



ASSESSMENT REPORT

MIXED USE DEVELOPMENT, EASTLAKES SHOPPING CENTRE MP 09_0146 MOD 1

1. INTRODUCTION

This report is an assessment of a request seeking to modify the Project Approval for a mixed-use development at Eastlakes Shopping Centre, in the Bayside local government area. The request has been lodged by Urbis, on behalf of Stateland East Unit Trust (the Proponent), pursuant to section 75W of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

The request seeks approval to modify the approved development on the northern part of the site, including increasing the height of residential Building 1B from three to eight storeys (above the podium level), amendments to the retail podium level, provision of an extra basement parking level, and changes to landscaping. The proposal would increase the gross floor area (GFA) on the site by 1778.5 m², or 3.6%, and result in 21 additional apartments.

The Department recommends the modification be approved as it would result in an acceptable urban design outcome for the site, it would provide additional housing close to shops and employment opportunities and subject to conditions, it would not result in any unreasonable visual or amenity impacts. The Department also notes the proposal would provide additional car parking spaces and traffic impacts would be negligible.

2. SUBJECT SITE

The site is known as Eastlakes Shopping Centre in the suburb of Eastlakes, approximately six kilometres (km) south of the Sydney central business district (CBD). It comprises two parcels of land, separated by Evans Avenue, known as the northern and southern sites (see **Figure 1**). The proposed modification relates to the redevelopment of the northern site.

The northern part of the site has frontages to Gardeners Road to the north, Evans Avenue to the south and it adjoins residential flat buildings to the east and west. The site previously accommodated an at-grade car park servicing the Eastlakes Shopping Centre combined with a row of single storey shops along its northern boundary. Construction works have commenced on the northern part of the site, including demolition and below ground level works.

The southern part of the site has frontages to Evans Avenue to the north, Barber Avenue to the east and south, and Eastlakes Reserve to the west. It accommodates a single storey retail development with rooftop and basement car parking. Construction works on this part of the site are yet to commence.

The surrounding locality is characterised by three and four storey residential flat buildings constructed in the late 1960s and early 1970s.



Figure 1: Site Location (source: Google Earth)

3. APPROVAL HISTORY

3.1 Project Approval

On 19 September 2013, the then Planning Assessment Commission granted Project Approval (MP 09_0146) for a mixed-use development incorporating:

- demolition and removal of all existing buildings
- construction of a mixed-use development generally between two - six storeys above podiums in height except at the corner of Evans Avenue and Racecourse Place, where a maximum height of RL 48.7 AHD applies
- maximum ground floor retail and community floor space of 14,404 m²
- maximum 405 residential apartments with a maximum GFA of 34,636 m²
- 916 basement car parking spaces over two levels
- associated landscaping
- associated infrastructure, stormwater and utility works
- stratum subdivision

Figures 2 to 4 include images of the approved development.

Botany Bay Council (now Bayside Council ('Council')) appealed the approval in the Land and Environment Court, on the grounds that the decision made by the Commission was invalid and not correctly made. The Court dismissed the appeal.



Figure 2: Approved Site Layout with Building 1B highlighted (source: approved plans)

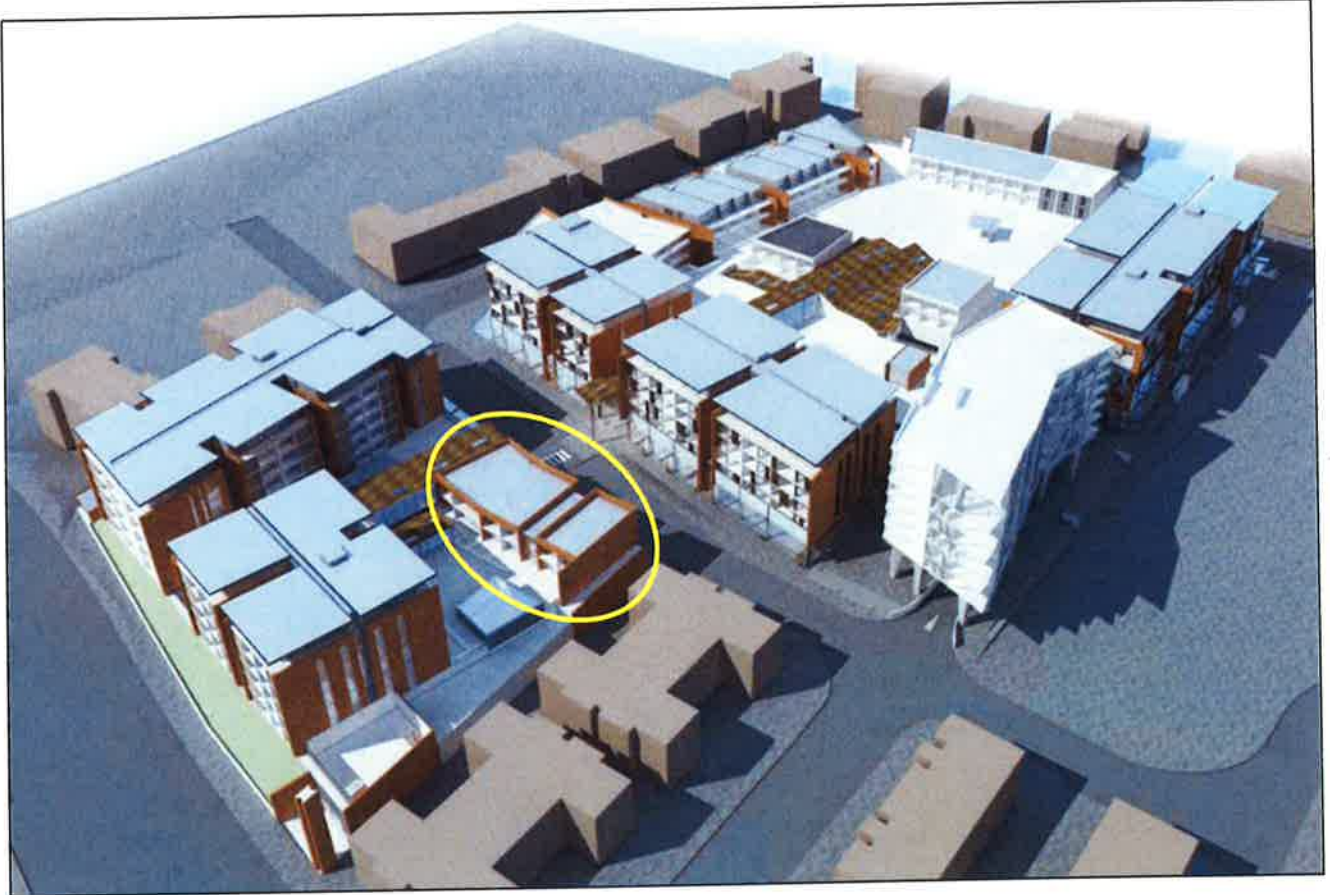


Figure 3: Indicative approved site layout with Building 1B highlighted (note: minor changes to built form were made after this image was prepared). (source: Proponents PPR for original application)



Figure 4: Approved Evans Avenue Elevation with Building 1B highlighted (source: approved plans)

3.2 Modifications

On 19 December 2017, the Department approved MP 09_0146 MOD 2 to allow vehicles up to 19 m long to access the site during construction.

On 14 March 2018, the Department approved MP 09_0146 MOD 3 for changes to street tree planting along Evans Avenue.

On 28 February 2018, the Proponent submitted MP 09_0146 MOD 4 to make significant changes to the southern site, including reconfiguration and design of the podium and substantial changes

to the above podium, residential flat buildings, including an increase in height from a maximum of six storeys above the podium, to a maximum of twelve storeys and an increase in the number of dwellings, from 418 to 627.

4. PROPOSED MODIFICATION

On 11 June 2017, the Proponent lodged a section 75W modification request (MP 09_0146 MOD 1) seeking approval to make changes to the northern site, including a modification of the Building 1B envelope, changes to the ground level retail areas, changes to the basement parking arrangements, and changes to landscaping.

On 21 November 2017, the Proponent submitted a Response to Submissions (RTS) amending the proposal. The RTS incorporated an additional level of basement parking on the northern site, amendments to proposed signage, further amendments to the landscaping and street tree planting, and clarified the proposal would result in an increase of only 1178.5 m² GFA.

On 5 and 28 March, and 11 May 2018, the Proponent submitted further responses, additional information and amended plans. The amended proposal incorporates changes to landscaping and podium design along the northern, eastern and western boundaries, removal of some fins at the upper floor levels to improve views through the top of the parapet, removal of a proposed sign, removal of street trees along Gardeners Road, and deletion of a request to remove street trees on Evans Avenue (as this was approved through MOD 3).

A comparison of the proposed modification, and the approved development is set out in **Table 1**. Images of the proposed modification are shown in **Figures 5 to 10**.

Table 1: Comparison between the approved project and proposed modification

	Approved	Proposed
Floor Space	Total site: 49,040 m ² including: <ul style="list-style-type: none"> • 14,984 m² retail GFA • 34,056 m² residential GFA • FSR of 2.039:1 	Total site: 50,819 m ² including: <ul style="list-style-type: none"> • 14,591 m² retail GFA • 36,228 m² residential GFA • FSR of 2.113:1
Number of dwellings	Building 1B: 6 dwellings including: <ul style="list-style-type: none"> • 3 x 2-bedroom units • 3 x 3-bedroom units 	Building 1B: 27 dwellings including: <ul style="list-style-type: none"> • 1 x studio unit • 7 x 1-bedroom units • 13 x 2-bedroom units • 6 x 3-bedroom units • function space, gym, and roof terrace
	Total site: 404 dwellings	Total site: 425 dwellings
Built Form	Building 1B: <ul style="list-style-type: none"> • 2 storeys above podium in rectangular form with maximum height of RL 30.5 North site: <ul style="list-style-type: none"> • 2 to 6 storeys above the podium • podium hidden below ground level as viewed from Gardeners Road 	Building 1B: <ul style="list-style-type: none"> • 8 storeys above podium (including roof level) in curvilinear form with maximum height of RL 50.150 North site: <ul style="list-style-type: none"> • 5 to 8 storeys above the podium • podium extended towards Gardeners Road and visible above ground level
Basement Parking	North site: 216 spaces including <ul style="list-style-type: none"> • 102 commercial • 114 residential • over 2 levels of below ground parking. 	North site: 280 spaces including <ul style="list-style-type: none"> • 136 commercial and residential visitor • 144 residential • over 2 levels of below ground parking.
	Total site: 916 spaces over 2 levels	Total site: 980 spaces over 2 – 3 levels

North Site Landscaping	Landscaped podium including swimming pool, soft landscaping, trees, and paved areas. Dense ground level plantings on northern, eastern and western boundaries	Changes to podium landscaping including relocation of swimming pool and rearrangement of soft and hard landscaped areas. Additional ground level landscaping to western boundary, reduced plantings to eastern boundary, plantings over structure along northern boundary.
Street Trees	Retention of 19 existing street trees on Gardeners Road	Retention of 12 and removal of 7 street trees on Gardeners Road
Signage	Pylon Sign with open base on Gardeners Road frontage	Pylon Sign with solid base on Gardeners Road frontage

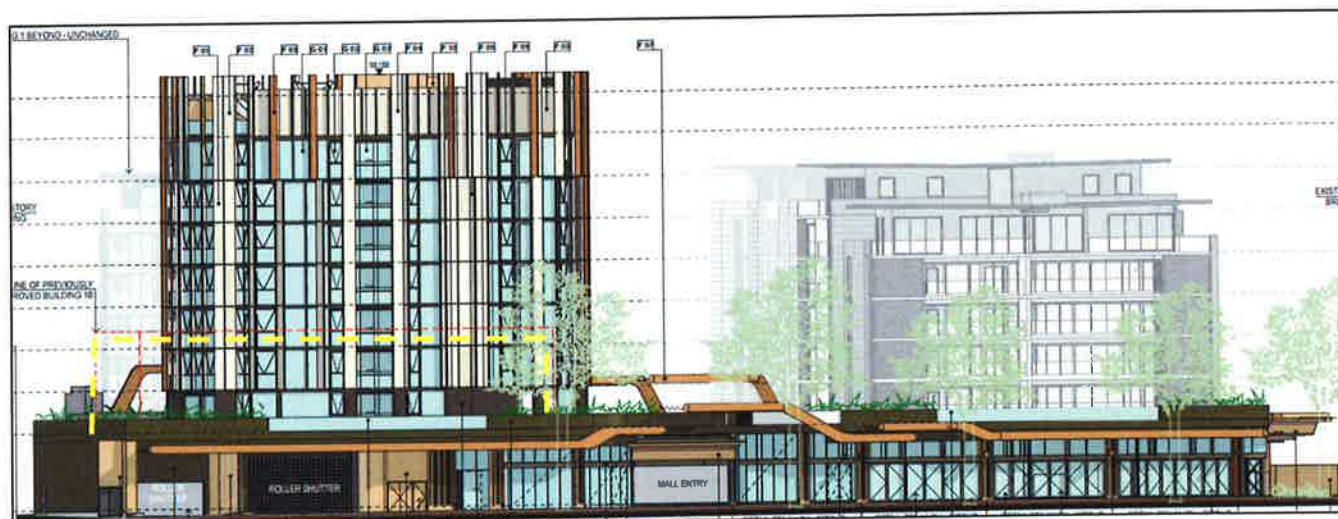


Figure 5: Proposed Evans Avenue elevation. Approved Building 1B envelope outlined in yellow (source: Proponent's request documents)



Figure 6: Perspective view of proposed Building 1B from Evans Avenue. Note: Proponent has subsequently removed some fins from the upper levels as can be seen in Figure 7 (source: Request documents)



Figure 7: Perspective view of proposed Building 1B from Evans Avenue. (source: Revised RTS)

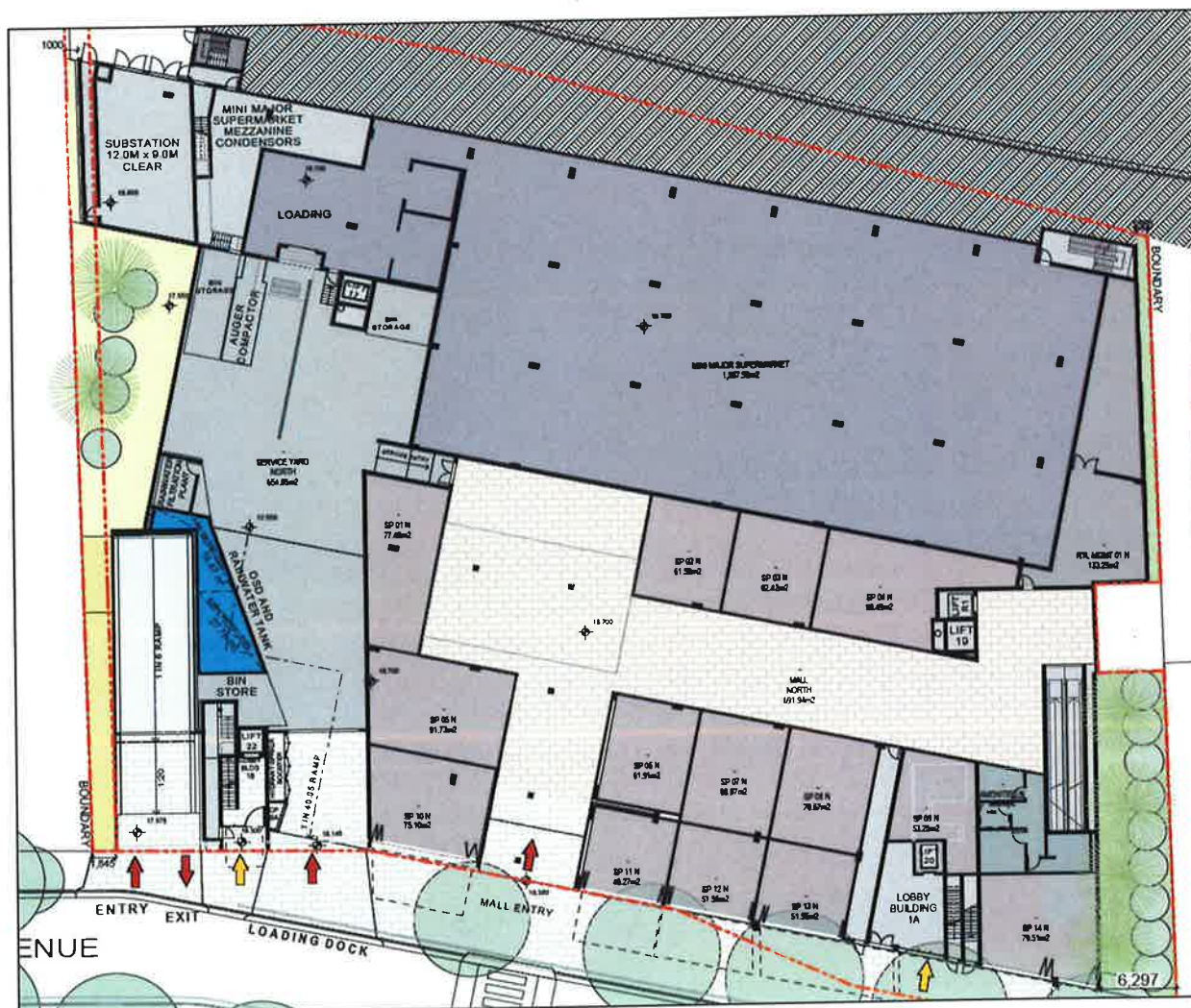


Figure 8: Approved ground floor retail layout (source: approved plans)

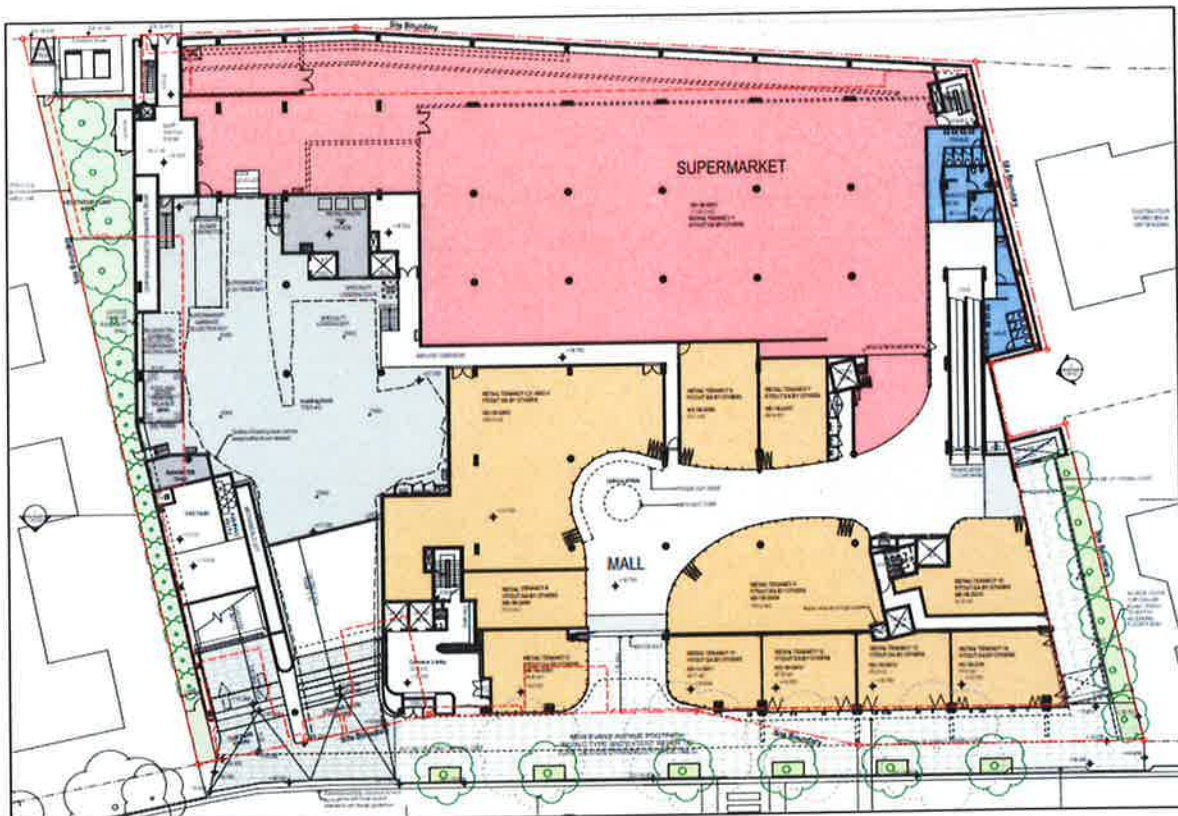


Figure 9: Proposed ground floor retail layout (source: Proponent's RTS)



Figure 10: Proposed landscaping (source: Proponent's revised RTS)

The modification is requested on the basis that it would create a "Gateway Building" to the site, increase housing supply, provide better access for visitors to the podium level of the site, and improve the relationship of the retail component with the public domain.

5. STATUTORY CONSIDERATION

5.1 Section 75W

The project was originally approved under Part 3A of the EP&A Act. The project is a transitional Part 3A project under Schedule 2 to the EP&A (Savings, Transitional and Other Provisions) Regulation 2017. The power to modify transitional Part 3A projects under section 75W of the Act, as in force immediately before its repeal on 1 October 2011 is being wound up – but as the request for this modification was made before the 'cut-off date' of 1 March 2018, the provisions of Schedule 2 (clause 3) continue to apply. Consequently, this report has been prepared in accordance with the requirements of Part 3A and associated regulations, and the Minister (or his delegate) may approve or disapprove the modification under section 75W of the EP&A Act.

5.2 Environmental Planning Instruments

The following environmental planning instruments (EPIs) are relevant to the development:

- State Environmental Planning Policy (State Significant Precincts) 2005
- State Environmental Planning Policy (Infrastructure) 2007
- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004
- State Environmental Planning Policy No. 55 – Remediation of Land
- State Environmental Planning Policy No. 64 – Advertising and Signage (SEPP 64)
- State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development (SEPP 65)
- Botany Bay Local Environmental Plan 2013 (BLEP)

The Department undertook a comprehensive assessment of the redevelopment against the above-mentioned EPIs in its original assessment. EPIs relevant to the assessment of the modification request have been considered in **Section 7**. The Department has considered all other above EPIs and is satisfied that the modification does not result in any change to consistency with the EPIs.

5.3 Approval Authority

The Minister for Planning is the approval authority for the request. However, the Independent Planning Commission (commission) may determine the request under delegation as Bayside Council object to the proposal.

6. CONSULTATION

6.1 Consultation

The Department publicly exhibited the modification request from 8 August 2017 to 23 August 2017. The request was made publicly available on the Department's website, and a notice was placed in the Southern Courier newspaper. In addition, the Department notified adjoining landholders and relevant State and local government authorities in writing.

The Department received a total of 21 submissions, including seven from public authorities, 13 from the public, and one from the Member for Heffron. A summary of the issues raised in submissions is provided below. Copies of the submissions may be viewed at **Appendix A**.

The Department notes the modification as lodged and exhibited, incorrectly identified the modification would result in an additional GFA of 10,816.4 m². Many of the comments received in

submissions relate to concerns with the increase in density. However, the Proponent clarified this was an error and the proposal only seeks an increase of 1778.5 m² of GFA.

Bayside Council advised it did not support an increase in density without a masterplan to guide development for the area. Council also made the following comments:

- the increase in GFA should not be considered a modification
- it is unclear where the additional floor space would be accommodated
- the resulting FSR of 2.49:1 is a substantial deviation from the LEP control of 1.5:1
- the additional density would have significant impacts on the road network and traffic safety
- given the significant increase in density, the provision of public benefits through a voluntary planning agreement (VPA) should be considered
- the proposed height is out of character with the locality and the 14-metre height control applicable to the site
- the building height would result in overshadowing of Evans Avenue, resulting in reduced potential for an active street frontage in this location
- Building B1 would not meet minimum building separation distances recommended by the Apartment Design Guide (ADG)
- all three-bedroom apartments should demonstrate compliance with the Family Friendly Apartment Building Guidelines in Botany Bay Development Control Plan 2013
- the shortfall of 59 car parking spaces would result in overreliance on bus services, which are already operating at capacity.

RMS advises it has no objection to the modification provided all buildings and structures are located wholly within the property and do not infringe upon Gardeners Road.

TfNSW advises it has no comment to make on the modification.

Civil Aviation Safety Authority (CASA) advises that the proposed building height of 50.15 m AHD would not infringe on the prescribed airspace for Sydney Airport and therefore it has no safety concerns about the proposal.

Sydney Airport Corporation advises it has no objection proposed buildings (to a height of 50.2 m AHD) inclusive of all structures including construction cranes.

Sydney Water advises there is adequate capacity for connection to existing water and waste water services, with formal requirements for servicing to be determined as a part of the Section 73 application. It also recommends the Proponent engage a hydraulic engineer to design the firefighting system. Standard conditions are recommended in relation to water servicing, Sydney Water assets and trade wastewater management.

Ausgrid raised concerns the modification request does not identify the new electrical substation requirements needed to service the additional 10,000 m² of floor space. Ausgrid also recommended conditions in relation to the design of substations, safety near overhead power lines and maintenance of easements.

Mr Ron Honeig MP (Member for Heffron) raised concerns that:

- the existing approval is already an overdevelopment of the site and therefore the proposed modifications should not be permitted
- Eastlakes cannot tolerate additional population density
- there are existing access problems to the site and access should be provided from Gardeners Road
- unit sizes in the existing development are too small
- an eight storey building would not be in keeping with the surrounding area.

13 public submissions were received, all objecting to the proposal. Key concerns raised in the submissions included:

- the proposed building height is out of character with the locality
- adverse traffic and on-street parking impacts associated with increased density
- additional density will put additional pressure on infrastructure such as public transport and schools which are already at capacity
- overshadowing, privacy, air flow and view loss impacts from the additional building mass
- the proposal includes some units with no solar access
- adverse impacts from tree removal

6.2 Response to Submissions

On 21 November 2017, the Proponent submitted a Response to Submissions (RTS) amending the proposal to address concerns raised in submissions. The RTS clarified that the proposal as lodged, included an error and the modification only seeks an increase of 1778.5m² GFA. The modified plans also included an additional level of basement parking, with a total of 64 additional parking spaces, amendments to proposed signage, landscaping and street tree planting.

Council advised the proposed increase in GFA is more consistent with the scale of the original proposal. Council now considers the modification to be minor in this regard. However, Council confirmed that it maintains its objection to the proposed building height.

No additional **public** submissions were received in response to the RTS.

The Proponent then submitted amended plans and additional information on 5 and 28 March and 11 May 2018, to address further concerns raised by the Department. Key amendments include:

- changes to the podium level and landscaping arrangements on Gardeners Road
- deletion of a proposed sign
- changes to landscaping arrangements on the eastern and western boundaries
- deletion of some fins and wall elements from the top level / parapet to allow increased views to the sky
- changes to podium landscaping.

7. ASSESSMENT

Key issues in the assessment of the modification request relate to:

- the proposed increase in density (**Section 7.1**)
- the urban design and visual impacts (**Section 7.2**)
- amenity impacts on neighbours and the locality (**Section 7.3**)
- traffic, parking and transport impacts (**Section 7.4**).

All other issues are considered in **Table 2** in **Section 7.5**

7.1 Density

The proposed modification would result in an additional 1778.5m² GFA. This would result in a minor increase in FSR from 2.039:1 to 2.113:1 (+3.6%) and a further exceedance of the BLEP 2013 FSR control of 1.5:1.

Concerns were raised in submissions about the proposed increase in density, the potential impacts on traffic and the lack of public transport and infrastructure to support the proposal. Concerns were also raised about the increased building height and potential amenity impacts associated with the proposal.

The Department notes the original modification incorrectly identified the proposal would result in an increase in GFA of 10,816.4 m² (from 40,040 m² to 59,856.4 m² or +25%). The RTS clarified

this was an error and the additional floor space is 1,778.5m² (comprising 1591.8 m² additional residential and 186.7 m² additional retail GFA). Following the submission of the RTS, Council advised it no longer had concerns with the proposed increase in density on the site.

The Department considers the provision of additional dwellings at this location would be consistent with the broader strategic planning objectives of *NSW 2021*, *The Greater Sydney Region Plan 2018*, and the *Eastern City District Plan* as the site has good access to services, transport and employment opportunities. In particular, the Department notes:

- the site is located within close proximity to major employment centres including the CBD (6 km) Green Square (2 km), Sydney Airport (2.5 km) and Randwick Health and Education Centre (2.5 km)
- the site has good public transport links, with buses departing from the site to the city every 2-3 minutes during the morning peak, and the light rail (currently under construction) will be located 1.5 km from the site
- future residents would have access to a wide range of retail services on the site.

The Department has also considered the potential built form, amenity, transport, traffic and parking impacts associated with the proposal, later in this report. The Department considers the site can support the proposed development without unacceptable visual, amenity, traffic, parking, or transport impacts. Further, the Department is satisfied the modest increase in density would not result in any material impacts on infrastructure provision.

The Department's assessment therefore concludes the proposed increase in density is minor and the proposal is consistent with the broader strategic planning objectives for the site. In addition, the Department is satisfied the proposal would not result in any unreasonable amenity or traffic impacts.

7.2 Urban Design and Visual Impacts

The Department has considered the potential urban design and visual impacts associated with the proposal, including the:

- increased height of Building 1B
- changes to the design and materials of the podium and Building 1B
- extension of the podium level facing Gardeners Road.

Height of Building 1B

The proposal seeks to delete the approved Building 1B, which has a height of 3 stories (above the podium) and replace it with a new Building 1B with a height of 8 stories (above the podium). The proposed building would have a maximum building height of 32 m (RL 50.15 m), equivalent to 10 storeys (including the podium level).

Compared to the height of other approved buildings on the site, Building 1B would present as:

- one storey taller than the highest approved building on the site (Building 2, located on the southern site),
- two storeys taller than the approved buildings on the northern site
- three storeys taller than all of the other approved buildings in the development fronting Evans Avenue.

The proposed height of Building 1B was a key issue raised in submissions. Council raised concern the proposed building height would represent a substantial deviation from the 14 m height control under BLEP 2013 and would be out of character with the surrounding 3-4 storey development. Council also raised concerns about the potential overshadowing impacts of the proposal on the footpath of Evans Avenue. Public submissions also raised concerns about the height of the building as it would be out of character with the surrounding area.

The Proponent argues the proposed building height is acceptable as:

- it has been designed as a 'gateway building' which will make an architectural statement and introduce greater variety in the appearance of buildings on the site
- from most viewpoints, the building would not be immediately apparent and would generally be screened from view by other approved buildings on the site (see **Figure 11**).
- the building would commensurate in height with other approved buildings and street trees would help soften the appearance of the building
- the top section of the building has been designed to be largely open with glazed balustrades providing views to the sky
- the development has been designed to ensure it results in no adverse amenity impacts on the neighbouring building at 16 Evans Avenue.



Figure 11: Perspective showing the limited view of Building 1B from Gardeners Road (source: Modification Request documents)

Department's Consideration

Building heights were considered in detail in the Department's original assessment of the project. Consistent with its original assessment, the Department maintains the view that the site can accommodate taller buildings, given its commercial zoning and town centre location. As discussed in **Section 7.1**, the site is well located to support additional density and therefore larger built forms, as it has good access to services, employment opportunities and public transport. The Department therefore considers the height of Building 1B would be appropriate within the context of its town centre location.

The Department also considers the proposed height of Building B1 is acceptable as it is similar in height to other tall buildings approved on the site. Building 1B is located in the central part of the town centre and it would be surrounded on most sides by other tall buildings which would only be one to three storeys lower in height. The surrounding buildings would appropriately screen Building 1B from most vantage points, with only some exceptions from the east and west of the site. However, even from these vantage points, the proposed building would still sit comfortably within a backdrop of the other approved buildings. Building 1B would also be more slender in appearance compared to the other approved buildings on the site, which will help minimise its visual impacts. In this context, the proposal would not look out of place or be visually dominant within the town centre.

The Department notes the proposed height of Building B1 would be taller than the adjoining three storey buildings at 16 Evans Avenue. Despite this difference, the Department considers the

proposal is acceptable as 16 Evans Avenue could potentially accommodate a taller building in the future, given it is also located within the town centre.

As discussed in detail later in the report, the Department is also satisfied the proposed building would not result in any unreasonable amenity impacts on neighbouring properties in terms of overshadowing, view loss or privacy impacts, subject to conditions.

The Department's assessment therefore concludes the proposed height of Building B1 is acceptable in the context of its town centre location and the other approved buildings on the site. Further, the Department is satisfied the proposed building height would not result in any unreasonable visual or amenity impacts on adjoining properties.

Building Design and Façade materials

The proposed design of Building 1B incorporates an oval shaped building footprint with a variety of colours and finishes. The proposal also includes modifications to the retail frontage including a curved awning and larger openings to the Evans Street frontage, to better activate the mall.

The Proponent advises the built form and materials have been designed to contrast with the predominantly clay brick 1960's housing of Eastlakes, while still incorporating materials and colours complementing the surrounding development.

The Department considers the proposal incorporates a high quality architectural design that would distinguish the site as a town centre. The Department is satisfied the proposed colours and finishes would allow the new building to maintain a visual relationship with surrounding development. The Department also notes no concerns were raised in submissions about the design of the building. The Department is therefore satisfied the proposal would result in a high standard of architectural design.

Changes to Gardeners Road Frontage

The approved podium was designed with a landscaped front setback to screen the podium when viewed from Gardeners Road (**Figure 12**).



Figure 12: Photomontage showing landscaping to Gardeners Road as approved (note: building forms have been subsequently modified) (Source: original Project application documents)

The modification seeks to extend the footprint of the podium towards the Gardeners Road boundary to provide additional retail floorspace. The Department initially raised concerns with this aspect of the modification, as it would result in a tall unbroken wall, up to six metres in height facing Gardeners Road (see **Figure 11**). Further, the revised design could not accommodate landscaping or trees within the front setback.

To address these concerns, the Proponent amended the design and incorporated a stepped podium along the Gardeners Road frontage. This has reduced the height of the podium wall at the footpath to a maximum height of 1.8 metres and allowed significant tree and shrub planting within the setback. Images of the proposed and approved development are shown in **Figures 13 to 15**. The Department considers the overall appearance of the proposal would now be similar to the approved development, albeit in a stepped, rather than a sloped form.

However, there two exceptions:

- the lower planter on the western side of the podium has a soil depth of only 400mm which can only support small ground covers. The Department considers the appearance of the podium could be significantly improved by lowering the base of the planter so it can support additional landscaping. A condition has therefore been recommended to this effect.
- at the western end of the podium, facing Gardeners Road, the podium wall extends above the emergency exit and service doors, resulting in a 5-metre-high structure at the edge of the footpath (see **Figure 15**). To reduce the visual impacts of the podium at this part of the site, the Department recommends the height be reduced to no greater than 3 m above the footpath and it be setback consistent with the remainder of the podium.

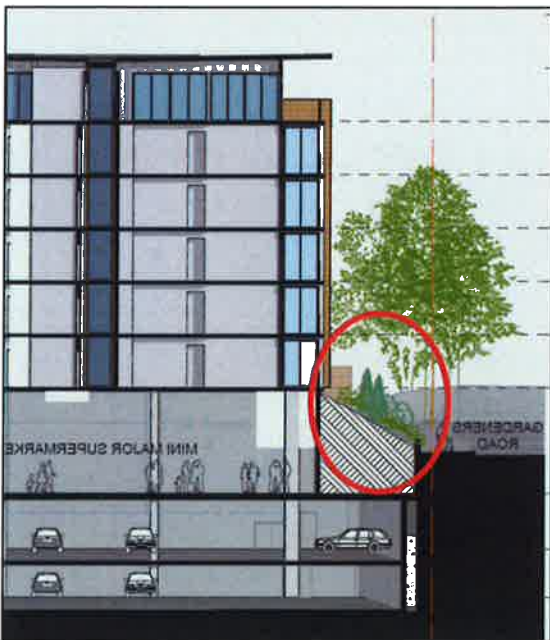


Figure 13: Approved Section at Gardeners Road (source: approved plans)

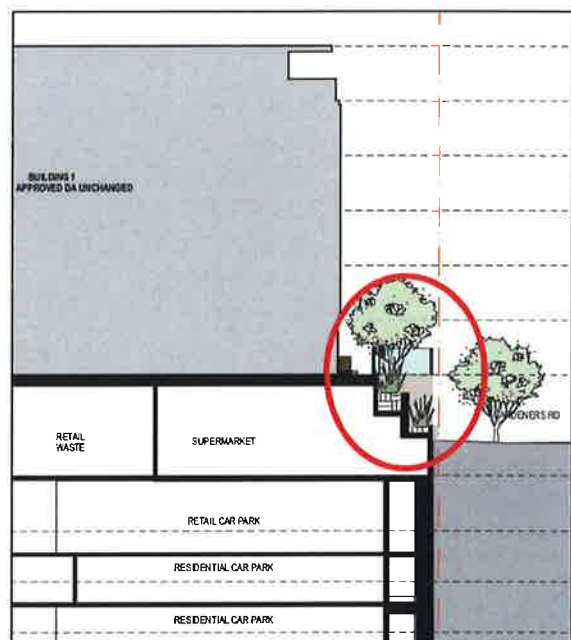


Figure 14: Proposed Section at Gardeners (source: Proponent's RTS)



Figure 15: Proposed Gardeners Road elevation (Source: Proponent's Revised RTS)

The proposal would also require the removal of six additional street trees. However, the Proponent notes replacement street tree planting could be provided to offset the tree removal. Arborist reports submitted with the request identify most of these trees are in fair to poor condition and none have a high retention value. The Department therefore recommends a condition requiring replacement street tree planting, consistent with the Botany Bay Street Tree Masterplan.

With a reduction in the podium massing at the western end, the provision of replacement street trees as well as landscaping within the front setback, the Department considers the proposed modification would retain a similar appearance to Gardeners Road as the approved development.

7.3 Amenity Impacts to Neighbours and the Locality

Public submission raised concerns about potential amenity impacts associated with the proposal including privacy, view loss, and solar access to adjoining properties and the public domain.

The Department considers the key amenity impacts relate to:

- loss of solar access to dwellings on Evans Avenue
- overlooking and visual impacts on 16 Evans Avenue
- visual impacts on 18 Evans Avenue
- overlooking and visual impacts to 293 Gardeners Road.

The Department has also considered potential view loss and overshadowing impacts associated with the proposal. The Department notes the proposed increase in building height would not result in any new or additional view loss impacts, as there would be no views over/past the site once the approved development is built. In addition, overshadowing diagrams submitted with the request demonstrate the proposal would not result in any additional overshadowing of neighbouring dwellings between 9:00 am and 3:00 pm mid-winter. Therefore, it is considered the proposal would not result in any unacceptable view loss or overshadowing impacts.

Solar Access to Evans Avenue

The Department notes the approved Building 1B was designed to maximise sun penetration to the southern side of Evans Avenue to encourage outdoor dining and contribute to the area's vitality and character.

Council also notes Evans Avenue is designated as having an 'active street frontage' under BLEP 2013 and overshadowing could compromise its character. It is also noted that the Commission imposed a condition requiring the footpath on the southern side of Evans Avenue to be widened to optimise sun access at this location.

The increase in building height would result in additional overshadowing of the footpath throughout the day in mid-winter, although parts of the footpath would still receive sunlight at various times during the day.

The Department notes there are no specific planning controls which seek to protect sunlight on the footpath. The active street frontage provisions of BLEP 2013 seek to ensure premises on the ground floor facing the street incorporate business or retail uses, but do not include any requirements in relation to solar access.

In addition, the Department notes the footpath and any future outdoor dining areas would receive some access to sunlight at mid-winter and very good access to sunlight at other times of the year. Further, the approved development on the southern site incorporates retail units with the potential for outdoor dining overlooking the park to the west of the site, with excellent access to sunlight in the afternoon throughout the year (**Figure 16**).

Therefore, despite the additional overshadowing of Evans Avenue, the Department considers the modified development would still provide for active frontages along Evans Avenue with opportunities for outdoor dining.

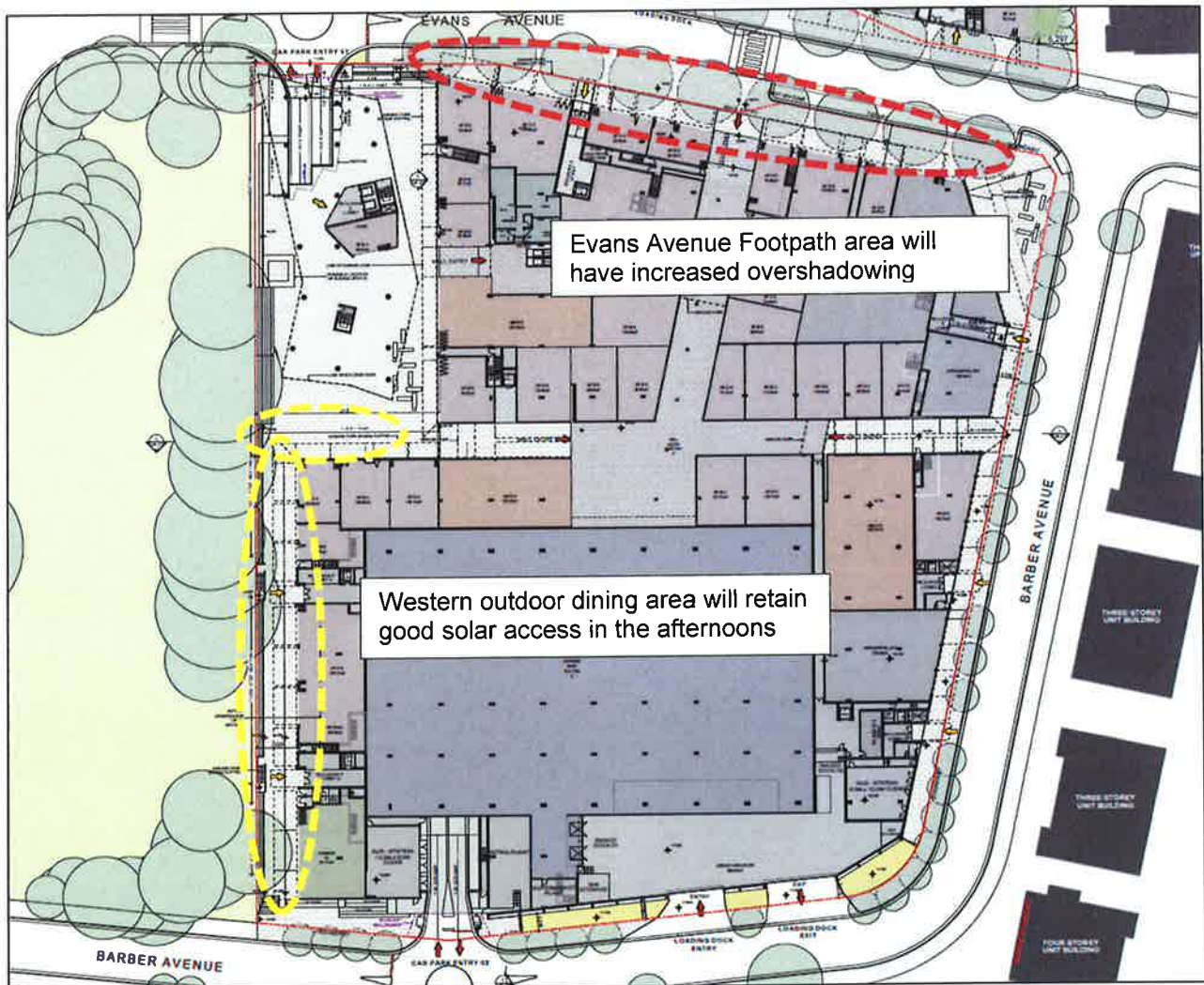


Figure 16: Approved layout of southern site showing the area on Evans Avenue that will be additionally overshadowed by the proposed building and the area overlooking the park that will have good solar access in the afternoons. (Base image source: approved plans)

Impacts on 16 Evans Avenue

The proposed changes to the design and setback of Building 1B have the potential to impact on the privacy of neighbouring residents at 16 Evans Avenue. 16 Evans Avenue is occupied by a three storey residential flat building with windows and balconies facing the subject site.

To achieve appropriate levels of privacy, the ADG recommends habitable rooms and balconies be setback from adjoining property boundaries by:

- 6 m for buildings up to a height of 12 m
- 9 m for buildings up to a height of 25 m
- 12 m for buildings up to a height of 25 m.

Building 1B would have a maximum height of 32 m to the top of the parapet and setback 6.47 m from the boundary with 16 Evans Avenue at its closest point. The proposal would therefore exceed the setback controls above 12 and 25 metres respectively. The extent of the non-compliance with the controls is shown in **Figures 17 to 19**.

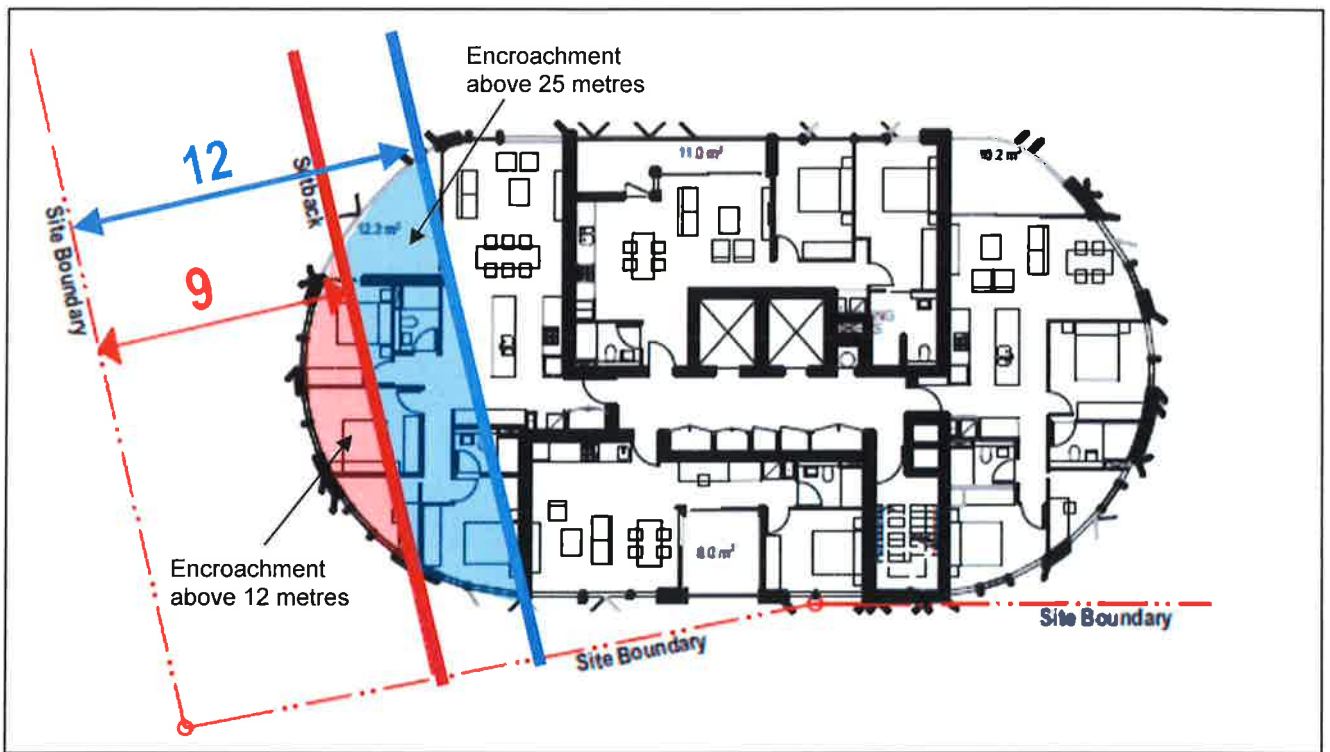


Figure 17: Typical floor plan levels 2-6 showing setback control encroachment (base image source: Modification Request)



Figure 18: Southern elevation showing setback control encroachment (base image source: Architectural Plans)



Figure 19: Perspective image of Building 1B as viewed from neighbouring premises showing setback control encroachment (base image source: Proponent's RTS)

The Proponent argues the variation from the controls is acceptable as:

- the curvilinear building form means the building quickly curves away from the boundary, limiting the extent of the building encroaching on the setback area
- it results in an 'average' building setback of more than 9 metres
- the proposed building has a greater building setback than the approved building in this location and a greater average building setback than the approved Building 1B on the site

- the proposed building has limited opportunities for overlooking. There is only one unit on each floor at the western end of the building and the units incorporate bedrooms on the western façade, rather than living spaces. Fixed vertical sunshades and privacy screen have also been incorporated on the façade to reduce opportunities for overlooking.

The Department considers the proposed building separation is acceptable in this instance, given the proposed setback has been increased compared to the original approval (see **Figures 4 and 5**). Further, the Department considers the design of the building would minimise the potential visual impacts of the encroachment, as it would present as a slender curved shaped building, at the western boundary of the site.

To minimise potential privacy impacts on 16 Evans Avenue, the Department recommends additional privacy screening be provided to bedroom windows and balconies closest to the boundary and access to the edge of the roof terrace be restricted. The Department has recommended an amended condition requiring the above measures to be provided accordingly.

The Department also notes the existing approval requires the landscape plans to be updated to provide landscaping along the entire edge of the western boundary. The purpose of the condition is to help screen the new buildings from adjoining residential premises and reduce opportunities for overlooking. The landscape plan submitted with the modification only includes three trees on the western edge of the podium and therefore does not satisfy the intent of the condition. The Department therefore recommends the condition be updated to clarify that the landscaping include trees and screen planting to mitigate overlooking of the adjoining premises. Subject to the recommended conditions, the Department considers the proposal would not result in adverse privacy impacts on 16 Evans Avenue, despite the variation from the setback controls.

With regard to visual impacts, the Department notes the additional building mass and height of Building 1B, would be highly visible from the adjoining site. However, in the context of the other approved buildings on the site, the Department consider the proposed building would be acceptable.

Furthermore, the Department notes the proposal seeks to delete the northern section of the podium adjacent to the boundary and provide an additional landscaped setback to this area (including three scribbly gums with a mature height of 15 m). This would improve the appearance of the development when viewed from the ground level of 16 Evans Avenue (see **Figures 4 and 5**).

Subject to the provision of additional landscaping along the western boundary, the Department is satisfied the proposal would not result in unacceptable visual impacts on the neighbouring development at 16 Evans Avenue.

Impacts on 18 Evans Avenue

The proposal seeks to delete the approved landscaping along the eastern boundary of the site, adjacent to 18 Evans Avenue, and replace it with paving to provide a second access to the shopping centre and improve activation in this part of the site (**Figure 20**). The original modification sought to incorporate outdoor dining within this area, but the Proponent subsequently advised outdoor dining does not form part of the proposal.

The proposal incorporates a 2 m wide landscape strip along the eastern boundary, including tree planting and shrubs to help screen the development when viewed from the adjoining site (**Figure 21**). A 1.8 m high blockwork wall is also proposed to mitigate acoustic and privacy impacts to the adjoining residential premises.

The Proponent advises that while the extent of landscaping has been reduced along this boundary, it will have no perceivable impacts as the visual outlook from 18 Evans Avenue would be consistent with the approved development, in so far as the neighbours will continue to have a direct outlook onto landscaping.

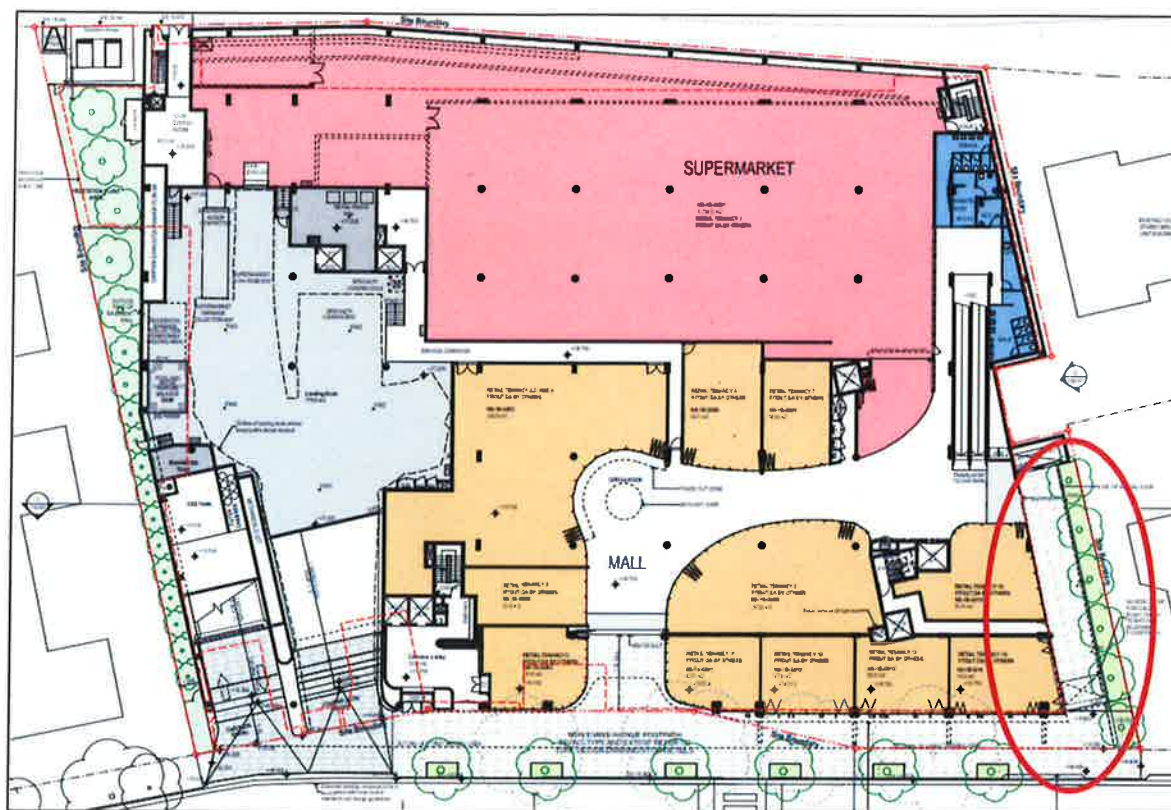


Figure 21: New retail entry (Source: Proponent's RTS)

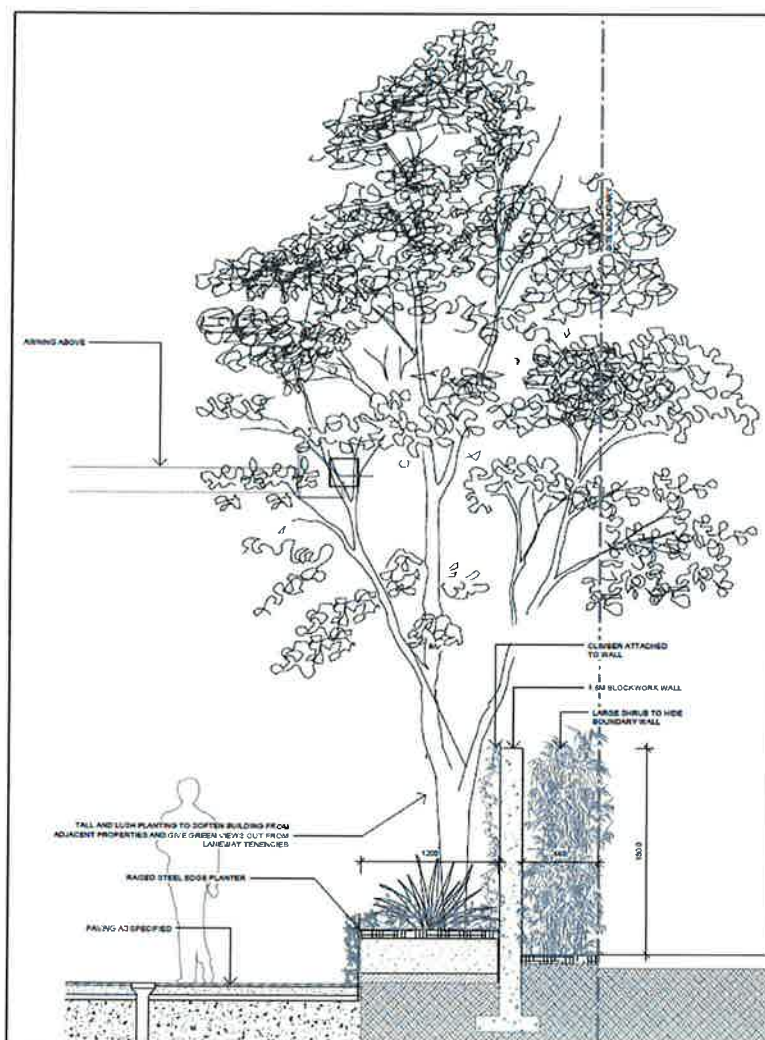


Figure 21: Proposed section through eastern boundary setback area (Source: Proponent's RTS)

The adjoining site at 18 Evans Avenue is zoned residential and the Department considers it is important for the development to be designed to provide an appropriate interface with the adjoining residential land use.

The Department considers the revised landscape treatment has the potential to provide a similar outcome to the approved development as it would appropriately screen the development. However, the proposal incorporates an awning above the setback area which may interfere with the proposed landscape planting. A condition is therefore recommended requiring the size of the awning to be reduced so that it does not extend into the tree canopy.

The Department also notes the Proponent's advice that the area will not be used for outdoor dining. To confirm this, the Department has recommended a condition specifying that no approval is granted for the use of this space for outdoor dining. The Department also notes existing conditions require the area to be lit at night and include CCTV to improve safety and reduce opportunities for concealment or entrapment.

Subject to these conditions, the Department is satisfied the revised layout and secondary entrance to the shopping centre would not result in unacceptable impacts to the adjoining property.

Impacts to 293 Gardeners Road

The modification initially proposed to increase the height of the podium wall from 3 m to 5 m and to remove dense landscape plantings at the podium edge, along the eastern boundary, adjacent to 293 Gardeners Road. The Department raised concerns with this aspect of the proposal, noting the height of the podium wall was reduced through the assessment of the original application and stepped to provide dense tree plantings to assist with mitigating visual impacts and overlooking towards 293 Gardeners Road.

In response, the Proponent amended the landscape plan to reinstate the stepped arrangement. The Proponent also advised the architectural plans have reverted back to the approved design. However amended elevation plans were not submitted. A condition is therefore recommended requiring updated plans be submitted to confirm the heights of the podium wall and landscape planters prior to the issue of a Construction Certificate.

Subject to updated plans demonstrating wall heights have reverted to the approved heights, the Department is satisfied the modified proposal would not result in additional visual or overlooking impacts to the adjoining property at 293 Gardeners Road, compared to the existing approval.

7.4 Parking, Traffic, and Transport

Submissions raised concerns about traffic generation, insufficient onsite parking and an overreliance on public transport services, which are already operating at capacity.

In response to these concerns, the Proponent amended the plans to incorporate an additional level of basement parking with 64 additional parking spaces to support the proposed 21 additional residential units and 449 m² of lettable retail floor space.

The modification request was also accompanied by a traffic and transport assessment which considered the impacts of the proposal on the surrounding road network. The Department notes that based on the approved car parking rates set out in Condition B33, the proposed modification results in a total parking demand for the north site of 272 spaces (141 residential spaces, 27 visitor spaces, and 104 retail customer spaces) and the proposal provides for 280 spaces. The Department is therefore satisfied the proposal would incorporate sufficient on-site parking to service the proposal.

The Department also considers the site is well serviced by public transport and the modification would not materially affect public transport capacity. The Department notes TfNSW have previously advised that public transport services are monitored on ongoing basis to enable capacity issues to

be addressed as additional population moves into the area. The Department is therefore satisfied provision could be made for upgrades to services, if considered necessary by TfNSW in the future.

The traffic assessment submitted with the modification request found that the proposal would result in a modest increase in traffic generation of 20 to 30 additional vehicles per hour in the weekday peak and 40 additional vehicles per hour in the Saturday peak. This is equivalent to an additional vehicle in the surrounding streets every 1.5 to 3 minutes during peak times. This would have a negligible impact on the operation of the surrounding road network. The Department is therefore satisfied the proposed modification would not result in any unacceptable traffic impacts.

7.5 Other Issues

Table 2: Assessment of Other Issues

<i>Issue</i>	<i>Consideration</i>	<i>Recommendation</i>
<i>Residential Amenity</i>	<ul style="list-style-type: none"> The Proponent has provided a detailed assessment against the requirements of SEPP 65 and the ADG. The assessment demonstrates the proposed building and apartment layouts are generally compliant with SEPP 65 and ADG, including compliance with solar access, natural ventilation, apartment sizes, storage, ceiling height, communal open space, and internal building separation provisions. Two areas of non-compliance relate to the setback to the western boundary and one unit which does not incorporate any private open space. The western boundary setback has been considered in detail in Section 7.3. The unit with no open space is a south facing studio unit on the top floor. The ADG recommends studio apartments should have a 4m² balcony. The proposed unit would have an internal floor area of 43.3 m², exceeding the ADG minimum recommended size of 35 m² (internal) plus 4 m² (external). The Proponent advises the non-compliance results in a better outcome, as a larger unit would provide better amenity and utility than a unit with a small south facing balcony and reduced internal living space. The Department agrees and considers in this case the studio unit would enjoy a good level of internal amenity noting: <ul style="list-style-type: none"> it would have a generous internal floor area for a studio it would incorporate large windows allowing good access to light and ventilation despite its southern orientation being on the top floor, it will have good access to views and outlook which will add to the amenity of the space. In addition to compliance with the provisions of the ADG, Council recommends all three-bedroom units in the building should be required to demonstrate compliance with the 'Family Friendly Apartment Buildings' requirements of the Botany Bay Development Control Plan 2013 (DCP). The Department is satisfied the proposal incorporates apartments with sufficient floor space and appropriate layout to accommodate the needs of families with children, consistent with the objectives of the DCP. This includes a high proportion of apartments with two or more bedrooms and two bathrooms and with some apartments also providing a study, generous bedroom sizes capable of accommodating a desk, private open space visible from the kitchen, and generous entry and storage areas. The Department considers that overall, the proposed new building will provide a high level of internal residential amenity. 	No additional comments or amendments necessary
<i>Developer contributions</i>	<ul style="list-style-type: none"> Council initially advised that due to the significant increase in density, the provision of public benefits through a voluntary planning agreement (VPA) should be considered. However, following clarification that the density increase was significantly less than originally notified, Council no longer raised concerns with the proposed density and did not pursue a VPA. The Department notes in the assessment of the original application, Council advised it did not wish to enter into a VPA and preferred payments be made in accordance with its contributions plan. Therefore, Condition B14 was included in the approval which requires the payment of contributions in accordance with the Botany Bay s94 Contributions Plan. The Department notes the existing condition estimates contributions based on an outdated version of the plans, but also notes that it is an estimate only and will need to be adjusted in accordance with changes to apartment numbers and floorspace. 	Condition B14 is recommended to be updated to require developer contributions in accordance with The City of Botany Bay Section 94 Development Contributions Plan

	<ul style="list-style-type: none"> The Department considers the condition should be revised to delete the estimates, as they are no longer accurate, and to simply require contributions payable in accordance with the Section 94 Plan. Subject to the updated condition, the Department is satisfied the development will incorporate appropriate contributions towards local infrastructure and services. 	
<i>Signage and Safety</i>	<ul style="list-style-type: none"> The modification incorporates changes to the design of a pylon sign on Gardeners Road in the north-west corner of the site, with the key change being the reinstatement of a solid structure, rather than a structure on supports. Condition B2 of the approval required the sign to be redesigned to allow pedestrian views through the base of the sign, to improve safety and security. The sign was amended accordingly, and the condition was discharged. The modification now seeks to reinstate the solid base to meet blast zone requirements in relation to the adjoining electrical substation. To compensate, the proposal incorporates additional landscaping and fencing around the sign to reduce opportunities for concealment and improve safety and security. The Department considers the proposed landscaping and fencing would be appropriate to deter antisocial behaviour and notes the proposed solid structure results in an improved safety outcome in terms of protection from the substation. The Proponent also submitted an assessment of the sign against SEPP 64 which demonstrates the amended sign would be appropriate for the town centre location, not result in visual clutter or affect views or amenity. The Department is therefore satisfied the proposed change to the sign is acceptable. 	No additional comments or amendments necessary
<i>Geotechnical and groundwater</i>	<ul style="list-style-type: none"> The modification includes an additional level of basement parking, resulting in the provision of three basement levels. The Department notes the geotechnical investigation for the original application was carried out on the basis that up to 3 levels of basement parking may be provided and included recommendations for the development on this basis. As such, additional geotechnical investigations are not required for this modification. The Department also notes existing conditions require compliance with the recommendations of the geotechnical report, as well as further detailed investigations of groundwater contamination, salinity, and acid sulfate soils, as well as the incorporation of measures to remediate contamination and construction measures prior to the issue of a construction certificate. The Department is therefore satisfied geotechnical and groundwater issues would be satisfactorily dealt with by the existing studies and conditions of consent and the modification would not result in any additional impacts beyond those already assessed and approved. 	No additional comments or amendments necessary
<i>Sydney Airport</i>	<ul style="list-style-type: none"> Civil Aviation Safety Authority (CASA) advises that the proposed development would come close to, but would not infringe on the prescribed airspace for Sydney Airport and therefore it has no safety concerns about the proposal. Sydney Airport Corporation advises it has no objection to the erection of the development to a height of 50.2 metres AHD, inclusive of all structures, and separate approval from Sydney Airport will be required if construction cranes are required to operate above this height. To ensure the development complies with Sydney Airport safety requirements, the Department recommends a condition requiring all construction equipment, including cranes not exceed AHD 50.2 m, unless prior approval is granted by Sydney Airport. Subject to this condition, the Department is satisfied the proposed increase in building height will not affect air safety. The Department also notes the site is outside the area designated as being affected by aircraft noise (i.e. outside the Australian Noise Exposure Forecast (ANEF) 20 contour), so no acoustic treatment would be required for the development. 	A condition has been recommended requiring all construction equipment, including cranes, not exceed AHD 50.2 m, unless prior approval is granted by Sydney Airport.
<i>Access</i>	<ul style="list-style-type: none"> A submission recommended that vehicular access to the site, particularly deliveries, should be provided from Gardeners Road. Access from Gardeners Road was considered in the assessment of the original application and was found to be not feasible due to level changes and proximity to the signalised intersection with Racecourse Place. The Department considers the proposed modification (which proposes no changes to the approved access arrangements) does not alter the Department's previous assessment or give rise to the need to reconsider the approved access points. 	No additional comments or amendments necessary
<i>Energy Efficiency</i>	<ul style="list-style-type: none"> In accordance with the requirements of State Environmental Planning Policy (Building Sustainability Index BASIX) 2004 the Proponent has submitted a BASIX report and certificates to demonstrate Building 1B would meet energy and water efficiency and thermal comfort requirements. A Section J report (under the Building Code of Australia) has also been submitted to demonstrate the revised 	No additional comments or amendments necessary

	podium level meets performance requirements for energy efficiency and construction.	
	<ul style="list-style-type: none"> The Department is satisfied the modified development meets the requirements of State Environmental Planning Policy (Building Sustainability Index BASIX) 2004 and incorporates appropriate design measures to ensure the building achieves high levels of energy efficiency and environmental sustainability. 	
<i>Previous Modifications to Plans</i>	<ul style="list-style-type: none"> Condition B2 of the original approval required a range of design modifications with updated plans to be approved by the Department. Amended plans were prepared to address the requirements of Condition B2 and were subsequently approved by the Department in December 2015. As the updated plans essentially replace many of the plans referred to in Condition A2 of the approval, and to avoid confusion over which plans apply to the development, the Department recommends that where relevant, Condition A2 be amended to refer to the plans discharged by Condition B2, and Condition B2 be deleted as it has already been discharged. 	Condition A2 is recommended to be updated to reflect plans approved when Condition B2 was discharged, and the requirements of B2 be deleted.

8. CONCLUSION

The Department has assessed the modification request and supporting information in accordance with the relevant requirements of the EP&A Act. The Department's assessment concludes that the proposed modification is appropriate on the basis that:

- the site is well located to support additional housing, being part of town centre with good access to services and public transport, consistent with key strategic planning objectives for the site
- Building 1B would not result in unacceptable visual impacts due to its central location in the town centre, and the height of other approved buildings surrounding the site
- it will achieve a high quality architectural design which contributes positively to the character of Eastlakes
- it would provide high levels of internal amenity for future residents
- subject to conditions, the proposal would not result in any unacceptable amenity impacts to neighbours in terms of visual impacts, privacy, solar access or view loss
- the proposal would not result in any traffic, transport or parking impacts.

Consequently, the Department considers the modification request is approvable subject to conditions. This assessment report and recommendation is hereby presented to the Commission for determination.

Recommended by:



Anthony Witherdin
Director
Regional Assessments



Anthea Sargeant 7/6/18
Executive Director
Key Sites and Industry Assessments

APPENDIX A: NOTICE OF MODIFICATION

A copy of the notice of modification can be found on the Department's website at:

http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=8613

APPENDIX B: SUPPORTING INFORMATION

The following supporting documents and supporting information to this assessment report can be found on the Department of Planning and Environment's website as follows:

1. Modification request

http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=8613

2. Submissions

http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=8613

3. Response to Submissions

http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=8613