

9 December 2024

Our Ref: SSD-2025/5
Our Contact: Lisa Ho (02) 9562 1864

Lucinda Craig
Senior Planning Officer – Senior and Affordable Assessments
Development Assessment and Infrastructure
Department of Planning, Housing and Infrastructure

Sent via email: lucinda.craig@dpie.nsw.gov.au

Dear Ms Craig,

Bayside Council submission on State Significant Development Application for 792-794 Botany Road and 33-37 Henry Kendall Crescent, Mascot (SSD – 72393459)

Thank you for your correspondence dated 8 November 2024 requesting Bayside Council to comment on the State Significant Development (SSD) application for the proposed construction of a residential flat building ranging in height between 3 and 8 storeys, including:

- 126 apartments, comprising 88 affordable dwellings and 38 social dwellings,
- site preparation works including demolition of all existing building and structures, tree removal and remediation,
- ground level car parking with a total of 57 car parking spaces, and
- associated works including landscaping and public domain works.

The proposal to provide social and affordable apartments on the site is supported as it would provide much needed social and affordable housing in the Bayside LGA. Notwithstanding this, council staff have undertaken a review of the exhibited documents, and a summary of the following key issues include:

- **Consistency of development with Secretary's Environmental Assessment Requirements (SEARs) and Planning Proposal (PP):** The proposal is inconsistent with the scale proposed in the SEARs and PP. Further justification explaining the variations are required.
- **Design Quality Process:** The proposal has bypassed the typical State Design Review Panel (SDRP) process. Further information is required in the application to demonstrate how the proposal will deliver quality design outcomes for tenants and the local community.
- **Affordable Housing:** Verification that the development will be used for affordable housing for at least 25 years as proposed.
- **Urban Design and Built Form:** Further refinement of the building form is required to provide an appropriate urban design outcome and an acceptable contextual response.

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- **Environmental Amenity Impacts:** Unreasonable shading of war memorial in Mascot Memorial Park.
- **Contributions:** Homes NSW is seeking an exemption to paying development contributions. There is no exemption in the Contributions Plan for social or affordable housing. On this basis contributions still apply to the proposal.

Detailed comments on the proposal are provided in **Attachment A**.

If you require any further information, please do not hesitate to contact Lisa Ho, Senior Urban Planner on (02) 9562 1864.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Smith', with a stylized flourish at the end.

David Smith
Manager Strategic Planning

Attachments:

1. Bayside Council Detailed Comments on State Significant Development Application 792-794 Botany Road and 33-37 Henry Kendall Crescent, Mascot.
2. Council Letter re: Homes NSW Request for Exemption dated 11 September 2024
3. Conditions of Consent – Traffic, Parking, Stormwater and Landscaping

Attachment 1: State Significant Development Application 792-794 Botany Road and 33-37 Henry Kendall Crescent, Mascot SSD- SSD – 72393459 – Bayside Council Submission

Item 1: Consistency of Development with SEARs and Planning Proposal

The SEARs issued to the proponent requires an explanation of how the development as described in the EIS is consistent with the development as was described in the request for SEARs and provide a justification for any differences.

The proposal is not consistent with the development outlined in the SEARs or recent Planning Proposal.

Table 1: Comparison of the proposal

Item	SSD	SEARs	Planning Proposal
Land Use	126 residential apartments (88 affordable dwellings, 38 social dwellings) <ul style="list-style-type: none"> 30% social 70% affordable 	126 residential apartments (88 affordable dwellings, 38 social dwellings) <ul style="list-style-type: none"> 30% social 70% affordable 	127 residential apartments (89 private dwellings, 38 social dwellings) <ul style="list-style-type: none"> 30% social 70% private
Height	29.39m	28m	28m
FSR	2.07:1	2:1	2:1
Height in Storeys	Height in storeys <ul style="list-style-type: none"> Part 3 storeys/part 8 storeys along Henry Kendall Crescent 8 storeys along Coward Street 8 storeys along Botany Road. 	Heights in storeys <ul style="list-style-type: none"> Part 3 and part 4 storeys along Henry Kendall Crescent 4 storeys along Mascot Memorial Park Part 4 and Part 8 storeys along Botany Road. 	Height in storeys <ul style="list-style-type: none"> 3 storeys along Henry Kendall Crescent 4 and 8 storeys along Coward Street and 6 storeys along Botany Road
Car parking	Car parking at grade	Unknown	Basement parking

The proposed scale (no. of storeys) of the development differs to those described in the request for SEARs and Planning Proposal.

The EIS maintains the proposed development is generally consistent with development as described in the request for SEARs and recent planning proposal. An explanation of the removal of the basement car parking has been provided citing flooding and geotechnical constraints. No explanation on the difference in scale from the PP and SEARs has been provided in the EIS.

The proposed development is not consistent with the development described in the SEARs and PP. Table 1 above provides a comparison of the scale of the development scheme from PP to SSD stage, which shows the scale has increased especially for development along Coward Street almost doubling in height (4 to 8 storeys) from what was shown in the SEARs to lodgement of SSD application. The proposed massing of the building is considered to respond poorly to the immediate context of the site – see further discussion under item 4: Built Form and Urban Design.

Another key change from the PP is the delivery of social and affordable housing from 30% social housing and 70% private dwellings at the PP stage to 30% social and 70% affordable housing at SSD. The change to increase the number of dwellings for affordable housing is supported and is further discussed under item 2 Affordable Housing.

Item 2: Affordable Housing

The SEARs issued to the proponent requires documentation that a community housing provider will manage the affordable housing component of the development for 15 years.

No documentation has been provided to demonstrate that a community housing provider will manage the affordable housing component of the development. Given the proposal includes affordable and social housing and is relying on the density bonus provisions of the Housing SEPP, documentation from Homes NSW must be provided to demonstrate that a community housing provider has agreed to manage the affordable housing component of the development. This is to ensure the affordable housing component of the development will be used for its intended purposes.

The EIS states Homes NSW will be partnering with a community housing provider (CHP) who will develop and manage the development for at least 25 years.

Council notes the EIS is not clear with the length of time the affordable housing should be used for. The EIS states '*at least 25 years*' which could be less than 25 years. While Council would prefer to see affordable housing to be provided in perpetuity, Council does not have any issue with the 25-year timeframe proposed by Homes NSW as it is seen to provide a more sustainable supply of affordable housing for Bayside than the 15 years required by the Housing SEPP. Council recommends that DPHI request for the appropriate documentation or condition (Section 88 Instrument) to ensure Homes NSW commit to their proposal to provide affordable housing for 25 years not '*at least 25 years*' as described in the EIS.

Item 3: Design Quality Process

One of the requirements of the SEARs is the development has been reviewed by the SDRP.

Council understands Homes NSW has worked with Government Architect NSW (GA NSW) to develop an alternative design review process to the SDRP process that is independent and integrated into the Housing Australia Future Fund (HAFF) project program. A tailored HAFF design review process has been used and accepted by the Department of Planning, Housing and Infrastructure (DPHI) as an alternative to the SDRP for the HAFF program SSDAs.

The EIS states the proposal has been subject to three design reviews with GA NSW held in July and August 2024. Given the proposal did not go through the NSW State Design Review Panel and Council and other external stakeholders were not included in the HAFF Design Review process it would be reasonable for all documentation regarding this process be provided in the SSD application for the purposes of transparency and to ensure the proposal demonstrates high design quality.

In addition, a letter from GANSW to Homes NSW dated 17 September has been provided. This letter does not confirm the proposal will deliver quality design outcomes for tenants and the local community and it is not clear what proposal GA NSW is reviewing.

Council would like further information on the following matters:

- The letter from GA NSW dated 17 September 2024 does not provide confirmation on:
 - Whether the proposal reviewed by GA NSW is the same proposal submitted as part of the SSD application. Please provide documentation demonstrating the proposal

being reviewed by GA NSW is the same proposal being considered as part of the SSD application. It is not clear what proposal GA NSW is reviewing.

- Whether the proposal will deliver quality design outcomes for tenants and the local community. The letter requests for further refinement to the design before the issue of the final advice letter and the submission of the SSD. Please provide a final advice letter from GA NSW confirming the proposal will deliver quality design outcomes for tenants and the local community.
- All documentation in the HAFF design review process for the proposal.

Item 4: Built Form and Urban Design

The SEARs require the proposal to demonstrate how the proposed built form addresses and responds to the context, site characteristics, streetscape and existing and future character of the locality.

The following comments and recommendations are provided in relation to the built form and urban design of the proposal:

Overshadowing of park

The increased height and additional building mass now proposed fronting Coward Street will exacerbate overshadowing of Mascot Memorial Park. It is noted that the building appears to be overshadowing the war memorial, however the war memorial is not clearly shown on the shadow diagrams.

The proposal will result in unacceptable overshadowing of the heritage listed Mascot Memorial Park. The shadow diagrams show that the proposal will result in overshadowing of the area around the Memorial located on the north-eastern corner of the park from 11.30am to 3pm, during the winter solstice.

The EIS notes that overshadowing will be restricted to a small portion of the north-eastern frontage of the park with the maximum impact being 10.7% of the park at 9am on the shortest day of the year. While the extent of shading of the park is not substantial the concern is the location of the overshadowing on the Memorial and the area around the Anzac War Memorial in which commemorative services take place. In this instance overshadowing is not acceptable at any time of the day in this location.

This matter was also raised in Council's response to SEARs (letter dated 8 July 2024) and has not been addressed in the SSD.

Street interface

The revised proposal is now serviced with an at grade carpark supported by plant and service areas that have been located on all street frontages. The proposed cross site link that connected Botany Road to Coward Street (in the PP) has also been removed. The resultant building provides a less active / permeable contribution to the neighborhood.

Communal Open Space (COS)

The shadow analysis provided does not consider the impact of future building forms when developed at a mass consistent with that of the subject site. When this factor is considered, solar access to the proposed COS will be significantly reduced. The currently proposed COS is also entirely enclosed by residential units. This will limit the potential of the COS to facilitate active uses, without impacting the privacy of residents. It is recommended that the proposed COS is supported by an additional roof top terrace that has better solar access, an outlook over the park and is less susceptible to potential privacy issues.

There are also no shading diagrams on the proposed COS. Further shadow diagrams on the proposed COS are required.

Cross ventilation

72 of the proposed 126 units (57%) appear capable of cross ventilation (60% required by ADG). Units D1.01A, D1.02A, D1.03A, D2.01A, D2.02A, D2.03A are dependent upon cross ventilation directly into a common walkway. It is a concern that opening requirements required to meet ADG design objectives will compromise the privacy of the unit.

Further development/information is required to meet ADG objectives for cross ventilation.

Building massing

The proposed increased FSR combined with the introduction of an above ground carpark has significantly increased the perceived mass of the proposal.

The current proposal presents a continuous 8 storey building to Botany Road. The approved PP addressed the corner of Botany Road and Coward Street with an 8 storey building that stepped down to a 6 storey building fronting Botany Road. The stepped building form assisted in providing a clear street corner form and provided a transition in scale more consistent with the evolving scale of Botany Road.

The PP also provided a building form fronting Coward Street that stepped down to the west on the corner of Coward and Henry Street. The stepped built form provided a transition in scale with the lower scale residential neighborhood to the west and limited the extent of over shadowing of the park.

The altered massing of building responds poorly to the immediate context of the site, therefore further development is recommended.

Alternative building massing

To provide an acceptable contextual response it is recommended that the proposal is developed with a basement carpark and an FSR compliant with the approved PP. Further refinements of the building form should be undertaken to provide an acceptable response to the immediate context of the site. This should include:

- The reduction of building mass fronting Coward Street to reduce overshadowing of the park and create the opportunity for a roof terrace to provide more amenable COS overlooking the park.
- The reduction of building mass fronting Botany Road to assist in providing a clearly defined street corner building form and providing an appropriate transition in scale with evolving street scale of Botany Road.

To assist in accommodating the developments outlined above consideration should be given to:

- The reinstatement of a basement carpark and the relocation of service areas to the basement, to allow more residential units to be incorporated at ground floor level.
- The addition of an additional story to the three-storey building fronting Henry Kendall Crescent.



Figure 1: Current proposal

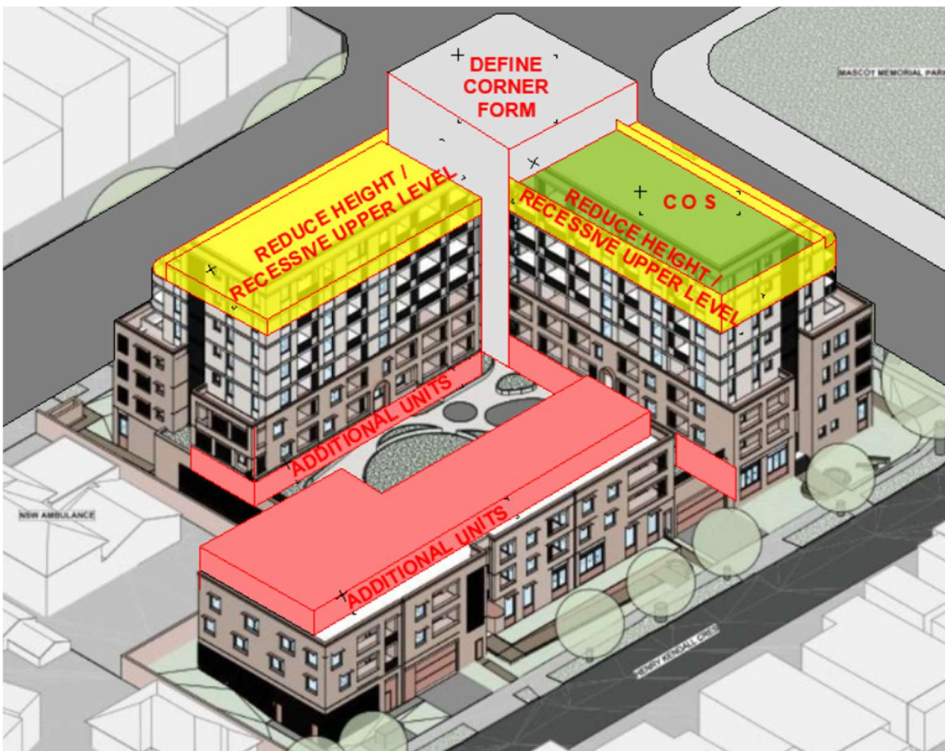


Figure 2: Recommended massing

Proposed developments to the approved PP have significantly increased the perceived mass of the building. The proposed building form no longer responds to the existing or future

desired context of the site in a reasonable manner. Further development of the building form is recommended. It is noted an improved contextual response and better amenity can be achieved without impacting the yield of the development.

Item 5: Heritage

The following comments are provided in relation to heritage impact of the proposal:

The subject property is in the vicinity of several heritage items listed in schedule 5 of BLEP 2021.

Suburb	Item name	Address	Significance	Item No
Mascot	Memorial Park	814 Botany Road and 149A Coward Street	Local	I262
Mascot	Botany Family Day Care	149 Coward Street	Local	I294
Rosebery	House group	995–999 Botany Road	Local	I266
Rosebery	Electricity Substation No 147	1001 Botany Road	Local	I267
Rosebery	Former National Bank of Australasia	1005 Botany Road, corner of Botany Road and Coward Street	Local	I268
Mascot	Coronation Hall	1007 Botany Road (corner of Coward and Botany Roads)	Local	I269
Mascot	Commercial building group	1009–1021 Botany Road	Local	I270

The existing buildings on the subject site are not heritage listed and have no heritage values, hence the proposed demolition is considered to have no adverse impact.

The proposed development has a substantially larger massing, height and footprint compared to the existing structures on the subject site. Despite this, the development is considered to have moderate impacts to the heritage significance of the surrounding items, particularly on item I262 “Memorial Park” and the items along the eastern side of Botany Road.

However, the development will have negative impacts on the sightlines from the public domain of Botany Road and Henry Kendall Crescent viewing south towards Mascot Memorial Park.

The southeastern corner of the development will also partially obstruct views from the public domain along Coward Street to the items along Botany Road.

The development will partially overshadow Mascot Memorial Park and the ANZAC War Memorial during winter.

It is acknowledged that the proposed development has taken initiatives to mitigate adverse impacts on the public domain and sightlines via landscaped setbacks from the boundary.

While the proportion of the development is not in keeping with the surrounding area or heritage items, the proposed design is utilising recessive materials and finishes that are sympathetic to the surrounding characteristics.

The negative impacts posed by the proposed development on the significance of the heritage items are relatively minor, and it is acknowledged that the proposal has attempted to incorporate measures to mitigate the negative impacts where possible. In view of the benefits of affordable housing provision in the area, the proposal is supported with the following recommendations:

- Any future design changes to the building massing should not pose any further negative impacts on the heritage items in the vicinity, this includes further obstruction of public domain sightlines and overshadowing of Mascot Memorial Park. Where possible, consider design solutions that can mitigate the current impact to the views and overshadowing.
- It is suggested that a heritage interpretation strategy be adopted in the public interface for interpretation of the site and vicinity's history, especially on the significance of items that are impacted by the development.

Item 6: Contribution and Public Benefit

NSW Homes has requested the Minister not impose a condition for local contributions under Section 7.13 of the EPA Act which states:

A consent authority may impose a condition under section 7.11 or 7.12 only if it is of a kind allowed by, and is determined in accordance with, a contributions plan (subject to any direction of the Minister under this Division).

A request for exemption to the levying of local infrastructure contributions was also made to Council. Council responded to this request in a letter dated 11 September 2024 broadly advising Homes NSW that an exemption cannot be granted.

The letter advises:

- Council recognises and supports the increased provision of social and affordable housing in the area.
- The land is subject to the City of Botany Bay Section 7.11 Development Contributions Plan 2016 (The Plan). Critically, the Plan does not contain any provisions that exempt social or affordable housing from development contributions.
- Council has no authority to approve a waiver of contributions.
- There are no provisions in existing legislation, including Ministerial Directions, that exempt social or affordable housing from development contributions.
- Council's practice has been to be levying S7.11 contributions to Community Housing Providers.
- The consent authority to determine whether to impose a condition on any development consent requiring the payment of a development contribution in accordance with the relevant plan or legislation.

A copy of the letter is attached for your information (Attachment 2).

Item 7 Section 7.11 Development Contributions

Council cannot provide an exemption to contributions as explained in item 6. The SSD will be levied under S7.11 of the EP&A Act for the additional number of dwellings as the SSD is residential and in the Botany Precinct, and Council levies additional dwellings in Botany Precinct under the *Former City of Botany Bay S7.11 Development Contributions Plan 2016 – Amendment 1*.

The S7.11 monetary contribution will be for 126 apartments comprising 66 x 1-bedroom units, 59 x 2-bedroom units, one (1) x 3-bedroom unit to be developed on the site after the demolition of the existing structures. Credits will be given for the 25 x existing dwellings on the site to be demolished.

Based on the provided information in the Scoping Report and Environmental Impact Statement, a Section 7.11 contribution of **\$2,020,000.00** is calculated.

The contribution is calculated according to the provisions contained within Council's adopted *Former City of Botany Bay s7.11 Development Contributions Plan 2016- Amendment 1* and having regard to the Ministerial Direction of 21 August 2012 (the \$20,000 cap). The amount to be paid to Council is to be adjusted at the time of payment, in accordance with the review process contained in the Contributions Plan.

The contribution is to be paid prior to the issue of any compliance certificate, subdivision certificate or construction certificate. The contributions are only used towards the provision or improvement of the amenities and services identified below.

Community Facilities	\$ 180,214.73
Recreation and Open Space	\$ 1,453,005.15
Transport Facilities	\$ 370,518.78
Administration	\$ 16,261.34
Total in 2024/25	\$ 2,020,000.00

Item 8 – Traffic, Parking, Access, Stormwater, Flooding and Landscaping

No major issues raised.

Conditions of consent recommended in **Attachment 3**.

Item 9: Contamination

No major issues raised. Council concurs with the recommendations made in the Interim Audit Advice Letter prepared by Ramboll Australia Pty Ltd dated 15 October 2024.

Item 10: Accessibility

No major issues subject to compliance with AS1428.1.

Attachment 2: Council Letter re Homes NSW request for exemption dated 11 September 2024

Attachment 3: Conditions of consent relating to Traffic/Parking, Stormwater and Landscaping