light Industrial zones, and the B5 – Business Development and B7 Business Park zones in the Bayside LEP 2021. These zones generate employment opportunities and play an important role in the economy. The purpose of this part is to provide more detailed objectives and controls for the employment zones, to support the provisions within the Bayside LEP 2021.

#### 6.2.4 Mascot Business Development Precinct

Part 6 Employment Zones of the Botany Bay Development Control Plan 2013 provides a framework to guide future development in the IN1 and IN2 industrial zones, and the B5 and B7 business zones in the Bayside LEP 2021. The subject site is not proposed to be zoned for residential purposes, and the draft Planning Proposal is consistent with the alignment of the B5 Business Development zone along the O’Riordan Street corridor, to which Part 6 of the Botany Bay DCP 2013 currently applies.

The Mascot Business Development Precinct also applies to the subject site, which identifies, among other key objectives, the following objective for development:

- O2 To ensure that the scale, design, material of construction and nature of the development, in the opinion of the Council, contributes positively to the visual amenity and the gateway function of the area*

While both *Part 6 Employment Zones* and *Mascot Business Development Precinct* chapters of the Botany Bay DCP 2013 already apply to the subject land and would need to be addressed as part of future consideration of any Development Application(s) for the site, it is considered that the proposed building height plane clause is the most effective way to manage transition in building height from the northern and eastern side boundaries, which adjoins Mascot Park.

### **Other likely Environmental Impacts**

#### Urban Design and overshadowing

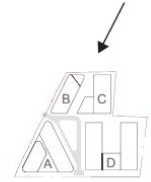
An Urban Design Report was submitted with the draft Planning Proposal which has been subject to review by Council's Technical Officers.

Section 3.6 of the Urban Design Report (**Attachment 3**) illustrates the increased shadow impacts of the proposed change in height. The modelling illustrates how built form to 22 metres in height, generated in the eastern half of the site would impact adjacent R3 Medium Density Residential zoned land to the east and the RE1 Public Recreation zoned land to the

north. **Figures 8 & 9** illustrate perspective view comparisons, based on current and proposed built form massing for the site.



Current 22m Massing

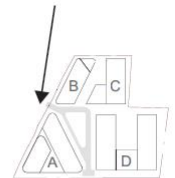


Proposed 44m Massing

**Figure 8:** Urban Design Report Extract: Current & Proposed Massing  
(View south-west adjoining Mascot Oval)



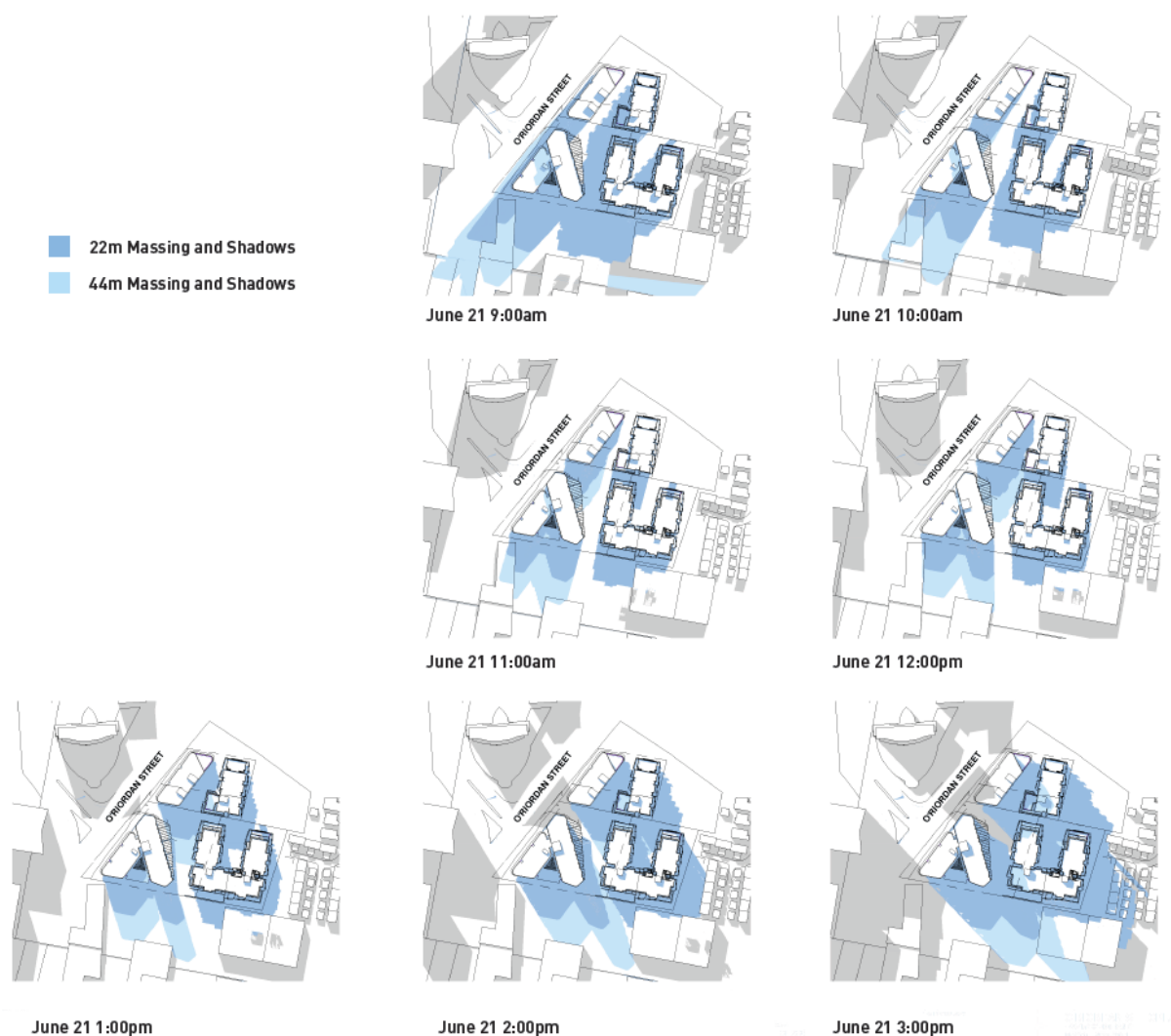
Current 22m Massing



Proposed 44m Massing

**Figure 9:** Urban Design Report Extract: Current & Proposed Massing  
(View south along O'Riordan Street corridor)

The shadow diagrams also illustrate how the proposed additional height in the western portion of the site would impact nearby properties, all of which are zoned B5 Business Development. As illustrated in **Figure 10**, no land zoned for residential or recreation purposes will be impacted by additional overshadowing resulting from this Draft Planning Proposal.



**Figure 10:** Urban Design Report Extract: Overshadowing Analysis  
(View south along O'Riordan Street corridor)

The proposed building height control on the site is considered acceptable in the context of building heights fronting O'Riordan Street in the vicinity of the site, along the O'Riordan Street corridor.

#### Proposed Building Height Plane Clause – Bayside LEP 2021

At its meeting of 29 September 2020, the Bayside Local Planning Panel (Panel) made the following recommendation for the previous draft Planning Proposal:



*"The Panel recommends to the Council that it exercises its delegation and make the Local Environmental Plan for 146-154 O'Riordan Street Mascot as exhibited, in accordance with Section 3.36 of the Environmental Planning and Assessment Act 1979, subject to an amendment to extend the Building Height Plane to the north-west corner of the site."*

The Panel's consideration is extracted from the meeting minutes and reproduced below:

*"The amended planning proposal seeks to address the built form outcome by including a building height plane (BHP) clause in the LEP. The Panel agrees the BHP clause is an appropriate tool and in this case manages an appropriate transition with the lower density residential area. However, the Panel is of the view the interface with the heritage oval would benefit by a BHP to apply to the whole of the northern boundary including the north-west corner of the site extending to O'Riordan Street. This would achieve greater community benefit, in particular having regard to the increasing importance and demand of existing open space areas in a precinct accommodating increased densities.*

*When this matter was first considered by the Local Planning Panel prior to exhibition, the Panel's advice sought to mitigate adverse impacts on the heritage item of Mascot Oval and Lionel Bowen Park by recommending a DCP and retaining the 22 metre height limit for a depth of 15m on the subject site along the full extent of the northern boundary to create a positive urban design outcome, rather than a continuous 44m height for the entire length of the O'Riordan Street frontage.*

*The Panel also noted that the built form on the western side of O'Riordan Street provides variation in heights as well as significant landscape setbacks in places. An appropriate setback and landscape buffer on the north-west corner of this site would provide a more appropriate outcome to respect the heritage item in the opinion of the Panel, and in the absence of a DCP, should be pursued by: the extension of the BHP; and through the development application stage."*

The draft Planning Proposal proposes a building height plane at the northern boundary extending over the part of the site that is proposed to remain at the existing mapped building height of 22 metres.

In response to the Panel's recommendation, the proponent submitted a 'Building Height Analysis – Urban Design Response' (Building Height Analysis - **Attachment 9**) to provide additional justification for the building height plane as proposed.

Council's technical staff reviewed the Building Height Analysis at the time, and raised no objection to the proposed building height plane as exhibited:

*'The site sits approximately at a minimum 25m from the heritage oval (boundary to oval edge) with the building interface largely separated from the oval through the proposed setbacks, additional landscaping on the adjoining lot and carparking. Concerns have not been raised as part of the internal urban design referral regarding the heritage interface and address of Building B as it is located at a substantial distance from the heritage open space. The interface and building address to the adjoining site will be further resolved through the DA process and assessment against clause 6.16 Design Excellence which will ensure a high-quality interface is achieved.*

*With reference to the Botany DCP 2013 6.2.4 Mascot Business Development Precinct, one of the objectives is to ensure that development contributes positively to the visual amenity and gateway function of the area.*

*The proposed development within the Mascot Business Development Precinct, along with the Electrolux building, acts as a marker to this precinct. The proposed development with the building height plane applied to the north-western extent of the northern boundary (Figure 1) steps away from the corner and doesn't provide a strong address to the Precinct that Figure 2 provides as an urban marker, and therefore lacks gateway significance.*



**Figure 1.**



**Figure 2.**

*Building B currently turns away from the park but still provides a strong address to the entry of the precinct. Modulation of the built form can address this at the DA stage and the massing and architectural address of building B can be emphasised through the*

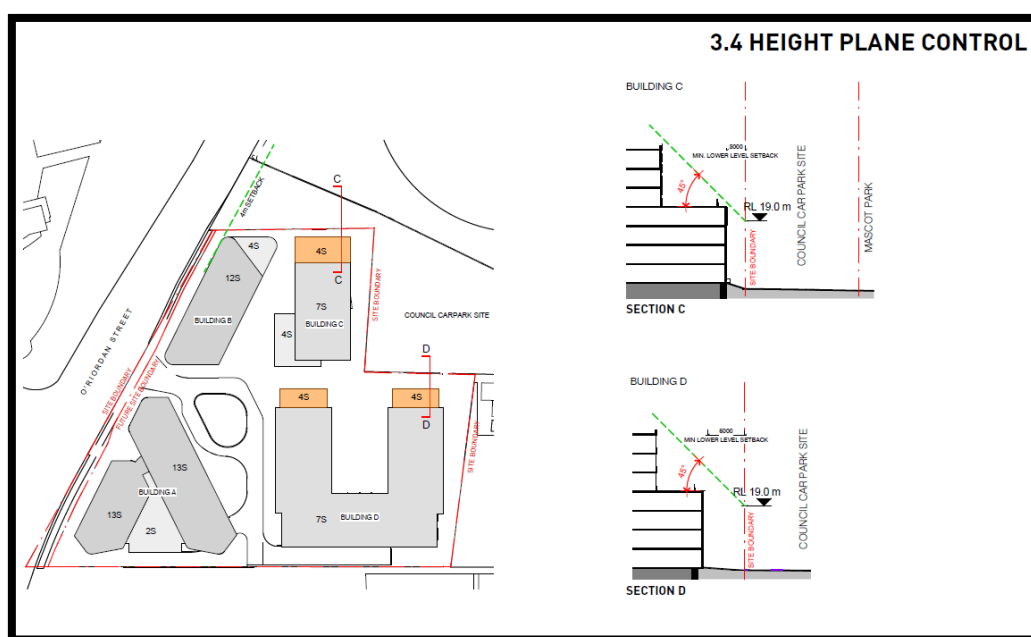
development brief as part of clause 6.16 Design Excellence of the Botany Bay Local Environmental Plan 2013.

*In addition, the panel noted that ‘appropriate setback and landscape buffer on the north-west corner of this site would provide a more appropriate outcome to respect the heritage item in the opinion of the Panel, and in the absence of a DCP, should be pursued by: the extension of the BHP; and through the development application stage.’*

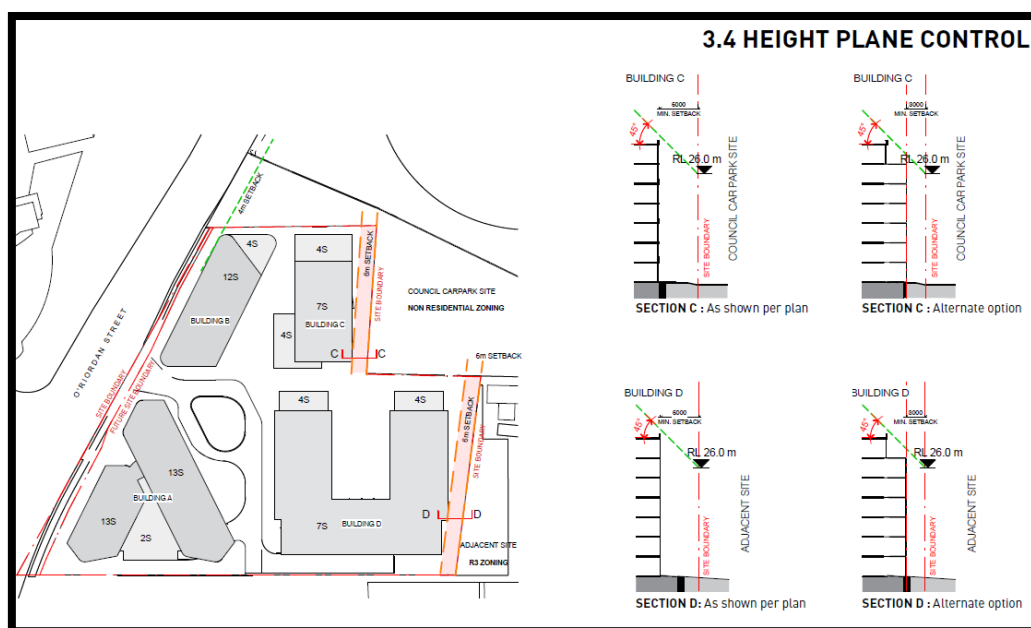
*The built form envelope proposed in the Planning Proposal is compliant with the DCP, and given the distance of the building from the oval, and context of the proposed built form as a marker within the Mascot Business Development Precinct, any further design resolution can be addressed as part of clause 6.16 Design Excellence of the Botany Bay Local Environmental Plan 2013.’*

The urban design advice remains current, despite the Bayside LEP 2021 repealing the BBLEP 2013, as there were no substantive policy changes introduced in the new LEP.

The updated Urban Design Report (refer **Attachment 3**) also includes modelling for the northern boundary (**Figure 11**) and eastern boundary (**Figure 12**), below:



**Figure 11: Northern boundary building height plane**  
(Source: Urban Design Report Revision D dated May 2020 – PTW Architects)



**Figure 12: Eastern boundary building height plane**  
 (Source: Urban Design Report Revision D dated May 2020 – PTW Architects)

## Economic Impact

An Economic Impact Assessment (**Attachment 10**) was included with the re-submitted draft Planning Proposal. However, it is noted that the draft Planning Proposal does not propose to intensify floorspace on the site, rather amend the height of building control and insert a building height plane clause for the site into the Bayside LEP 2021.

## Traffic and Vehicular Access

A Traffic and Parking Impact Statement (TPIS) report (refer **Attachment 8**) has been prepared to inform the draft Planning Proposal, which concluded that there would be no unacceptable impacts on traffic safety and that the road network, including intersections, could accommodate the redevelopment of the land. This is primarily because there is no increase to permitted floor space proposed.

An independent review of the submitted TPIS concluded the following:

*“In principle, there are no traffic or transport issues identified with the TPA that would preclude its (sic) Planning Proposal approval.”*

It is noted that the previously considered Planning Proposal was referred to Transport for NSW (TfNSW) for comment as part of the exhibition of the Planning Proposal. TfNSW raised no objection to the Planning Proposal.

## Sydney Water Assets

Sydney Water infrastructure, namely the Mascot Park Branch, traverses the mid-section of the site. In this regard, the draft Planning Proposal was referred to Sydney Water’s Growth Planning and Development team for comment as part of the Gateway determination



conditions for the previous Planning Proposal. Sydney Water raised no objection to that Planning Proposal at that time.

## Bayside Local Planning Panel Recommendation

The Panel considered the draft Planning Proposal on 21<sup>st</sup> September 2021 and provided the following advice to Council:

1. *The Bayside Local Planning Panel notes that a previous Local Planning Panel supported the Planning Proposal to proceed to Gateway but noted the need for further investigation to ensure that the increased height proposed did not result in adverse impacts to Mascot Oval. The particular concern related to the risk that the increased height could have a bulky, overbearing appearance from the Oval.*
2. *Having considered the additional information provided by the Applicant, in defining specific Building Height Planes, the Panel is satisfied that the Planning Proposal will result in an appropriate relationship with the public domain including Mascot Oval and that an extension of the building height plane along the entire northern boundary is not warranted.*
3. *The existing 22 metre height limit along the O’Riordan Street frontage is an anomaly in this area and the increase to 44m is consistent with existing controls, adjoining developments and in keeping with the character of the location.*
4. *The Planning Proposal is consistent with the strategic planning framework and promotes growth of the Green Square-Mascot strategic centre*
5. *The Bayside Local Planning Panel recommends to Council that pursuant to s3.33 of the Environmental Planning and Assessment Act 1979 (EPAA) the draft Planning Proposal for land known as 146-154 O’Riordan Street, Mascot be submitted to the Department of Planning, Industry and Environment for a Gateway determination.*
6. *The Bayside Local Planning Panel recommends to Council that should a Gateway determination be issued, a further report be presented to Council following the public exhibition period to demonstrate compliance with the Gateway determination, and to provide details of any submissions received throughout that process.*

## Planning Agreement

An offer to enter into a Planning Agreement has not been submitted to Council by the proponent.

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## Financial Implications

Not applicable	<input checked="" type="checkbox"/>
Included in existing approved budget	<input type="checkbox"/>
Additional funds required	<input type="checkbox"/>

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## Community Engagement

Should the draft Planning Proposal proceed through Gateway, the Planning Proposal will be subject to community consultation in accordance with Sections 3.34(2)(c) of the *Environmental Planning and Assessment Act 1979*.

## Attachments

- 1 Planning Proposal (Under separate cover Attachments Part Two) [⇒](#)
- 2 Statement of Heritage Impact (Under separate cover Attachments Part Two) [⇒](#)
- 3 Urban Design Report (Under separate cover Attachments Part Two) [⇒](#)
- 4 Detailed Site Investigation (Under separate cover Attachments Part Two) [⇒](#)
- 5 Preliminary Aeronautical Impact Assessment (Under separate cover Attachments Part Two) [⇒](#)
- 6 Controlled Activity Approval (Under separate cover Attachments Part Two) [⇒](#)
- 7 Flood Advice (Under separate cover Attachments Part Two) [⇒](#)
- 8 Traffic and Parking Assessment Report (Under separate cover Attachments Part Two) [⇒](#)
- 9 Building Height Analysis - Urban Design Response (Under separate cover Attachments Part Two) [⇒](#)
- 10 Economic Impact Assessment (Under separate cover Attachments Part Two) [⇒](#)